

# Public register and advertising applications – How we use the information in your application



Environment  
Agency

## This guidance note sets out the duty on the Environment Agency to maintain a public register of applications for abstraction and impoundment licences.

Information relevant to the abstraction and impoundment of water is available through a public register of abstraction and impoundment licences maintained under section 189 Water Resources Act 1991(WRA).

Applications must be accompanied by notices which are published in a local newspaper and on the Environment Agency website (now [www.gov.uk](http://www.gov.uk)) and which include certain information and name a place where a copy of the application and map, plan and other documents submitted with it will be open to inspection by the public, free of charge at all reasonable hours during a specified period (section 37 WRA).

In addition the public can make requests for disclosure of information under Section 1 of the Freedom of Information Act 2000 (FOIA) and Regulation 5 of the Environmental Information Regulations 2004 (SI 2004/3391) (EIR) and we are under a statutory duty to respond to such requests and to provide advice and assistance.

This document covers the specific requirements for public registers and for withholding information from public registers and from notices.

## Public registers

### Duty to maintain public registers

The Environment Agency must maintain a public register containing brief particulars of applications for licences to abstract and impound water and particulars of its decisions thereon and licences that are granted. The register must be available for inspection by the public at all reasonable times (section 189 WRA).

You (or any other person, including us) may notify the Secretary of State that, in your opinion, the inclusion of information on a public register would be contrary to the interests of national security. You (or other notifying person) must let us know that you have notified the Secretary of State. You must not however exclude that information from any submission to us, such as a licence application.

We must keep this information off the public register unless the Secretary of State determines that it should be included (section 191A(2) WRA). We must notify the Secretary of State when we exclude information from a public register (section 191A(3) WRA).

Any public notice given under WRA section 37 and relating to an application for a licence must not include any information that is not to be included in a public register by virtue of section 191A WRA (Regulation 6(7) of the Water Resources (Abstraction and Impounding Regulations) 2006 (SI 2006/641)). The notice of the application must be published by the date 28 days after the day on which we receive notice of any determination by the Secretary of State of exclusion from public registers of information affecting national security (Regulation 6(4)).

### Commercial confidentiality

Information must be withheld from the public register of applications for abstraction and impoundment licences or a public notice relating to an application for a licence where we determine that it is commercially confidential – as defined (Section 191B(1) WRA).

‘Confidential information’ is defined as being information in relation to any individual or person, that would if it were contained in the public register or a public notice prejudice to an unreasonable degree the commercial interests of that individual or person (Section 191B(11) WRA).

### Form and content of public registers

The public register can be in any form. The public registers must contain the information set out in Regulation 34 of the Water Resources (Abstraction and Impounding Regulations) 2006 (SI 2006/641).

The public register is subdivided into a number of geographically based non-electronic public registers located at our Area Offices. Please contact our National Customer Contact Centre on tel. 03708 506 506 to find out where the public register is located for a particular area.

### National security

No information should be included in the public register of applications for abstraction and impoundment licences if, in the opinion of the Secretary of State, the inclusion of that information in the register would be contrary to the interests of national security (section 191A(1) WRA).

If asked to, the Secretary of State must determine whether placing the information on the public register would be contrary to the interests of national security. The Secretary of State may direct us to exclude specified information (or a specified description of information) from the public register (section 191A(2)(a) WRA).

The Secretary of State may direct us to refer a specified description of information to him for his determination before its inclusion on the public register (section 191A(2)(b) WRA).

We are required to determine whether information must be excluded from the public register on the grounds of commercial confidentiality when: you have applied for commercial confidentiality as part of your licence application or we have notified another person that we have acquired information relating to them that may be commercially confidential and that person has asked that we treat the information as commercially confidential (Section 191B(4) WRA).

If you want confidential information to be excluded from the public register you should request this when you send the information to us, whether as part of an application, as monitoring information, or for any other purpose. You should provide clear justification for each item of information you wish to be kept from the public register. It will not be enough, for example, merely to assert commercial prejudice: the test is whether disclosure of the information would prejudice to an unreasonable degree the commercial interests of an individual or person. The amount of information asked to be excluded from the public register should be kept to the minimum necessary to safeguard your commercial advantage. You should make sure that any information which you consider confidential is readily identifiable. It will help us if the information you wish to be excluded is submitted in a way which will allow it to be easily removed should the claim be granted: for example on separate pages, marked ‘claimed commercially confidential’.

We may only determine requests based on the information provided to us. If the information provided does not clearly demonstrate that information should be protected, then we must determine that it is not commercially confidential. In reaching our decision, we must apply the legal criteria and take account of any reasons given by you.

Where we determine that information is not confidential, the information must be kept from the public register for a further 21 days. This is the period within which an appeal may be made to the Secretary of State. If no appeal has been made within that time, the information must be put on the public register.

Where an appeal to the Secretary of State is made in respect of any information, the information shall not be entered on the public register until the end of the period of seven days following the day on which the appeal is finally determined and it is determined that the information is not commercially confidential or the appeal is withdrawn (section 191B(5) WRA).

The Secretary of State may give us directions as to specified information, or descriptions of information, which the public interest requires to be included in public registers we keep or maintain under any provision of the WRA notwithstanding that the information may be commercially confidential (section 191B(7) WRA).

Any public notice given under section 37 WRA and relating to an application for a licence must not include any information that is not to be included in a public register by virtue of section 191B WRA (Regulation 6(7) of the Water Resources (Abstraction and Impounding Regulations) 2006 (SI 2006/641)). The notice of the application must be published by the date 28 days after the day on which we tell the applicant we have determined information to be commercially confidential (Regulation 6(5)(a) or if we determine it is not commercially confidential, if no notice of appeal is served by the date 28 days after the end of the period within which notice of appeal against that determination may be served or if a notice of appeal is served, by the date 28 days after the day on which we receive notice of determination or withdrawal of the appeal (Regulation 6(5)(b)).

A determination of commercial confidentiality will only last for four years. You may re-apply for a determination if you consider information still to be commercially confidential before the end of the four years and we must then make a new determination. If you do not do so, we must place all previously commercially confidential information on the public register (Section 191B(8) WRA).

## **FOIA and EIR**

The public may also use Section 1 of the FOIA and Regulation 5 of the EIR to make requests for disclosure of any information that we hold. This can include information that has been withheld from a public register on grounds of commercial confidentiality or national security although there are exemptions and exceptions to disclosure that might apply, subject to the public interest test. Further guidance may be obtained here:

<https://www.gov.uk/make-a-freedom-of-information-request>