

# Interpreting and clarifying requests

## Freedom of Information Act Environmental Information Regulations

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## Introduction

1. The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2003 (EIR) give rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA and the EIR can be found in [The Guide to Freedom of Information](#) and [The Guide to the Environmental Information Regulations](#).
3. This is part of a series of guidance, which goes into more detail than the Guides, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains what a public authority should consider when interpreting a request, and when it should ask the requester for clarification. It does not cover the issue of the validity of a request. If you think the request might be invalid then you should first read our guidance 'Recognising a request made under the Freedom of Information Act (Section 8)'.

## Overview

- Public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording.
- The authority must answer a request based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.
- Sometimes the requester's correspondence may suggest that other information would be of more use to them. Where this is the case, the authority should offer advice and assistance to help the requester to submit a new request for different information.
- If the authority finds there is more than one objective reading of the request then it must go back to the requester to ask for further clarification. It should not attempt to guess which interpretation is correct.
- Authorities are not normally obliged to look beyond the wording of the request itself when interpreting its meaning. However, if

the requester refers to other correspondence, or provides additional context when making the request, the authority should take this into account if it impacts on the interpretation.

- Authorities must also read requests impartially. This means that they should ignore any emotive language or criticism when interpreting the meaning of the request.
- When an authority receives an unclear or ambiguous FOIA request, its Section 16 duty to provide advice and assistance will be triggered and it must offer the requester help to clarify the request.
- Section 1(3) of the FOIA stipulates that, where an authority has informed the requester that it requires clarification, it will not be under any further obligation to comply until the requester supplies the information it requires.
- Where an authority receives an unclear or ambiguous EIR request, it must issue a refusal notice under Regulation 12(4)(c) whilst at the same time complying with its Regulation 9 duty to provide the requester with “reasonable” advice and assistance to help them clarify the meaning of that request.

## Reading requests objectively

5. If the request clearly specifies exactly what information or documents the requester wants, the authority will comply by providing this information.

### **Example**

A local authority receives a request phrased:

*‘Please send me a copy of the report entitled “City Centre Regeneration Strategy 2015 – 2020” that you published on 17 September 2013’.*

The wording of this request is so specific that it has only one clear meaning - that the requester wants a copy of the named report. Therefore the authority would comply by responding to

this clear request and considering the report for release.

6. Sometimes however a request may have more than one possible interpretation.

**Example**

A government department receives a request phrased:

*'I would like copies of all internal memos written by the minister and of all speeches given by the minister in February 2013.'*

This request can be interpreted in two different ways. The requester may mean:

all internal memos ever written by the minister, plus copies of all the speeches he made in February 2013

However, they could equally mean:

all internal memos written by the minister in February 2013, plus copies of all the speeches given by the minister in the same month.

7. Where an authority receives a request with more than one possible meaning, it must go back to the requester to ask them to clarify which interpretation is correct.
8. If the request was made under the EIR, then, as well as asking for clarification, the authority must also issue a refusal notice under Regulation 12(4)(c) - the exception for requests formulated in too general a manner.
9. This process is covered in more detail in the section entitled 'Clarifying a request'.
10. The authority should never attempt to guess which meaning the requester actually intended. Even if it responds correctly to one possible objective reading of a request it may still find itself in breach of the legislation if it fails to identify an alternative interpretation which is equally valid.

**Example:**

In [Mr A Berend v IC and LBC Richmond upon Thames \(EA/2006/0049 & 0050; 12 July 2007\)](#), The London Borough of Richmond received a request asking for:

*"...all working papers and documents attached to agendas".*

The Information Tribunal found that the council had breached the FOIA in only considering working papers that were attached to agendas, even though this was an objective reading. They had failed to identify the alternative meaning, which would include all working papers.

**Requests where the background and context change the meaning**

11. We would not expect an authority to search for the history and context behind a request where none has been provided.
12. However, authorities will need to take the background and context into account where:
  - it is referenced in the request; and
  - has the potential to alter its objective meaning.
13. For instance, if the request makes reference to ongoing dealings between the requester and the authority, and these shed new light on the meaning of the current request, the authority will need to revise its interpretation accordingly.
14. Similarly, if a request makes specific reference to, or is clearly linked with, other correspondence between the authority and the requester, then the authority will need to read the request in that context.

**Example**

A government department receives the following request:

*"With reference to my letter dated 12 August 2013, I would like to know how much was spent on strengthening flood defences in the North of England last year"*

The department is not clear, from the wording of the request, which specific geographical area the requester means by *'the North of England'*.

However, when the department refers back to the requester's letter of 12 August, it finds that he has defined the *'North of England'* as the counties on the border with Scotland - Cumbria and Northumberland.

After reading the request in this light, the department recognises that it has to be interpreted to mean the amount spent on flood defences in the counties of Cumbria and Northumberland.

15. In the decision notice below, the authority's failure to properly read the request in context meant that it overlooked the alternative objective meaning of the request.

### **Example**

In ICO decision notice [FS50418149](#) the complainant had asked Cumbria Partnership NHS Foundation Trust to provide:

*'...figures for the number of dental procedures which have been postponed or cancelled in the past 12 months'.*

The Trust responded by providing the figure for the total number of cancellations by patients and by the Trust combined.

However, the complainant contended that her request was for the number of cancellations by the Trust alone.

In the course of his investigation, the Commissioner learned that the request was part of a letter of complaint about the Trust's cancellation of dental appointments and its failure to provide an acceptable level of service in that area, and he found that the request did have an alternative objective meaning when considered in this context.

*'Given that the context in which the request was made was the Trust's cancellation of appointments, with no mention of the cancellation of appointments by patients, the Commissioner is satisfied that the complainant's contention*

*that she was only seeking information about cancellations by the Trust was an alternative objective reading of the request...*' (para 19).

16. If, once the background and context are taken into account;
- the meaning of the current request becomes unclear or ambiguous; OR,
  - it is apparent that there is at least one other possible interpretation of the request;

the authority must go back to the requester to ask for further clarification. This is covered in more detail in the section 'Clarifying a Request'.

### **Example**

A local authority receives a request asking for:

*"...the source of the statistics on Church Street Comprehensive School quoted in your letter of 11 August."*

The authority refers back to its letter of 11 August but discovers that it only contains references to statistics about North Lane Academy School.

As the meaning of the request is unclear when read in this context, the authority will need to go back to the requester to ask for clarification.

### **Requests where the context or background suggests the requester may want different or additional information**

17. Sometimes the meaning of a request may appear to be clear, but the background or context might suggest that the authority would better meet the requester's needs by providing different or additional information.
18. Where this is the case, the authority's duty in relation to the request that has been made is to simply provide what the requester has asked for. However, the Code of Practice issued under section 45 of FOIA explains that authorities should also provide advice and assistance to those who 'propose to make'

requests. Depending on the circumstances this may involve contacting the requester to help them formulate a new request that will better meet their needs.

19. In this situation authorities may choose to provide advice and assistance to help the requester make a new request, before they respond to the original request. In many cases this will be more helpful to the requester and may even lead to the original request being withdrawn.

### **Example**

A requester asks a public authority for the following:

*'The paper published by New Street Hospital in October 2012 entitled "Expenditure on treating alcohol related conditions 2009 - 2012"'*

The authority is clear about the objective meaning of the request and can easily identify and locate the information from the description provided.

However, it notes that in making his request, the requester has referred to his previous correspondence on the subject of the costs of treating alcohol related violence.

The requested paper only covers the costs of treatment for intoxication. The authority suspects that the requester is unaware of this, and concludes that the information is unlikely to be of value to him.

The authority also holds a report on the costs of alcohol related violence which it believes would better meet the requester's needs.

The authority decides to contact the requester to explain that the paper does not cover alcohol related violence, and that it holds a report that might better fulfil his requirements. The requester confirms that he no longer requires the paper he originally asked for and submits a new request for a copy of the report.

By contacting the requester in this way the authority meets the requirement to provide advice and assistance to those who 'propose to make' requests, and also saves the time it would have spent in answering the original request.

20. However, authorities should remember that the requester still has a right to have the original request answered and should take care not to suggest otherwise. In some cases a requester may decide not to withdraw the original request, even though they also make a new one. If this happens the authority is still obliged to answer the original request within the statutory time limit (usually 20 working days).
21. The position under the EIR is largely the same. The [EIR Code of Practice](#) states that;

9. Every public authority should be ready to provide advice and assistance, including but not limited to the steps set out below. This advice and assistance should be available to those who propose to make, or have made requests and help them to make good use of the Regulation. The duty on the public authority is to provide advice and assistance "so far as it would be reasonable to expect the authority to do so."

## Unclear requests

22. If the request is not sufficiently clear to enable the authority to locate or identify the requested information, then its duty to provide advice and assistance will be triggered and it must go back to the requester to ask for further clarification.
23. If the request was made under the EIR, then the authority will also need to issue a refusal notice under Regulation 12(4)(c) - the exception for requests formulated in too general a manner.
24. This is covered in more detail in the section entitled 'Clarifying a request'.

## Contentious criticisms and allegations

25. Sometimes a requester may level criticisms or allegations at the authority or its employees, for instance by asking for information about a '*ridiculous decision*' or '*failures within the authority*', or making accusations of misconduct or corruption against staff.

26. However, the authority must not allow its own views about the validity of any criticisms or allegations to influence how it reads the request; its sole focus must be on the information that is being requested.

**Example 1**

A government department receives the following request:

*'I would like to know the reasons behind the ridiculous decision to close your advice line.'*

The department does not accept the requester's assertion that this was a ridiculous decision. However, it can't allow this to affect how it reads the request.

It may not, for example, take the position that it does not hold any information about a '*ridiculous decision*' because, in its view, it has not made a ridiculous decision.

Rather, it must remain impartial and concentrate on the actual request, which is for information on the closure of the advice line.

## Requests that describe information using different terminology to the authority

27. The requester cannot reasonably be expected to have a detailed knowledge of the way in which an authority organises and structures its records, or the terminology it uses to describe and classify information internally. Authorities must therefore make allowances for this when reading requests.
28. They should not exclude material from the scope of an otherwise clear request because the requester has described the information in a different way or has failed to use the 'correct' terminology.

**Example:**

In ICO decision notice [FS50448565](#) the requester asked the London Borough of Barnet to provide '*...a copy of the One Barnet programme risk register...*'. He later reiterated the request and asked to be provided with '*the entire register*'.

The Council classed the information in this register as falling into one of two categories:

- *'risks'* (pre-emptive problems that had been identified and were being pro-actively managed); and,
- *'project issues'* (actual problems that had occurred and were being managed).

The Council provided the requester with a copy of the register but redacted the details of the *'project issues'* as it believed these fell outside the scope of the request.

However, the Commissioner took the view that the council had wrongly interpreted the scope of the request and ruled that it should provide the complainant with the *'issues'* sections of the risk register or issue a refusal notice in accordance with section 17 of the Act:

*'The Commissioner considers that, in making the request, the complainant could not have been expected to understand the intricacies of the distinction between 'issues' and 'risks' made by the council...He finds that an objective reading of the request, which explicitly asks for a copy of the "entire register" does not allow for a distinction to be drawn between the different elements of the register as the council has defined them.'* (paragraph 19)

29. If the authority is unclear what the requester is asking for then it must go back to them and ask for further clarification.
30. This is covered in more detail in the section entitled *'Clarifying a request'*.

## Clarifying a Request

31. Sometimes an authority may receive an unclear or ambiguous request where it reasonably requires further information in order to identify and locate the requested information. This will trigger its duty to provide advice and assistance and it must contact the requester within 20 working days to ask for clarification.

32. When seeking clarification the authority should ensure that:
- its only purpose is to make sure that it understands what information the requester wants;
  - it does not give the impression that the requester is obliged to explain their reasons for making the request; and,
  - the individual's interest in the information is only taken into account if it helps to determine the scope of the request; it should not have any bearing on the authority's response.
33. If, following the provision of reasonable advice and assistance, the requester is still unable to supply the required clarification, the authority will not be expected to offer advice and assistance a second time.
34. However, it must still consider the release of any information falling within the scope of the request that it has been able to identify and locate.

### **Responding to unclear or ambiguous requests under the FOIA**

35. Section 16(1) of the Act states:

**16.—(1)** It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

36. When an authority receives an unclear or ambiguous FOIA request, its Section 16 duty to provide advice and assistance will be triggered and it must go back to the requester to ask for clarification.
37. Part II of the [Section 45 Code of Practice](#) provides some examples of the type of advice and assistance an authority might offer to a requester who has made an unclear request.
38. Under Section 1(3) of the FOIA, once the authority has informed the requester that it requires further clarification, it

will not be under any further obligation to respond until that clarification has been provided.

**1.—(3)** Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

39. The authority should ensure that there is no undue delay in requesting clarification. This is emphasised in Part II paragraph 9 of the Section 45 Code of Practice which states, '*...it is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.*'
40. If the requester subsequently provides enough detail to enable the authority to identify and locate the information, then the authority must respond to the clarified request within a new 20 working day time limit with the 'clock' starting the day after it receives the required clarification.

### **Responding to unclear or ambiguous requests under the EIR**

41. Under Regulation 12(4)(c) of the EIR, an authority can refuse a request that has been formulated in too general a manner.

**12.—(4)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that — ...

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;...

42. The term 'formulated in too general a manner' covers requests that are:

- too unclear or non-specific for the authority to identify and locate the information requested; or,
  - ambiguous and can be interpreted in more than one way.
43. If an authority chooses to apply Regulation 12(4)(c), then it must issue the requester with a refusal notice within 20 working days of receipt of the request, explaining why it has engaged the exception.
44. More detailed information on the application of Regulation 12(4)(c) can be found in our guidance [Regulation 12\(4\)\(c\): Requests formulated in too general a manner](#).
45. An authority can only apply Regulation 12(4)(c) where it has also fulfilled its obligation under Regulation 9 to offer the requester advice and assistance.

**9.—(1)** A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

46. Regulation 9(2) stipulates that where a public authority intends to refuse a request under Regulation 12(4)(c), it must ask the requester to provide more particulars to clarify the meaning of the request, and provide “reasonable” advice and assistance to help them do so.
47. The authority must provide advice and assistance before or at the same time as it issues its refusal notice.
48. If, following the provision of this advice and assistance, the requester provides sufficient detail to enable the authority to identify and locate the information, then the authority should treat the clarified request as a new one.

49. This means that the authority will have a new 20 working day limit in which to respond, with the 'clock' starting the day after it receives the required clarification.
50. This will also reset the 20 working day time for compliance for:
  - Regulation 6(2)(a) – the time limit for explaining why the authority is not making information available in the form or format requested; and,
  - Regulation 14(2) – the time limit for issuing a formal refusal notice to the requester.
51. If the requester responds but is still unable to clarify what they want, even after the authority has provided reasonable advice and assistance, then the authority will have met its obligations under the EIR in relation to the original request and won't need to do anything more.

### **The relationship between Regulation 9 and the EIR code of practice**

**9.—(3)** Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

52. Under Regulation 9(3), an authority that follows the [EIR Code of Practice's](#) recommendations for providing advice and assistance will also have complied with its duty to provide advice and assistance under regulation 9(1).
53. Part III of the code makes several recommendations about the types of advice and assistance that could help a requester who makes an unclear request. However, it explains that these are not exhaustive, and therefore it is possible to follow all the steps suggested in the code and still be in breach of regulation 9.
54. For this reason, we would advise authorities to take a proactive approach to providing advice and assistance. In practice, this will mean making judgments based on the individual circumstances of each request and being aware that it may sometimes be necessary to go above and beyond the

recommendations in the code in order to comply with Regulation 9.

## More information

55. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other FOIA exemptions, or EIR exceptions.
56. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
57. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
58. If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at [www.ico.org.uk](http://www.ico.org.uk).