

Internal reviews under the EIR

Environmental Information Regulations

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Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. An overview of the main provisions of the EIR can be found in [The Guide to the Environmental Information Regulations](#).
2. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
3. This guidance outlines public authorities' responsibilities when dealing a complaint about the handling of an Environmental Information Regulations request, and explains when and how to carry out an internal review.

Overview

Under Regulation 11 of the EIR, if a requester believes that a public authority hasn't dealt with a request for environmental information properly, the requester can complain to the public authority and ask it to reconsider its response.

Such a complaint must be made in writing and, in most cases, will need to be made no later than 40 working days after the requester receives the public authority's response to their request

Upon receiving a complaint the public authority must:

- Consider the requester's representations and any supporting evidence they have provided; and
- Decide if it has complied with the requirements of the EIR.

The authority must notify the requester of the outcome of the internal review as soon as possible and no later than 40 working days after receiving the complaint.

If the public authority does not uphold the complaint then it is good practice to remind the requester of their right to refer the matter to the Information Commissioner, even though the requester should have been advised of this right in the original refusal notice.

A public authority should not make any charge for its internal review.

What the EIR say

Regulations 11(1) and 11(2) state:

11.(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

When to carry out an internal review

4. A requester can ask for an internal review if he believes a public authority has failed to deal with his request properly, for example by incorrectly applying an exception, taking more than 20 working days to respond, or mishandling the request in some other way.
5. To be valid, a request for an internal review must be:
 - made in writing (this includes by electronic means); and
 - submitted within 40 working days after the date on which the requester believes the authority breached the requirement concerned.

Determining the date on which the requester believes that the public authority has failed to comply with the requirement.

6. In most cases, the date on which the requester believes the authority breached the regulations should be easy to

determine. It will usually be the day on which the requester receives a response to his information request.

7. However, in a few cases, identifying this date may not be quite so straightforward.

Example 1

If the requester continues to write to the public authority after his request is answered and subsequent exchanges convince him that it holds more information than was initially provided, then the date he believes the breach occurred will fall sometime later than the date of the original response.

Example 2

Where a public authority considers a request under the wrong legislation, the requester may not initially be aware that he has any grounds for complaint under the EIR, and this can make the precise date on which he became aware of the problem more difficult to pinpoint.

8. We therefore consider it good practice for authorities to exercise a degree of flexibility over the 40 day limit in any case where the exact date on which the requester became aware of a breach cannot easily be established.
9. Where the ICO receives a complaint in which the requester and the public authority are in dispute over whether the internal review request was submitted in time, then we will make a decision based on the individual circumstances of that case.
10. It is not necessary for the requester to specifically request an internal review in their letter. The EIR Code of Practice states that any correspondence in which the requester has expressed dissatisfaction over the handling of their request should be addressed through the internal review procedure.

Time limit for response

11. Once the authority has received a request for internal review it will need to respond as soon as possible and no later than 40 working days after the date it receives the representations. We

consider that in most cases it should be possible for the authority to respond within 20 working days.

12. It is good practice to send the requester an acknowledgement specifying the target date for a response. If the authority finds that it is unable to meet the target date because the issue is particularly complex or requires more lengthy consideration, then it should inform the requester of the reasons for the delay. However, it must always ensure that the internal review has been completed and the requester notified of the outcome within the 40 working day limit.

How to carry out an internal review

Regulation 11(3) states:

(3) The public authority shall on receipt of the representations and free of charge

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

13. The EIR Code of Practice states that each public authority must have a review procedure in place.
14. Any request for review will need to be handled in accordance with these procedures and conducted in a fair and impartial manner.
15. We consider it good practice to abide by the following guidelines when conducting a review:
 - The review procedure should involve a thorough re-examination of the original decision and handling of the request.
 - It should be genuinely possible to have a previous decision amended or reversed.
 - There should be provision to review the outcome of a public interest test.

- It should be carried out by someone senior to the person who dealt with the original request. If this is not possible it should be undertaken by someone trained in, and who understands, the Environmental Information Regulations.
- The procedure should be a clear and straightforward, single stage process.
- It should also be capable of producing a prompt decision for the requester.

What if circumstances change?

16. It is quite possible that the circumstances relating to the request will have changed by the time the internal review is carried out.
17. However, any review must take into account the circumstances which applied at the time of the request (or at the latest, the time limit for responding, which will normally be 20 working days after the request is received) rather than those in place at the time of the internal review.
18. This shouldn't be taken to mean that if, at any time, circumstances change to the extent that the authority is able to release the information, then it cannot do so. It will obviously make sense to do this and it may lead to the requester withdrawing their complaint.
19. However, if the requester does not withdraw their complaint and still wants an internal review then the public authority will need to decide if its original response complied with the requirements of the EIR by referring to the circumstances in place when the request was originally made.
20. For further guidance on the time limits for responding to requests, please refer to the chapter 'What should we do when we receive a request for information' in the [Guide to the Environmental Information Regulations](#).

Communicating the decision

21. Once the public authority has reached a decision it must notify the requester of the outcome of the review. If the authority

decides not to uphold the complaint then it must communicate its reasoning to the requester. The public authority should have already informed the requester of their right to complain to the ICO in its original refusal notice. However, it is good practice to remind the requester of this right when writing with the outcome of the internal review.

Upholding complaints

Regulation 11(5) states:

(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of:

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

22. If the review reverses a decision to withhold information, then the public authority should release that information to the requester straight away.
23. If the review finds other failings then the public authority should state what these are and set out when and how it intends to correct them. Obviously it will not be possible to correct any time breaches that have already occurred, but the public authority should still acknowledge that they have happened.
24. Where a public authority has found that its staff failed to follow the proper procedures, it is good practice to provide the requester with an explanation and apologise. The authority should also take appropriate steps to prevent the problem from recurring in future.

Monitoring complaints

25. It is advisable to keep a record of each complaint and the outcome of the subsequent internal review, including the

reasoning behind the decision. This will help to highlight any areas where the public authority's information handling procedures could be improved and will also be needed if the requester takes their complaint to the ICO.

Publicising the complaints procedure.

26. Public authorities should ensure that the details of their complaints procedure are included in their publication scheme or are readily available elsewhere, for example via the authority's website. This should also include information about their timescale for dealing with complaints.

More information.

27. 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.
28. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
29. If you need any more information about this or any other aspect of freedom of information, please [Data Protection and Freedom of Information advice - ICO](#)