

Regulation 9 – Advice and Assistance

Environmental Information Regulations

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Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities.
2. An overview of the EIR's main provisions can be found in [The Guide to the Environmental Information Regulations](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities fully understand their obligations and promote good practice.
4. This guidance provides advice to public authorities about their advice and assistance duties under regulation 9 of the EIR.

Overview

- Advice and assistance is a wide-ranging duty that may be relevant to all stages of the request process which includes prospective applicants.
- The purpose of advice and assistance is to help applicants exercise their rights under the EIR.
- The duty on public authorities under the EIR is to provide 'reasonable' advice and assistance.
- The amount of advice and assistance that it is 'reasonable' for a public authority to provide will depend on the circumstances of each request or prospective request.

5. There are differences between giving advice and assistance under the EIR and giving it under the Freedom of Information Act 2000 (FOIA). Under the EIR the duty is wider and is not limited to certain triggers as in the FOIA.

What the EIR says

6. Regulation 9 of the EIR places a duty on public authorities to provide advice and assistance to applicants regarding requests for environmental information.

7. Regulation 9 states:

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.

(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.

(4) Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

(5) The provisions referred to in paragraph (4) are—
(a) regulation 5(2);
(b) regulation 6(2)(a); and
(c) regulation 14(2).

8. Regulation 9 requires a public authority to provide advice and assistance, as far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
9. It goes further by requiring that if a public authority decides that an applicant has formulated a request in too general a manner, it should ask them as soon as possible – and in any event no later than 20 working days after receiving it – to give more details about the request, and it should help them do so.
10. If a public authority conforms to a Code of Practice issued under regulation 16 as regards giving advice and assistance in a particular case, it will be taken to have complied with regulation 9(1). Currently, one Code of Practice is issued under regulation 16 – the [Code of Practice on the discharge of the](#)

Compliance with the EIR Code of Practice

11. Regulation 9(3) states that where a public authority conforms to a Code of Practice, it will be regarded as complying with its regulation 9 obligations.
12. Part III of the EIR Code of Practice (the Code) provides guidance to public authorities as to the recommended practice and steps to take when providing advice and assistance.
13. However, the Code does not provide a defined limit to the level of advice and assistance that could be required and states that it should not necessarily be limited to the steps in the Code. This reflects the wording of regulation 9(1), which says advice and assistance should be provided 'so far as it would be reasonable to expect the authority to do so'.
14. What is reasonable will vary from case to case. This means there will be situations where a public authority is not required to take the steps in the Code to comply with regulation 9. This also means that in some circumstances the advice and assistance that would be reasonable may exceed the steps in the Code.
15. Therefore in practice a public authority could follow the Code's recommended steps but still be found in breach of regulation 9 for something the Code did not cover, taking into account what advice and assistance it would be reasonable to provide in the specific circumstances. Public authorities should be aware that the amount of advice and assistance needed to comply with regulation 9 will vary from case to case. The circumstances will dictate the most appropriate course of action.

Circumstances when advice and assistance may be required

16. Giving advice and assistance is a wide-ranging duty and may be relevant to most, if not all, stages of the request process including when dealing with prospective applicants.
17. Advice and assistance can simply be seen as the means by which a public authority engages with an applicant to establish

what the applicant wants and, where possible, to help them obtain it; in effect it provides for good customer service.

18. Circumstances when a public authority may need to offer advice and assistance could include:
 - where someone has made clear they intend to make a request for information;
 - where the request is too vague;
 - where the information is already publicly available; or
 - where the request has been turned down because of an exception.
19. This list is not exhaustive. There are many circumstances in which advice and assistance under regulation 9 will be appropriate. Therefore public authorities should consider each situation carefully.

Example

An individual informs a public authority that they are interested in the energy efficiency and waste generated by that public authority.

The public authority gives the potential applicant advice and assistance by explaining the types of information they hold and their charging policy. It also informs the individual that it publishes yearly energy-efficiency reports on its website in its publication scheme.

20. In general, there is unlikely to be any additional burden in giving advice and assistance as it is essentially a matter of good customer service. So most of the time the duty to provide advice and assistance is likely to be fulfilled when public authorities deliver their usual customer service standards.
21. The duty to provide advice and assistance can also be triggered if the public authority is aware at the time of the request that the applicant may actually be seeking other information, over and above what they have asked for.
22. The Commissioner is of the view that, taking into account what is said at the time of making the request, if it is obvious that the applicant is seeking other information and what that other information is, then the public authority should give advice and assistance so that the applicant can make another request. In such a situation the public authority should still answer the

original request but at the same time offer advice and assistance to enable the applicant to make a further request.

‘Reasonable’ provision of advice and assistance

23. Regulation 9(1) states that public authorities have a duty to provide ‘reasonable’ advice and assistance. The term ‘reasonable’ is not defined in the EIR. However the Code states that public authorities should take a flexible approach and treat each request or proposed request individually depending on the circumstances.
24. In many cases the nature of the advice and assistance required is likely to be clear from the outset. In others, the public authority will need to have a discussion with the applicant to see what advice and assistance would be appropriate and therefore reasonable.
25. The Code gives examples of types of advice and assistance that may be appropriate:
 - Outlining the different kinds of information that might meet the terms of the request.
 - Providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority.
 - Giving a general response to the request, with options for further information that could be provided on request.
 - Informing the person that another person or agency (such as a citizens advice bureau) may be able to help them with the application or apply on their behalf.
26. The examples above are not exhaustive and will depend on the particular circumstances. For instance in other circumstances ‘reasonable’ advice and assistance could also include:
 - informing a potential applicant of their rights under the EIR;
 - helping an applicant to focus their request, perhaps by saying what types of information are available
 - informing an applicant that information is available elsewhere, and explaining how to access it, or
 - keeping an applicant informed of the progress of their request.

Example

In case reference [FS50596886](#) the complainant requested all information about a listed building held by named officials at a District Council. The Council initially dealt with the request under FOIA and refused the request under section 12 because the cost of compliance would exceed the cost limit. During the Commissioner's investigation the Council recognised that the request should have been handled under the EIR, so refused the request under regulation 12(4)(b) – the request for information is manifestly unreasonable. This was again because it would cost too much to comply with the request.

Initially the Council had simply asked the complainant to be more specific and to narrow the scope of the request. In the Commissioner's view, the Council did not give meaningful advice on how that could be achieved or how far the response to the request would be too costly.

The Commissioner considered the EIR Code of Practice, specifically its suggestion that the public authority could give the applicant access to detailed catalogues and indexes where these are available. The Commissioner found that this was the type of advice and assistance the Council should have considered giving to the applicant to meet its advice and assistance obligations.

27. In order to comply with the EIR, a public authority may need to go further than the specific steps in the Code. The circumstances of each case will dictate the most suitable course of action so public authorities should not take a rigid 'one size fits all' approach to advice and assistance.
28. The Commissioner expects public authorities to give as much advice and assistance as possible. But she accepts that sometimes there may be no advice or assistance that a public authority could reasonably give the applicant, taking into account the specific circumstances.

Example

In case reference [FER0463795](#), a request was made to a Council for information about a planning application. The Council applied various exceptions to the information requested. The Commissioner disagreed that the exceptions applied and ordered that the information be disclosed.

The requester also thought the Council had failed to give any advice and assistance during the handling of the request,

though without specifying what form of advice and assistance the Council might reasonably have given.

The Commissioner considered the nature of the advice and assistance suggested by the EIR Code of Practice and found that it fell into three broad categories:

- Assisting potential requesters in submitting their requests.
- Helping applicants to better describe the information they are seeking (clarification), and
- Assisting requesters who have asked for information in a specific form and format (regarding the application of regulation 6).

The Commissioner looked at the Council's handling of the request and decided that the request did not trigger any of the broad classes of advice and assistance identified above. The Commissioner also found it unclear what further steps the Council might have taken, beyond the EIR Code's explicit recommendations, in handling the request. The Commissioner therefore found that the Council had complied with regulation 9(1).

29. The Commissioner will consider any complaints about providing reasonable advice and assistance on a case-by-case basis.

Requests formulated in too general a manner

30. If a request has been formulated in too general a manner so that the public authority cannot tell what the applicant wants, then it can ask the applicant to clarify in line with regulation 9(2).

31. Regulation 9(2) states:

9. (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.

32. A request is likely to be 'formulated in too general a manner' if, for example, it is unclear what information the applicant wants.
33. There is a corresponding exception for regulation 9(2) in regulation 12(4)(c). This allows public authorities to refuse to disclose environmental information if the request has been formulated in too general a manner and they have given advice and assistance to the requester in line with regulation 9.
34. For more about this subject, public authorities should refer to the Commissioner's guidance on [requests formulated in too general a manner](#).

Form and format

35. Applicants can ask to receive the requested information in a particular form or format unless there is another reasonable approach to providing it or it is already publicly available and easily accessible in another form or format (regulation 6 of the EIR).
36. As part of its advice and assistance duties, if a public authority cannot give an applicant the information in the form or format specified, it should explain why it cannot reasonably do so.
37. The Commissioner has produced separate guidance for public authorities about [form and format](#) under the EIR. It gives more detail including information about advice and assistance duties.

Contact with the applicant

38. It is good practice to contact an applicant early and maintain a dialogue with them while dealing with the request, keeping them informed at every stage.
39. Public authorities should also ensure the advice and assistance they provide is clear and intelligible to the applicant.
40. If there is ambiguity about the extent of the information being sought, the applicant should be contacted as soon as possible. The EIR Code suggests contact be made by telephone, fax or email – but the method will depend on the circumstances.
41. Public authorities should be prepared to explain to the applicant why they need more information, for example explaining why the request as it stands is unclear.

42. In some situations it may help the public authority to identify what information the applicant seeks if they know the reason for the request. However, there is no requirement in the EIR for an applicant to explain why they want the information and the public authority cannot insist on a reason. Public authorities should not give the impression that applicants must explain their motive.
43. It is good practice for a public authority to keep a record of any advice and assistance or clarification it has given. This will help in the event of a dispute about whether such advice was given.
44. For more advice about contacting applicants, see the Commissioner's guidance on [interpreting and clarifying requests](#).

Timescales

45. If the request is formulated in too general a manner the public authority must contact the applicant as soon as possible or within 20 working days of the date of receiving the request, to refuse the request. It should state the exception at regulation 12(4)(c), ask for clarification, and give reasonable advice and assistance.
46. If clarification is received from the applicant, the public authority should treat this as a new request. From the date of receiving the clarification, it has 20 working days to respond.
47. In all other cases of advice and assistance, if the 12(4)(c) exception has not been used, the 20 working day clock does not stop – for example if the public authority can easily identify and locate the information being requested but decides to ask the applicant if they are also interested in some other information. If the applicant does not provide clarification, the public authority will still need to ensure it responds to the original request within 20 working days.
48. For more information about timescales, see the Commissioner's guidance on [time limits for compliance](#) under the EIR.

Advice and assistance when refusing requests

49. When a public authority refuses a request because of an exception, it should give advice and assistance in the refusal

notice if a refined or reformulated request may enable it to provide some information.

50. Other than requests that are formulated in too general a manner (regulation 12(4)(c)), a refusal notice is not explicitly required to include advice and assistance.
51. However, the Commissioner normally expects public authorities that refuse manifestly unreasonable requests under regulation 12(4)(b) because they ask for voluminous information and because of the costs (but not where the request is, in effect, vexatious), to give advice and assistance to help the requester submit a less burdensome request.
52. Failure to provide advice and assistance does not invalidate the use of this exception. But it could lead the public authority to breach regulation 9 if it would have been reasonable to provide advice and assistance.
53. However, First Tier Tribunals have unwilling to support the use of regulation 12(4)(b) if the public authority has not tried to give the applicant advice and assistance. The Tribunals have held that when applying the exception for manifestly unreasonable requests, public authorities should act in a reasonable way, which includes giving advice and assistance.

Example

In [Mersey Tunnels Users Association vs IC & Halton Borough Council \(EA/2009/0001, 24 June 2009\)](#) the Tribunal considered the exception for manifestly unreasonable requests (regulation 12(4)(b)) in terms of whether it would be costly and burdensome to respond to the request. As part of this, the Tribunal looked at the duty to provide advice and assistance. It acknowledged that regulation 12(4)(b) does not specifically require compliance with regulation 9, but made the following comment at paragraph 95:

"...we do not consider that a public authority can rely on this exception if it has itself acted unreasonably in dealing with the request. In this case we consider that the Council has acted unreasonably itself by not clarifying the scope of the request,....."

The position of this judgment was supported by the Tribunal in the more recent case of [Bright vs IC & City of York Council \(EA/2015/0107, 16 November 2015\)](#), which noted at paragraph 14 that they:

"...accept and adopt a previous decision of this Tribunal in our understanding of this exception, and in particular:

.....

b. A public authority will not be able to claim that a request is manifestly unreasonable where it has acted unreasonably in dealing with the request, for instance by failing to comply with its duty to advise and assist the requestor."

54. In some cases it may be possible for a public authority to provide part of the information that falls within a request that is manifestly unreasonable because of the costs involved. Therefore the public authority should contact the applicant to ascertain what part of the request is most important to them, and decide whether this could be provided.
55. The Commissioner would expect the public authority to help the applicant rephrase their request in a way that would allow it to give some information.

Example

In case reference [FER0558525](#) a request had been made to a Council for "details of any statutory notices issued under the Highways Act 1980 such as those issued under Sections 152, 154, 167 and 230 (and any other sections as appropriate) that remain open i.e. where the matter has not been resolved by the property/land owner." The Council refused the request because it was manifestly unreasonable under regulation 12(4)(b).

The Council had cited the exception because the cost and burden of dealing with the request was too great as the information requested was not held in a centralised way. The Council told the Commissioner that it did give such information in response to land searches (Con29 searches) regarding a specific property for a modest fee. But in this case the applicant was asking for information about the entire county.

The Council gave no advice and assistance about refining the request. However, in the Commissioner's view it would have been reasonable, for example, for the council to suggest the request be made regarding specific properties.

The Council had correctly applied the exception for manifestly unreasonable requests, but the Commissioner found that it had breached regulation 9(1) by not giving appropriate advice

and assistance.

56. It is therefore good practice for public authorities to give the applicant appropriate advice and assistance when issuing a refusal notice, if this would be reasonable in the circumstances.

Advice and assistance and charging

57. The EIR allows a public authority to make a reasonable charge for making environmental information available.
58. As part of their regulation 9 obligations, public authorities should consider whether to give the applicant advice and assistance on the options for making information available.
59. Detailed guidance on [charging for environmental information](#) can be found on the Commissioner's website.
60. If an applicant says they are unwilling to pay the fee for the requested information, it would be good practice for the public authority to help them refocus their request by explaining what sort of information may be available for a lesser fee.
61. The Code says the public authority should also consider whether there is any information it holds that could be of interest to the applicant which could be provided free of charge.

Example

In [Keston Ramblers Association v Information Commissioner and London Borough of Bromley \(EA/2005/0024 26 October 2007\)](#) the Tribunal offered some observations on the interaction between regulation 8 (fees) and regulation 9 (advice and assistance) of the EIR, although this was not central to the appeal.

In this case, the information held by the public authority that was relevant to the appellant's request comprised over 300 pages of documents. In its submissions to the Tribunal, the Commissioner suggested that where a public authority had collated the requested information and offered to provide copies for a fee, the duty to provide advice and assistance would normally require the authority to offer applicants the opportunity to inspect the documents first, so that they could decide whether they simply want to inspect the documents or whether they wish to pay for copies.

The Tribunal said this was likely to be the correct approach and would avoid “*any sense of grievance*” arising from applicants paying for copies of information that may not be relevant to the information they are interested in.

Other considerations

62. It is for each public authority to decide whether other pieces of legislation impose further obligations about how they may advise and assist an applicant for information. For example, disability discrimination legislation may impose requirements on how an authority responds to requests for information from a disabled applicant. In the same way, statutory provisions may require certain public authorities to provide information in other languages.
63. If the information requested includes material that would be covered by FOIA, the public authority should inform the applicant at an early stage that their request spans legislation other than the EIR. It should explain clearly the possible consequences – for example, the differences in timescale and possible charges. Each public authority should develop its own procedures for handling such requests.

More information

64. This guidance relates only to the EIR. If the information requested is not environmental, public authorities need to consider the FOIA regime instead and specifically ICO guidance on [section 16 advice and assistance](#).
65. If you want to know more about the public interest test or the EIR exceptions, additional guidance is available on [our guidance pages](#).
66. This guidance has been developed drawing on ICO experience. Because of this it may give more detail on issues that are often referred to the 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 Commissioner, Tribunals and courts.

67. It is a guide to our general recommended approach. Individual cases will always be decided on their own circumstances.
68. If you want more information about this or any other aspect of the EIR, please [contact us](#), or visit our website at www.ico.org.uk.