

# Form and format of information (regulation 6)

## 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.
2. An overview of the main provisions of the EIR 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 to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how to meet their duties under regulation 6 of the EIR, which are about the form and format in which they make information available in response to a request.

## Overview

- Regulation 6 of the EIR is relevant when a public authority is providing environmental information in response to a request and the requester has expressed a preference for the information to be made available in a particular form or format. If the public authority is not providing the information requested, because of an exception in the EIR, then it is not relevant.
- The requester must express their preference when they submit their request.
- 'Form or format' encompasses the physical form of the information (eg electronic or hard copy); how it is organised within that form (eg a particular electronic format); and how it is made available (eg providing a copy or allowing inspection).
- The public authority is not required to organise the information under particular subject headings specified by the requester.
- A requester can express a preference for a digest or summary. If so, the public authority must establish whether this is a request for one that already exists, or a preference for the public authority to summarise the information.
- The public authority does not have to comply with the preference if it is reasonable to make the information available

in another form or format, or if the information is already publicly available and accessible in another form or format.

- Deciding whether it is reasonable to provide it in another form or format depends on the balance between making environmental information easily accessible and other legitimate factors.
- If the public authority considers that the information is publicly available and accessible elsewhere it must be able to direct the requester to where they can obtain all of the information they have requested.
- If the public authority is not complying with the requester's preference they must explain the reasons for this within 20 working days and inform the requester of their rights to complain.
- The public authority may charge a reasonable fee for making the information available in the requester's preferred form or format. It may not charge for making the information available for inspection.
- The public authority has a duty to provide advice and assistance to requesters and in doing so must conform to the relevant part of the EIR Code of Practice.
- Regulation 6 does not require a public authority to translate information into another language, but the public authority should be aware of any other statutory duties it may have under other legislation to provide information in other languages.
- Unlike FOIA, the EIR do not contain specific provisions relating to datasets but if a requester asks for information in a re-usable form, the public authority should consider this as a preference for a particular form or format.

## What the EIR say

5. Regulation 6 states:

**6.—(1)** Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

**(2)** If the information is not made available in the form or format requested, the public authority shall—

(a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;

(b) provide the explanation in writing if the applicant so requests; and

(c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

6. Regulation 6 is about how a public authority should make information available that it is releasing under the EIR. It is relevant when a public authority has received a request for information and has identified what it is going to make available. If the public authority is not making the information available because of an exception in regulation 12, then regulation 6 does not apply.
7. Regulation 6 is intended to make it possible for requesters to receive environmental information by the means that suit them best, subject to certain conditions. If a requester asks to receive the information in a particular form or format, the public authority must provide it in that way unless one of two conditions applies: either it is reasonable to provide it in a different form or format, or the information is already publicly

available and accessible to the requester in another form or format.

8. If the public authority is not providing the information in the way that the requester wanted, then it must explain why and tell them about their right to complain.
9. The provisions of regulation 6 are similar to those in section 11 of the Freedom of Information Act (FOIA), but they are not identical. Where relevant, this guidance explains the differences between the two regimes. Further information on section 11 of FOIA is available in our guidance document on [Means of communication](#).

## Preference must be expressed at time of request

10. In our view, the requester must express their preference as to how they want the information at the same time they make their request. Section 11 of FOIA refers to the requester expressing a preference “on making his request for information”. Regulation 6 does not contain similarly explicit wording. However, as with FOIA, an EIR request is made on a certain date, from which the deadline for answering it is calculated; making the request is not an ongoing process. On that basis we consider that the preference must also be expressed at the same time as the request. This view was supported by the First-tier Tribunal in the following case.

### **Example**

In the First-tier Tribunal case of [W J Bunton v Information Commissioner \(EA/2011/0058, 9 March 2012\)](#), Homes for Islington had provided some information in response to a request from Mr Bunton. During the course of subsequent correspondence, he asked to receive the information in a particular electronic format. The First-tier Tribunal found that the public authority was not obliged to comply with this preference under section 11 of FOIA, because it had been expressed some time after the request and indeed after the public authority’s response.

Although the public authority had dealt with the request under FOIA, the Information Commissioner had found in his decision notice that some of the information requested was environmental, and this should have been dealt with under the EIR. The Commissioner argued that the requirement for the preference to be expressed at the time of the request applies

under regulation 6 of the EIR, as it does under section 11 of FOIA.

The Tribunal accepted this interpretation:

*"20. ... As FOIA was the assumed framework of both requester and public authority, we do not read any great significance into the different wording of FOIA and EIR in this respect and consider that the Respondent's [ie the Commissioner's] decision to "read across" from FOIA to EIR for the purposes of interpretation was reasonable.*

*21. We reject the Appellant's submission that a request under FOIA and EIR should properly be regarded as an on-going process rather than a single event."*

11. Nevertheless, we also consider that, if the requester expresses a preference at a point after they have submitted their request but before the public authority has started to do any work on it, the public authority may use its discretion to regard the preference as having been expressed at the time of the request.

## Form or format

12. Under regulation 6(1) a requester may ask for the information to be made available in a particular form or format. The phrase 'form or format' has a wide meaning, and in general usage the two terms are not always distinct. We consider that it includes:
  - the physical form of the information,
  - how the information is configured or arranged within that form, and
  - the way in which the information is made available.

## Form of the information

13. A requester may want to have the information in a particular physical form, for example:
  - a copy printed on paper,

- an electronic file, sent as an email attachment, or as a link to a web page, or on removable media such as a memory stick, or
  - an audio tape.
14. Parliament introduced the EIR to implement the [European Directive 2003/4/EC](#) on public access to environmental information (the Directive) and therefore the Directive remains relevant to our interpretation of the EIR. The Directive in turn implements the UN/ECE Convention on access to information, public participation and access to justice in environmental matters ([the Aarhus Convention](#)). The UK is an independent signatory to this international treaty. Article 4 of the Aarhus Convention says that information must be made available “in the form requested”. The [Implementation Guide](#) to the Aarhus Convention explains this as follows:

Under article 4, members of the public may request information in a specific form, such as paper, electronic media, videotape, recording, etc. (page 54)

### **Format of the information**

15. The phrase “form or format” is taken from Article 3(4) of the Directive:

Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available...

16. We consider that the use of this phrase means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, ie the format. For example, in relation to electronic information the term ‘format’ is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats.
17. The [Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 \(SI 2004 no 3391\)](#) issued by DEFRA (the EIR Code of Practice) explains why the public authority must consider a requester’s preference for a particular format:

A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies. (Paragraph 22)

18. It should be noted that there are more specific provisions in section 11 of FOIA requiring a public authority to make information available in an electronic form capable of re-use, but these only relate to one type of information, namely datasets. There is a further explanation of section 11 in our guidance documents on [Means of communication](#) and [Datasets](#).

#### **- Subject headings**

19. Our interpretation of the phrase 'form or format' does not imply that a requester can ask the authority to reorganise the information in order to set it out under particular subject headings. A public authority will not breach its regulation 6 duties if it does not do so. The Information Tribunal made this point in the following case:

#### **Example**

In the Information Tribunal case of [Keston Ramblers Association \("the Association"\) v the Information Commissioner and London Borough of Bromley \(EA/2005/0024 26 October 2007\)](#), the Association had asked for information about a map modification order, and specifically for copies of correspondence with seven different bodies.

The Association argued that the Council had not met its duties under regulation 6 because, in their response to the request, they had not sorted the information into seven groups, relating to the seven bodies listed. The Tribunal rejected this argument. They did so partly because the Association had not actually asked the council to do this in their request, but also because they considered that 'form or format' did not mean subject categories:

*"While it is not necessary for us, for the purposes of this appeal, to take a definite view on the proper interpretation of regulation 6, Mr Pitt-Payne and Mr Wong submitted that the expression "form or format" is not a reference to categories of subject-matter, but is a reference to whether the information*

*should be supplied by means of paper copies, or electronically, or by viewing of a microfiche, and so on. We think that submission is probably correct, and on that basis the contention that there was a breach of regulation 6 would not succeed even if we were to hold that it formed part of the appeal.” (paragraph 50)*

### **- Digests and summaries**

20. Unlike section 11 of FOIA, regulation 6 does not refer to the requester expressing a preference for a digest or summary. However, the [EIR Code of Practice](#) says that the ‘form or format’ can include a digest or summary:

Although there is no specific reference in the Regulations to the provision of information in the form of a summary or digest, a request for environmental information may include a request for information to be provided in the form of a digest or summary. This should generally be provided so long as it is reasonably practical to do so, taking into account the cost. Many applicants will find a summary more useful than masses of data, and this should be taken into account when considering proactive dissemination. (paragraph 23)

21. The significance of this point in the EIR Code of Practice is shown in regulation 9(3) of the EIR, which 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.

...

(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.

22. So, a public authority has a duty under regulation 9 to provide advice and assistance to requesters and it complies with that duty if it follows what the [EIR Code of Practice](#) says about advice and assistance. The relevant part of the Code is section III which deals with “The provision of advice to persons making

requests for information” and the comments quoted above to do with digests and summaries are in that section. Therefore, if a public authority provides a digest or summary when requested (so long as it is reasonably practical to do so), it will have complied with the Code and also met its duty under regulation 9(1), in that respect.

23. It is important to distinguish between a requester asking for a pre-existing summary, and a requester asking the public authority to summarise the information, rather than provide the full text.
24. An example of the first scenario would be where a requester asks for “the executive summary from the report on X that was considered by the management board”. This is about whether the public authority holds the specific information that has been requested ie an executive summary. If it does not, then the exception in regulation 12(4)(a) (the public authority does not hold the information when the request is received) may be engaged.
25. An example of the second scenario would be where a requester asks for “the council’s report on its new recycling initiative in the form of a summary”. In this case the requester is asking for the information to be made available in a particular form or format. They want the public authority to summarise the information that they are interested in, so regulation 6 applies. The EIR do not require a public authority to create new information in order to answer a request, and so the public authority does not have to write a new summary. The question is whether they can produce a summary by extracting parts of the information that has been requested. In the example above, it may be possible to cut and paste paragraphs from the report in order to produce a summary. If that is not possible, then it may be reasonable to provide the full report instead. There is a further discussion of what is reasonable in the section on ‘Another form or format’ below.
26. If the public authority is in any doubt as to whether the first or second scenario applies, they should ask the requester whether they are requesting a pre-existing summary, or whether they want the public authority to summarise the information they hold.

## **Inspection**

27. Regulation 6, unlike section 11 of FOIA, does not specifically cover inspecting the information. However, in our view, it

should be interpreted broadly, so that a request for a particular form or format can include a request to inspect the information, rather than to receive a copy of it. Regulation 6 is intended to make it as easy as possible for requesters to access environmental information, and allowing inspection would aid that. Furthermore, the EIR provisions on charging in regulation 8 clearly envisage the inspection of information:

8. (2) A public authority shall not make any charge for allowing an applicant—  
(a) to access any public registers or lists of environmental information held by the public authority;  
or  
(b) to examine the information requested at the place which the public authority makes available for that examination

28. Article 3 of the [Directive](#) is about access to environmental information upon request. Paragraph 5 of this article refers specifically to providing facilities for inspecting requested information:

5. For the purposes of this Article, Member States shall ensure that:  
...  
(c) the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as:  
...  
— the establishment and maintenance of facilities for the examination of the information required

29. The [Aarhus Implementation Guide](#) also says that the [Aarhus Convention](#) requires public authorities to make information available for inspection if requested. In explaining the provisions of the Convention about 'form requested' it says:

The issue of form also means that public authorities must provide copies of documents when requested, rather than simply providing the opportunity to examine documents. In addition, some applicants may prefer to examine the original documentation rather than receive copies. If they so request, public authorities must allow them to do so, subject to

subparagraphs (i) and (ii) below. (page 55)

30. The subparagraphs (i) and (ii) mentioned here refer to reasons for not meeting the requester's preference and correspond to subparagraphs 6(1)(a) and (b) of the EIR.
31. Public authorities should also note that under regulation 8(2) which is set out above, they cannot make a charge for making the information available for inspection.

## Limitations on the duty

32. The duty to make the information available in the requester's preferred form or format is not an absolute one. The public authority does not have to meet the requester's preference if either of two conditions applies. These are:

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

## Another form or format

33. The first potential reason for not complying with the requester's preference is that it is reasonable to make the information available in another form or format. In this case the public authority is still making the information available but in a different form or format.
34. The key term here is 'reasonable'. If the public authority wishes to take advantage of this condition, it must be able to show that it is reasonable to make the information available in a different form or format. Since Parliament introduced the EIR to implement the [Directive](#), the purpose of the Directive is still relevant to our interpretation of this provision. Article 1 of the Directive states:

The objectives of this Directive are:

(a) to guarantee the right of access to environmental information held by or for public authorities and to set out the

basic terms and conditions of, and practical arrangements for, its exercise; and

(b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.

35. The public authority must therefore interpret this condition (that it is reasonable to make the information available in a different form or format) in a way that ensures that environmental information is made available to the public as widely as possible.
36. What is reasonable will also depend on the circumstances of the particular case. This is shown in the following example.

**Example**

The First-tier Tribunal case of [\*East Riding of Yorkshire Council v the Information Commissioner and Stanley Davis Group Ltd t/a York Place \(EA/2009/0069, 15 March 2010\)\*](#), concerned a request by the company ("York Place") to the East Riding of Yorkshire Council ("the Council") for 'property search' information (specifically building control, traffic and highways information) relating to certain properties. York Place had asked to inspect the information. The Council instead offered to provide a copy. In its grounds of appeal to the Tribunal, the Council set out its reasons for deciding that it was reasonable to make the information available in a different form or format:

- The records could contain personal data.
- Inspection could compromise the security of computer systems.
- The records as they existed were unintelligible.
- The software licence limited access to the relevant computer programmes.
- The information was held at different sites.

The Tribunal gave detailed consideration to the Council's evidence. They found that the Council had not shown that it was reasonable to provide the information as a copy rather than by inspection:

*"As we make clear, our decision has had to be made in circumstances where the evidence provided by both sides, but in particular the Council, failed in several respects to address important issues. It may be that in other cases involving the same broad subject matter a public authority will be able to demonstrate that its decision to refuse inspection was based on a well thought out and fairly applied policy, which achieved a reasonable balance between the requirement to make environmental information generally available and other legitimate factors. Our decision is simply that, in the circumstances of this particular case and this particular public authority, the case was not made out." (paragraph 40)*

37. So, when deciding which form or format is reasonable, the public authority must strike a balance between the aim of increasing public access to environmental information and other legitimate factors.
38. What factors are legitimate will depend on the circumstances of the case. They could include, but are not limited to:
  - How the information is held. For example, the information may be held in a document that is particularly old or fragile, that could be damaged if copied.
  - The cost of complying with the requester's preference. To make the information available in the preferred form or format may involve actual expenditure or cost in staff time. The public authority is able to charge the requester a reasonable fee, under regulation 8, for making the information available and there is an explanation of what the fee can cover in our guidance document [Charging for environmental information](#). However, if complying with the requester's preference would incur a significant cost which the public authority cannot pass on to the requester, it may be reasonable to take this into account in deciding whether to comply with that preference.
  - The available resources of the public authority.
  - Whether there are issues, such as security restrictions or difficulties of physical access to records stores, which would prevent members of the public from entering the public authority's premises to inspect records.

## Available and accessible

39. The second potential reason for not making the information available in the requester's preferred form or format is that it is already publicly available and accessible to the requester in another form or format.
40. A public authority cannot rely on this provision if they are only directing the requester to something similar to the requested information or a part of it or a summary of it, rather than all of it.

### **Example**

In decision notice [FER0497378](#), the requester had asked Trinity Housing Association ("the Association") for all the information they held relating to their purchase of certain land. The Association did not provide a copy of the information because they said it was available from organisations including the Land Registry and Down District Council. The Commissioner's view was the Association would have been entitled to rely on regulation 6(1)(b) if all of the information were available and accessible. However, this was not the case here:

*"The Association has not demonstrated to the Commissioner that all the information contained within the agreement (including the exact wording of each of the clauses and any annotations to the agreement) is publicly available and reasonably accessible to the complainant in another form or format. Indeed, in its submissions to the Commissioner, it has indicated that only some of the information within the contract is in fact publicly available and that it considers the precise terms of the contract to be confidential. Therefore the Commissioner finds that the Association has not demonstrated that regulation 6(1)(b) applies to this information."* (paragraph 17)

41. The public authority must also be able to direct the requester to where the information is available. In the example given above, Trinity Housing Association had told the requester that the information was available from other organisations including the Land Registry and Down District Council. The Commissioner found that this was not specific enough:

*"The Commissioner is of the view that a complainant cannot be expected to search for unspecified information that may or may not be held by another public authority."* (paragraph 17)

42. Regulation 6(1)(b) is perhaps most likely to be relevant if the information is already publicly accessible on a website (either the authority's own website or another site). However, the information may be available and accessible in other ways such as a printed publication produced by the authority or another publisher, or it may be available for inspection elsewhere.
43. The key questions are whether the information is 'publicly available' and 'easily accessible to the applicant'. So, if the information is available in a library, then it must be one that the public can use and one that the requester can easily access. The [Aarhus Implementation Guide](#) comments:

Informing an applicant about the existence of a single copy of a book in a library 200 km from his or her residence would probably not be a satisfactory response. (page 55)

44. This highlights the issue of accessibility, but it should not be taken to mean that there is a specific geographical limit, or distance, beyond which the information is not easily accessible. Any decision on this point will depend upon the circumstances of the case.
45. The public authority should also consider the cost to the requester of accessing the information by the alternative means. If this is the subject of a complaint to the Commissioner, then he will not take account of the requester's own financial circumstances when assessing whether the information is publicly available and easily accessible to them. However, there may be cases where the cost of accessing the information elsewhere is so high that it is not publicly available or easily accessible. On this point the [Aarhus Implementation Guide](#) says:

In addition, "publicly" available assumes that the same reasonable cost standards are in place for that information as required under the Convention. (page 55)

46. So, any cost to the requester of obtaining the information in the other form or format must conform to 'reasonable cost standards'. This does not necessarily mean that the cost must be minimal. If the public authority is permitted to make a commercial charge for making information available, this may be considered to be a reasonable charge in terms of the EIR. There is a further explanation of this point in our guidance document on [Charging for environmental information](#).

## Informing the requester

47. If the public authority is making the information available in a different form or format to that requested, then under regulation 6(2) it must do the following:

- (a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant so requests; and
- (c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

48. We recommend that public authorities should always do this in writing, to avoid misunderstanding and for good record keeping.
49. Under regulation 11, requesters can ask for an internal review of the handling of their request, including how the public authority has applied regulation 6. They must do this within 40 working days. If the requester is dissatisfied with the outcome of the internal review, under regulation 18 they may complain to the Information Commissioner.

## Other considerations

### Costs and fees

50. A public authority may charge a reasonable fee for making the information available in the requester's preferred form or format. There is an explanation of what the fee can cover in

our guidance document on [Charging for environmental information](#).

51. Under regulation 8(2), a public authority may not charge a fee for making information available for inspection.

### **Advice and assistance**

52. As noted above in the section on Digests and summaries, a public authority has a duty under regulation 9(1) to provide advice and assistance to requesters, so far as reasonable. Regulation 9(3) says that the public authority will have complied with that duty if it conforms to what the [EIR Code of Practice](#) says about providing advice and assistance. The relevant part of the Code is part III (paragraphs 8 to 23). This contains general requirements for the provision of advice and assistance, and it says in relation to form and format in particular:

Regulation 6 allows for the applicant to be given the information available in a particular form or format unless there is another reasonable approach to supplying the information. A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies. (paragraph 22)

### **Translations**

53. A requester might ask for information to be translated into a particular language, but a public authority has no duty to do this under regulation 6. It may have a statutory obligation to do so under other legislation, for example the Welsh Language Act 1993, but the Information Commissioner has no role in regulating this. This is illustrated in the following case.

In decision notice [FS50434072](#), the requester had asked Snowdonia National Park Authority for a copy of a planning document, namely a section 106 agreement for a particular property. The authority provided a copy of the agreement in Welsh. The requester asked for it in English. The authority confirmed that it only held a copy in Welsh.

The Commissioner found that the authority had not failed to meet its duty under regulation 6, because it was not required to translate the document:

*"Regulation 6 of the EIR does not require public authorities to translate information into other languages in order to respond to a request for information. As a result, the Commissioner is satisfied that the Authority has provided the recorded information that is held relevant to the request and he is satisfied that the Council has complied with its obligations under regulations 5 and 6 of the EIR."* (paragraph 19).

The decision notice explained that under the Welsh Language Act 1993, public authorities in Wales are required to adopt and implement a Welsh Language Scheme which sets out how they will treat both languages equally in communicating with and providing services to the public. If a person considers that a public authority has not met its duty under the Welsh Language Act, they can take this up with the authority and the Welsh Language Board, but the Commissioner has no role in regulating this.

## **Datasets**

54. FOIA contains specific provisions relating to making datasets (as defined in FOIA) available in a re-usable form and under a licence permitting re-use. The EIR do not contain any equivalent provisions. However, a preference for a particular form or format under regulation 6 could include a preference to receive information in a re-usable form; for example, a requester may ask for an electronic dataset of environmental information in a CSV format. The public authority should consider this as a preference for a particular form or format, and comply with it as they would with any preference for form or format under regulation 6.
55. In this context, public authorities should also be aware of the licences available under the [UK Government Licensing Framework](#) that they can use to license the re-use of information for which they own the copyright or database rights.
56. There is a detailed explanation of the dataset provisions in our guidance document on [Datasets](#).

## More information

57. Additional guidance is available on [our guidance pages](#) if you need further information on EIR exceptions.
58. 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.
59. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
60. 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).