

Freedom of Information and Environmental Information Regulations Requests Procedure

At a glance

1. This document sets out Nottinghamshire County Council's approach to fulfilling its obligations in respect of Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) requests, which gives the public a right of access to official information held by public authorities.
2. It forms part of the suite of documents that comprise the Council's [Information Governance Framework](#) and sits under the [Information Rights Policy](#).
3. It will be of particular relevance to those parts of the Council which actively deal with FOIA and EIR requests, namely the Complaints and Information Team (CIT), but also all other services who may be required to provide information to the CIT.
4. FOIA requests must be made in writing, however EIR requests can also be made verbally. All staff must recognise and know how to deal with such requests.
5. The Council must respond to these requests within 20 working days, although EIR does allow for applying an extension to the deadline.
6. Some information may be exempt from disclosure, and the Council can refuse to comply with a request which:
 - would cost too much to deal with,
 - is vexatious or repeated, or
 - is manifestly unreasonable.
7. Staff should always remain mindful of information you create especially in emails you send, as these may have to be disclosed under legislation.
8. It is a criminal offence to alter, deface, block, erase, destroy or conceal requested information to prevent it being released.

Background

1. The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) have as their main principle the public's right to know about the activities of public authorities by giving everyone the right to access official information.
2. The FOIA and EIR applies to all public bodies in England, Wales, and Northern Ireland (similar provisions apply in Scotland, under the Country's own equivalent acts).

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3. All requests for information received by Nottinghamshire County Council have to be answered in accordance with the FOIA and EIR. The only exception will be an individual's request for their own personal data (Subject Access Request) which must be handled under the terms of the Data Protection Act 2018 (DPIA 2018). See separate [Subject Access Request Procedure](#).
4. The FOI and EIR provides access to recorded information in two ways:
 - a. Proactively publishing information via a Publication Scheme (to ensure public transparency); and
 - b. Responding to FOIA and EIR requests
5. FOIA and EIR are statutory requirements, so the Council is obliged to comply with them. To not do so could lead to regulatory action.
6. Compliance with the FOIA and EIR is overseen by the Information Commissioner's Office (ICO), the independent regulatory body set up to uphold information rights.
7. The key differences between the FOIA and EIR are set out in Annex A.

Definitions

8. "**We**" means the County Council and includes all members, employees, trainees / apprentices and volunteers of the County Council and contractors, suppliers and partners delivering County Council services on our behalf.
9. **Information** is used here as a collective term to cover terms such as data, documents, records and content, audio recordings, digital and photographic images etc. and can be on paper or electronic.
10. **Processing** is any operation or set of operations which is performed on personal information such as collection, recording, storing, alteration, combining, retrieval, use, disclosure, destruction etc.
11. **Personal data** in the context of SARs means any identifiable data or information relating to a living individual. This can be held in any format and (e.g., paper; electronic photographs; audio / visual recordings; CCTV images; microfiche etc)

Scope

12. This Procedure applies to all Nottinghamshire County Council's employees, contractors, agents, representatives and temporary staff, working for or on behalf of the Council.
13. In respect of their constituency duties, elected representatives (including County Councillors) are not individually subject to FOIA and EIR and do not have to apply the legislative provisions to requests for information they receive. However, elected representatives' correspondence (written and electronic) with public authorities falls within the scope of the legislation and the Council may be required to release a copy of such correspondence if it receives a relevant request. Such a disclosure would typically be made only after the relevant elected representative had been

consulted. The presumption is that the information from, or relating to a constituent, would not be disclosed.

14. This document does not apply to information held by schools. Schools are data controllers in their own right and are individually responsible for ensuring that they comply with Data Protection and Freedom of Information legislation. If a request concerns data protection in a school or a wish to access school records, the requester should contact the Head Teacher of the relevant school.

Who can submit a request and how do they do it?

15. FOIA and EIR requests are considered to be applicant blind – i.e they can be made by anyone, and requests will be treated in the same way regardless of who submits them. It is also worth noting that disclosure of information under either FOIA or EIR are considered to be disclosures ‘to the world’, not simply to the person who submitted the request.
16. Under FOIA the request must be in writing. Under EIR a request can also be made verbally. ‘In writing’ covers those submitted electronically which is how most requests are received. The request does not need to give a reason for wanting the information or quote any particular wording or legislation.
17. The requester must include their name and address. The name can either be the name of an individual or a company or organisation making the request. An address can be postal or electronic.
18. Requests made directly through the council’s [webform](#) will receive an automated acknowledgement. Requests received by Customer Services will be forwarded to foi@nottsc.gov.uk. All requests are recorded by the Complaints and Information team on Infreemation and all key actions are recorded for an accurate and complete audit trail for each request. Requests received through other routes such as by letter will be recorded and acknowledged in the same way.
19. It is important that all employees know how to recognise FOI and EIR requests and how to respond to it. This will be referenced in relevant intranet guidance (see [Freedom of Information Act \(FoIA\) & Environmental Information Regulations \(EIR\) requests and mandatory information governance training](#)).

What information can be requested under FOIA or EIR?

20. The legislation allows the public to request any recorded information in any format. This can include not just paper or computer records, but photographs and audio or video records. EIR covers information which would fall under the definition of ‘environmental information’, for example information about land development, pollution levels, energy production, and waste management. FOIA covers all other information which is held by the authority.
21. This doesn’t mean every enquiry should be treated as a formal request under FOIA or EIR. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures, for example, if a member of the public wants to know whether a school has a space for their child. The provisions of the Act need to come into force only

if the requester makes it clear they expect a response under the legislation or where you cannot provide the requested information straight away.

How long has the Council got to respond to a request?

22. The Council is required to respond to requests promptly, and in any case within **20 working days** from receipt. Within this timescale we must either provide the information or explain, as fully as possible, why we are not going to do so. Where a request is unclear, clarification must be sought from the requester within the 20 working day deadline.
23. Under EIR there is provision to extend the response deadline by a further 20 working days, where a request is particularly complex. In these exceptional cases, we must inform the requester as soon as possible and in any case within the 20 working day timeframe that this extension will be applied.

What information needs to be provided in response to a request?

24. The legislation covers all recorded information held by a public authority. It is not limited to official documents, and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information you create, so it also covers, for example, letters received.
25. The legislation covers information that is held on behalf of a public authority even if it is not held on the authority's premises. For example, where a service is sub-contracted to an external company, that company may then hold information on our behalf. However, it does not cover information we hold solely on behalf of another person, body or organisation. This means employees' purely private information is not covered, even if it is on a work computer or email account; nor is information we store solely on behalf of a trade union, or an individual MP or councillor.
26. If the information is not already in the public domain, the Complaints and Information team (CIT) will forward the request on to the relevant service area/s and ask that the information is provided.
27. The Council does not have to respond to requests where it would cost too much to deal with, or which are manifestly unreasonable; therefore, if the service area considers that the gathering of the requested information will take more than the 2½ days, they need to let the CIT know.
28. There are a number of exemptions and exceptions under the legislation, where requested information may be excluded from disclosure. If the service area believes that the information should not be disclosed, this should be discussed with the CIT; however, the Council will not withhold information without clear justification.
29. As the legislation refers to the release of information rather than documents, it may be appropriate to release just the information rather than full document. Any potentially sensitive information not relevant to the request or for which disclosure was not authorised will be removed or "redacted" in the copy sent to the applicant. However, if there is no sensitivity about the additional information, you could consider releasing the whole document.

30. Generally, the information will be provided free of charge. However, we can charge for the cost of printing, photocopying and postage, if these costs exceed £10 for a request. If this cost will need to be applied, a fees notice will be issued to the requester before the information is released.
31. Consideration will be given to whether or not the information provided is likely to be of general public interest. If so, we will consider whether it should be included in the Councils Publication Scheme or in a simultaneous releases page on our website.

Who in the Council is responsible for responding to requests?

32. Responsibilities for dealing with information requests within the Council are as follows:

Type of request	Dealt with by
All FOI and EIR requests	Complaints & Information Team
Routine, straightforward, and typical service request Note these are typically not corporately recorded as FOIA or EIRS, but the requirement to respond is on the terms set out in this document, as a minimum.	The relevant service area

33. Each service area is responsible for providing requested information to the CIT, following a formal FOIA or EIR request.
34. The Complaints and Information team will maintain documented operational FOI and EIR processes. All service areas across the Council are responsible for ensuring they support the CIT to respond to requests in keeping with these processes which may change from time to time.
35. All requests dealt with by the Complaints and Information Team will be entered into Infreemation (the case management system) and this will be maintained to monitor compliance to ensure all requests are answered in accordance with legislative requirements.

Can a FOIA or EIR request be refused, or information withheld?

36. A requester may ask for any information that is held by the council. However, this does not mean that it should always be provided. In some cases, there will be good reasons to withhold information from release. In FOIA these reasons are called exemptions, and in EIR they are exceptions. These apply to the content of the information only, and the council must be able to give their reason/s why the exemption applies. They can be applied to part of the information, or rarely, to all of it.
37. The process of applying an exemption begins with the CIT's initial assessment of the request, as in some cases it may be immediately apparent that an exemption

may be required. When the request is sent to the service area, the CIT Officer will state their initial observations regarding exemptions.

38. If an exemption may be required, the CIT Officer may need to discuss this with the service area, and if it contains information about, or that may affect, third parties, it may be necessary to consult with them as well. FOIA and EIR do not oblige the public authority to consult with third parties, so the response deadline cannot be extended to allow for consultation.
39. The majority of the exemptions in the FOIA and EIR exceptions are “qualified” and therefore the main consideration, if one of these exemptions or exceptions applies, is whether the public interest favours withholding or disclosing the information. Even if an exception or a qualified exemption applies, the public interest in withholding the information must outweigh the public interest in releasing it.
40. ‘Public Interest’ is defined by the ICO as the public good, not what is of interest to the public, or the private interests of the requester. However, there is no fixed definition of “public interest” and this assessment will essentially be a matter of judgement on a case-by-case basis. Where commercial interests are involved, consultation with those affected should inform, although not necessarily determine, the public interest.
41. Under FOIA, there is provision to claim a reasonable extension to the time limit of 20 days (up to an additional 20 working days), where more time is needed to consider the public interest test. There is no such extension in EIR specifically for the test, however Regulation 7 allows for an extension from 20 to 40 working days for complex and high-volume requests.
42. A few of the FOI exemptions are “absolute”, meaning that the information can be withheld without considering any public interest in disclosure. Nevertheless, it is important to ensure that the decision to cite an absolute exemption is valid. In some cases, consideration should be given as to whether it is feasible to release some of the information on a discretionary basis, if you have the power to do so.

Exemptions and Exceptions

43. The FOIA provides 24 exemptions and EIR provides 10 exceptions where disclosure of some or all of the information requested may be refused. It should be noted that both legislations work on the presumption of disclosure, and most exemptions and exceptions can only be applied where the relevant interest would be prejudiced or adversely effected by the disclosure.
44. The most commonly used exemptions and exceptions applied by the Council are:

Exemption / Exception	FOI	EIR	Details
Personal information: This is an absolute exemption under FOI and is the only	Section 40	Regulation 13	This is applied to information that is about an individual and would enable that individual to be identified and where we consider that disclosure of a third party’s personal data would contravene the data protection principles. It would

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exception under EIR where the public interest test is not applied.			not usually be applied to council officers other than in exceptional circumstances such as putting an officer at risk of harassment. Where the personal information relates to the requestor, the data would be provided in line with the Subject Access Request process instead.
Cost of compliance (FOI) or Manifestly unreasonable (EIR): Technically this is a refusal rather than an exemption.	Section 12	Regulation 12 (4)(b)	Under FOIA, we can refuse to process a request if we estimate that it will take more than 18 hours (FTE for one officer) to locate, retrieve and extract the requested information. This refusal would usually be applied to the entire request, but it can apply to specific parts of it. Although the manifestly unreasonable exception in EIR does not directly replicate the FOIA's cost of compliance (there is no fixed cost ceiling), the exception provides a basis for refusing a request where the cost of compliance is considered too great – however the public interest test must be applied before relying on this exception.
Commercial interests: Whilst there is no corresponding exception under EIR, there are exceptions which could protect information of a commercial nature	Section 43	N/A	Applies where the release of information could prejudice the commercial interests of one or more parties. It can be the interests of either the council or business partners that are prejudiced. This will typically be information about the council's business relationships and contracts. Where the information relates to an external party, it is good practice to contact them to obtain their views on releasing the information.

45. Further information about exemptions and exceptions can be found on the ICO website: [FOI exemptions](#). [EIR exceptions](#)

46. In responding to a request, the public authority is obliged to state whether information is held. This is called Confirm or Deny. When a refusal or exemption is applied, the response should still state whether information is held. The exception to this is if to confirm or deny would breach the exemption itself. For example, if the request was for personal information, and confirming information was held would itself reveal personal information, then we should refuse to confirm or deny.

Publishing Information (Publication Scheme) and Disclosure Log

51. Public authorities are required to be transparent and to proactively publish information in accordance with the [Information Commissioner's model publication scheme](#). This describes seven broad types of information that should be published such as 'Who we are and what we do'. It includes things like the structure of the organisation, minutes of meetings, reports, plans and policies, and financial information as well as published or requested datasets.
52. The Council's Scheme contains links to relevant web pages and information. It is on the Council's website at: [Publication Scheme](#).
53. The Council also publishes a Disclosure Log (called FOI Search Tool on the website). This is a record of FOIA and EIR requests we have received, and the responses and information that has been disclosed in reply to requests. It is on the Council's website at [FOI Search Tool](#). The Complaints and Information Team is responsible for maintaining the Disclosure Log.

Internal reviews/appeals

54. Requesters may appeal because:
 - the response took longer than 20 working days
 - information was withheld, and they believe that the exemptions or exceptions have been wrongly applied
 - the calculation of costs contravenes the Fees Regulations
 - the public authority has in any other way mishandled the request
55. EIR requests for internal review must be made within 40 working days of the date of the refusal letter. Public authorities must deal with any EIR appeal within 40 working days of receipt of an appeal. There are no statutory time limits under FOI for this internal review process. However, there are good practice guidelines for prompt handling for internal reviews.
56. The appeal/review should be in writing. Upon receipt of the complaint the Senior Practitioner will review the handling of the original request along with information provided/withheld. If the Senior Practitioner was involved in the earlier decision about the case, the review will be considered by the Team Manager.
57. A reply to a complaint/review should be sent within 20 working days. If the complaint is complicated, this may take longer, and the Senior Practitioner should keep the requester informed about what action is being taken and when to expect a reply in full.

Complaints to the Information Commissioners Office

58. If, following an appeal to the Council, the requester is still unhappy, they can complain to the Information Commissioners Office (ICO).
59. If a complaint is received by the ICO, they will contact the Council to ask them to reconsider the way it has handled the request and ask for information about the case. This will be managed by the CIT Senior Practitioner. They will then

consider the case and will give the Council one opportunity to justify its position, before issuing a decision notice.

60. If they find in favour of the complainant, the decision notice will set out what the council is required to do. It can include legally binding steps that the council must follow. In cases of non-compliance this can include the issuing of a court order against the council.

Retention Period

61. The Council's retention period for its FOI/EIR requests is 7 years. Information is used for the management of information requests and will delete request records 7 years from the closure of the request.

Roles and Responsibilities

62. All Council staff are responsible for recognising information requests which they may receive and understanding how these requests are dealt with in keeping with internal guidance and processes.
63. The Complaints and Information Team are responsible for the management of and response to FOIA and EIR requests received by the Council.
64. The Council's [Information Governance Framework](#) provides further detail of the nature of specific information governance related roles (e.g. that of SIRO, Caldicott Guardian, Data Protection Officer, Information Asset Owner, Information Asset Manager etc.) see also the intranet page on [IG roles and responsibilities](#).

Compliance with this Procedure

65. It is a criminal offence to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of all or part of the information a person making a FOIA or EIR would have been entitled to receive.
66. Wilful or negligent disregard for information governance policies and procedures will be investigated and may be treated as a disciplinary matter under the relevant employment procedure(s) which could lead to dismissal or the termination of work agreements or service contracts.

Monitoring and Review of this Procedure

67. This procedure will be periodically monitored and reviewed by the Senior Practitioner – Information, Complaints and Information Team (or their nominee) who will revise it in line with learning arising from its implementation.
68. Beyond that, the procedure will be monitored and reviewed every two years in line with legislation and codes of good practice.

Advice, Support & Further Information

69. For advice or further information on this document please contact:
The Complaints & Information Team
Email: foi@nottsc.gov.uk
Telephone: 0115 9772788

70. Further reading and supporting information:

Complaints and Information Team business process for dealing with FOI/EIR can be viewed by the following link FOI EIR Business Process.doc
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Document Control

Owner	Data Protection Officer
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Approver	Senior Information Risk Owner (SIRO) under delegation from Information Governance & Cyber Security Board
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1.1	TBC	Updated to point 34, to reference to all service areas to support CIT to manage requests inline with CIT's business process, and updated link to that process. Approver – SIRO under delegation from the Information Governance & Cyber Security Board

Annex A

Differences between EIR and FOIA

Environmental Information Regulations	Freedom of Information Act
<ul style="list-style-type: none"> ▪ There is a stronger presumption in favour of release under EIR; ▪ The range of bodies covered by the EIR is wider, and includes public utilities and certain public private partnerships and private companies, such as those in the water, waste, transport and energy sectors; ▪ Requests for environmental information need not be in writing; ▪ There are differences in the exceptions available under EIR and the exemptions available under FOIA; ▪ There are no datasets provisions. ▪ The requirement for public authorities to have in place a complaints and reconsideration procedure to deal with representations alleging non-compliance with the EIR is mandatory. 	<ul style="list-style-type: none"> ▪ There is a requirement to publish certain classes of information about The Council’s activities in a publication scheme. ▪ There is a requirement to publish datasets. Datasets are a type of information that is ‘raw’ data. ▪ It does not cover information not held by the authority, so information stored by the Council on behalf of another party (e.g. schools) may not be covered; ▪ Councillors are only covered in so far as the information relates to council business; matters relating to their Wards do not fall within FOIA.