

Advice note for community groups: *Planning decisions and your rights to access information*

This advice note is intended for community groups engaged in planning issues in their area. It provides answers to questions about access to information relating to planning decisions.

To make a sound planning decision an extensive range and depth of supporting information needs to be considered. The right information is crucial to good decision-taking¹. What constitutes the right information and the extent to which it can be made public is determined by the local planning authority.

The planning process is not simply about scrutiny, instead it should be a creative exercise in finding ways to enhance and improve the places in which people live their lives². To facilitate this people need to have sufficient information to understand, interpret, analyse, assess and draw conclusions about the impact a development may have.

Supporting information can take a variety of forms and, in some cases, may be sensitive because it contains personal data or includes commercially confidential financial details. It may not be appropriate therefore for all information to be released into the public domain.

Equally however it is important that planning decisions are taken in a transparent manner that allows everyone to engage in the decision making process in an informed and open manner. Careful and effective management of sensitive information by the local planning authority is therefore extremely important.



What information can be released and what will be withheld?

The way that information is managed is guided by legislation³, court decisions and decisions from the Information Commissioner. The former sets the rules against which local planning authorities operate whilst the latter provides clarification and interpretation. Emerging case law has helped in understanding how information should be managed, what is appropriate to be released into the public domain, and what should be withheld as confidential.

What is the most important legislation to know about?



The two most important pieces of legislation for the purposes of access to information are the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Freedom of Information Act (FOIA) sets out the right for anyone to ask any public body for information they wish to have sight of, subject to the information in question not being considered sensitive such that it should be retained as confidential.

The Environmental Information Regulations (EIR) work alongside the FOIA and relate to the management of any information that is concerned with the environment. For planning, whilst both the FOIA and the EIR may be applicable, it is the EIR that is most often used. Clarification can be obtained from the public body that you are making the request of regarding the legislation involved.

¹ National Planning Policy Framework (CLG, 2012) paragraph 192

² National Planning Policy Framework (CLG, 2012) paragraph 17

³ Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

What rights do I have to access information?

You have the right to request any information held by a public body. Before releasing the information the public body must consider the notion of *public interest* and whether it is in the public interest to withhold or release the information. For both the FOIA and the EIR there is a presumption in favour of release; however the starting principle is always that the public interest is best served by disclosure rather than withholding of the information, unless an exemption/exception can be justified.

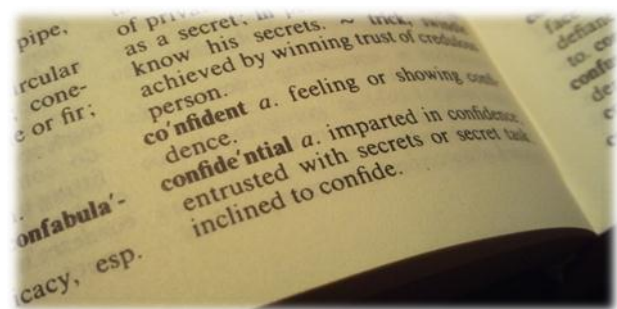
On what basis is the information managed?

Under the FOIA, the public body in question is not deemed to legally 'hold' the information if it is holding it *solely* on behalf of someone else. For example, a local authority working on behalf of the electoral registration officer or a county records office acting on behalf of parish councils.

For planning, where information is held under the EIR, this means that the local planning authority that is subject to the request makes the decision as to whether the information can be released. This is regardless of the wishes of the initial supplier of the information.

How do I request access to information?

Requests made under the FOIA need to be in writing, whereas requests under the EIR do not. Although when making a verbal EIR request for environmental information it would be prudent to confirm what is being asked for in writing to ensure there is a record of your actions.



Whilst there is no prescribed format or specific form for requesting information it is important to ensure that the request is⁴:

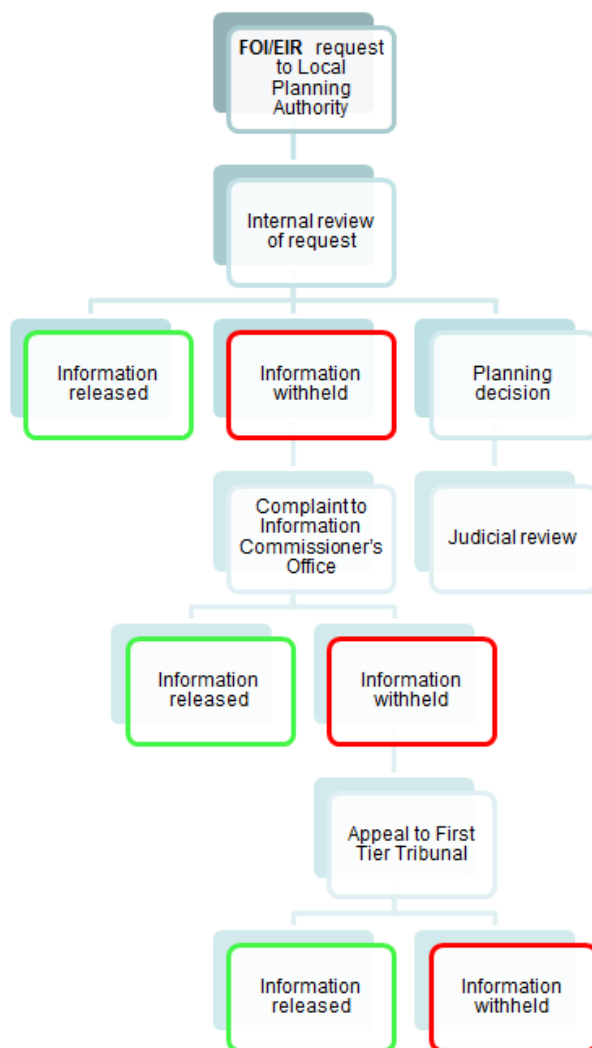
- **Specific** (about the subject area)
- **Precise** (about what it is you want to know)
- **Unambiguous** (clear in what is being asked)
- **Reasonable** (is it realistic to expect the authority to be able to provide the information)

⁴ The Environmental Information Regulations 2004

Who determines whether I can see the information?

In the first instance it is for the public body in question to make a decision on whether the information should be released. So, if access to information relating to a planning application is requested for example, it is the local planning authority that needs to be contacted in the first instance. If that organisation does not release the information requested there is an opportunity to appeal this decision to the Information Commissioner's Office (ICO).

For both the FOIA and the EIR the process is essentially the same:



How much does it cost?

A request for information under the FOIA or the EIR is free in most cases. Obtaining copies of documentation might entail a small charge for photocopying or postage and packaging.

In the case of the FOIA, if the public authority thinks that it will take them more than 18 hours (or 24 hours for central government) to find the information and prepare it for release, then they can decline the request. If this

happens it may be necessary to consider narrowing down the request by being more specific about the information sought.

By comparison, there is no costs limit on dealing with EIR requests. However, a request may be rejected if it is 'manifestly unreasonable.' It may still be necessary to comply with a request which is manifestly unreasonable if the public interest test is in favour of disclosure.

How long does it take?

A request under the FOIA or EIR should be processed in 20 working days but an EIR request can be extended to 40 working days if the request is considered onerous or complex. The FOIA limit may also be extended by 20 working days if it is necessary to consider the public interest test.

How will the decision be made?

Remembering that there is a presumption in favour of release, the question is whether there is anything that should prevent its release. The starting point for all cases concerning the EIR is an assessment by the public body against the following criteria, which specify that where information may be withheld if:

- a. The request is unreasonable.
- b. The request is too general.
- c. The information concerns something that is a 'work in progress'.
- d. There are issues concerning international relations, defence, national security or public safety.
- e. The course of justice may be impacted upon by the release of the information.
- f. Intellectual property rights are involved.
- g. The protection of the environment merits withholding the information rather than releasing it.
- h. Confidentiality of commercial or industrial information is at stake where provided by law to protect a legitimate economic interest.
- i. The person supplying the information was not under, and could not be put under, any legal obligation to supply the information, did not supply it in circumstances where they could otherwise be released, and did not consent to release.

Any of the above criteria could be present in a planning related matter.

In addition to these factors a number of court cases have considered the management of planning related information, usually involving the EIR, which have helped in understanding the scenarios where information may be withheld or released:

1. If the public body subject to the request has an interest in the matter, for example they are a land owner in a planning proposal there is an increased likelihood that the information will be released.
2. Conservation factors can also increase the chance of information being released. For instance, if a building is listed then the increased sensitivity of the case increases the potential for release.
3. The format of any financial information is important. Where information is based upon generic financial calculations it is generally considered reasonable that this should be released. However, where the information is specific to the finances of an individual or an organisation, then it is more likely that the information will be withheld to protect commercial interests.
4. It is also worth considering the concept of 'gist'. The courts have taken the view that a key consideration is whether or not the information that is available is sufficient to allow for informed decision making. This might mean that enough information is made available so that people have the 'gist' of the details, but that some of the specifics are withheld.
5. It is important to remember that it is only the particularly sensitive information that is protected. This means that an edited version may be publishable.



Internal communications are not exempt from the EIR regulations and are tested on the same basis as other documentation. The nature of these communications may make them sensitive however.

These scenarios are further explained through two examples on the next page of this guidance sheet.

Example 1

Planning authority A had an interest in a piece of land that was subject to a development proposal. The development involved the demolition of a listed building. Initially the financial viability statement was not released due to the economic interest argument, but following a challenge through the ICO the report was ordered to be published. Key to this decision was the authority's interest in the land, the heritage aspect, and the fact that the financial information was based upon theoretic calculations of costings rather than being specific to the financial operations of the developer.

In a similar scenario, authority B withheld financial information but in this case, following a challenge to the ICO, the decision was accepted as correct. The key difference between this case and the one involving authority A was the fact that the financial information was 'open-book', that is to say it was specific to the financial operations of the developer involved. There was therefore a genuine issue with regards to the protection of a legitimate economic interest if the information in question was publically released.



Where can I find more information?

Every public body will have information that that explains how they manage information and the process to go through to request information.



The Government's GOV.UK website is a good source of information, this also includes information on the Data Protection Act which explains how your information is protected: www.gov.uk



To find out more about challenging a decision to withhold information you should visit the Information Commissioner's Office website: www.ico.gov.uk



Bristol City Council also provide further information on how information is managed across the organisation: [Freedom of Information in Bristol City Council](#)

Example 2

Local authority C received an application for a significant development proposal which involved 'enabling' development; this is additional development that may not be acceptable on its own merits, but which is required to make the proposal that is at the heart of the application economically viable.

In this case the full financial information behind the enabling development was not released to the public, and indeed the local councillors on the planning committee did not have access to all the information.

The failure to release the information was challenged through the ICO but it was found that the local authority had acted appropriately and correctly in withholding the information from release because enough information was available to enable all parties to make an *informed* decision; they had the 'gist' of the case and could make a decision on this basis.

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