



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

**Freedom of Information &
Environmental Information Regulations
Guidance**

ISSUE STATUS – 1.4

DATE OF ISSUE – December 2018

DATE OF LAST REVISION – January 2025

Guidance

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1. INTRODUCTION

1.1 The Freedom of Information Act (2000) and the Environmental Information Regulations 2004 (EIR) establish a right of access to council information.

1.2 Definitions:

FOI - defines ways in which the public may obtain access to government held information.

EIR - provides public access to Environmental Information held by public authorities.

1.3 Allowing access to council information increases openness and transparency, enabling residents and other stakeholders to better understand and participate in decisions affecting them. It increases public scrutiny of how services are delivered, and contributes to strong, accountable local government.

1.4 However, unlimited access to council information would make it difficult to operate. The FOI and EIR balance these interests through exemptions and exceptions which allow council information to be withheld in particular circumstances.

2. WHAT INFORMATION IS SUBJECT TO FOI & EIR?

2.1 All recorded information held by, or on behalf of, an Authority is within the scope of FOI or EIR.

2.2 The legislation applies regardless of the age, format, or origin of the information, this includes archived and closed files.

2.3 Information that belongs to the council but is held or processed by a partner on the council's behalf, is still the council's information and still subject to FOI & EIR.

3. IDENTIFYING A REQUEST

3.1 It is important to deal with requests under the correct administration. Requests which would usually be handled as part of a service's 'business as usual' do not need to be processed as a request under FOI/EIR.

3.2 All other requests will constitute a FOI/EIR request. Forward requests to:

foi@eastcambs.gov.uk so that they can be logged. It is important not to delay because the time limit to respond starts running when the council receives the request, not when it gets to the right team.

3.3 Anyone can make a request, including members of the public, journalists, lawyers, businesses, charities, and other organisations. All requests are treated as 'applicant and purpose blind' that is without regard to the identity or the requester or reason(s) for making the request.

4. WHAT IS A VALID REQUEST?

- 4.1** The request must be for recorded information and state the information requested.
- 4.2** The requester must give their name and an address for correspondence (this can be an email address).
- 4.3** The requester does not have to explicitly state that they are requesting information under FOI/EIR.
- 4.4** An FOI request must be in writing, but an EIR request could also be made verbally.

5. DEALING WITH A REQUEST

- 5.1** Once you receive a request for information from the FOI officer or from your Service Lead, searches must be undertaken to identify and locate the information.
- 5.2** There is a duty to conduct reasonable searches, but not to create information if it is not held.
- 5.3** You should respond promptly and within the deadline stated on the FOI email template.
- 5.4** If meeting the deadline will be an issue, let the FOI Officer know quickly, stating why and with an estimated date of response
- 5.5** Please read the request carefully to ensure that you know what is being asked for. If the request is not clear, let the FOI Officer know quickly as they will need to seek clarification for the requester. If we do not receive a reply within 3 months, the request can be closed. If we do receive clarification, the 20-day working time limit starts from the date that clarification is received.
- 5.6** It is important to consider the possibility that releasing (or withholding) information in response to a request could have wide implications. If you are concerned about the effect of releasing information or refusing to release information, please speak to the FOI Officer.
- 5.7** It is a criminal offence to wilfully destroy or alter any original documents that are the subject of an FOI request.

6. RESPONDING

- 6.1** If the cost of compliance with a request exceeds 18 hours (£450 cost limit), there is no requirement to proceed with the request. However, under Section 16 of the FOI Act you should provide advice and assistance and inform the requester of how they can narrow down the scope of their request so that the request can be responded to.
- 6.2** Both FOI and EIR allow requesters to express a preference about the form in which they receive the information. Where practical and reasonable to do so, you should meet this request.

7. EXEMPTIONS / EXCEPTIONS

7.1 The Freedom of Information Act contains a number of exemptions that allow you to withhold information from a requester. In some cases, it will allow you to refuse to confirm or deny whether you hold information.

7.2 Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.

7.3 There is also an exemption for personal data if releasing it would be contrary to the UK General Data Protection Regulation (the UK GDPR) or the Data Protection Act 2018 (the DPA2018).

7.4 We can automatically withhold information because an exemption applies only if the exemption is 'absolute'. However, most exemptions are not absolute but require us to apply a public interest test. This means we must consider the public interest arguments before deciding whether to disclose the information. So, we may have to disclose information in spite of an exemption, where it is in the public interest to do so.

Exemptions that apply under the FOI Act:

Section 21	Information Accessible Via Other Means - ABSOLUTE
Section 22	Information Intended for Future Publication
Section 23	Security Matters - ABSOLUTE
Section 24	National Security
Section 25	Ministerial Certificate
Section 26	Defence
Section 27	International Relations
Section 28	Relations within the United Kingdom
Section 29	The Economy
Section 30	Investigations and Proceedings
Section 31	Law Enforcement
Section 32	Court Records - ABSOLUTE
Section 33	Audit Functions
Section 34	Parliamentary Privilege - ABSOLUTE
Section 35	Formulation of Government Policy
Section 36	Effective Conduct of Public Affairs – ABSOLUTE (if relates to House of Commons/Lords)
Section 37	Communications with Her Royal Majesty – ABSOLUTE (if relates to HRH and 2 Heirs)

Section 38	Health and Safety
Section 39	Environmental Information
Section 40	Personal Information - ABSOLUTE
Section 41	Information provided in confidence - ABSOLUTE
Section 42	Legal Professional Privilege
Section 43	Commercial Interests
Section 44	Prohibitions on Disclosure - ABSOLUTE

Exceptions that apply under the EIR:

12(4)(a)	Information Not Held
12(4)(b)	Manifestly Unreasonable
12(4)(c)	Request too General
12(4)(d)	Draft/Unfinished Documents
12(4)(e)	Internal Communications
12(5)(a)	International Relations, National Security, Public Safety and Defence
12(5)(b)	Course of Justice
12(5)(c)	Intellectual Property Rights
12(5)(d)	Confidentiality Agreements
12(5)(e)	Commercial Information
12(5)(f)	Voluntary Provided Information
12(5)(g)	Information which affects the environment

8. THE PUBLIC INTEREST TEST

8.1 If the exemption is qualified, the public authority must weigh the public interest in maintaining the exemption against the public interest in disclosure. This is the public interest test.

8.2 A public authority can only withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosure. The public interest here means the public good, not what is of interest to the public, and not the private interests of the requester.

8.3 Factors that weigh in favour of disclosure include:

- Furthering public understanding and debate
- Promoting accountability and transparency
- Allowing individuals to understand reasoning behind decisions which affect their lives or have an impact on public health and safety.
- Age of the information (e.g. the public interest in maintaining an exemption will diminish over time).

8.4 Factors that weigh in favour of withholding include:

- Endangering public safety
- Discouraging frank and open discussions and therefore undermining effective government
- Harming a public authority's position in a commercial matter

8.5 The FOI Act recognises that there are circumstances where it would be inappropriate for a public authority even to confirm or deny that they hold information and a response can be issued stating this.

9. WHAT HAPPENS NEXT

9.1 If dissatisfied, the requester has up to 40 working days to request a review of their response. The review would be done by an Officer not connected with the first response, and a reply would be sent back within 20 working days of their review request.

9.2 The requester can complain to the Information Commissioner (ICO) who can review the response and issue a Decision Notice. That notice can either order the Council to disclose some or all of the information or decide that the information was correctly withheld.