

FOIA and EIR Foundation Training Module 2: EIR overview



The delegates should have the objectives and timetable in front of them.

FOIA and EIR copies?

Mention FOI workbook – consider working through it with mentor/line manager.

No fire drill expected

One break

Introductions

Environmental Information Regulations 2004

Environmental Information Regulations 1992

Aarhus Convention 1998 on environment:

- access to information
- public participation
- access to justice

Directive 2003/4/EC on public access to
environmental information

Environmental Information Regulations 2004

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Ask them to recall the background and key features
of EIR (from Intro to FOI module)

Remind them about directive and Aarhus

Public participation; solving environmental
problems...



Potential overlap EIR and FOI. Which one to use? Both provide right to request info. FOI = all info; EIR = env only.

EIR Stand-alone obligation: you can't simply choose to apply FOIA not EIR; even if exempt under FOIA still must apply EIR.

There is an exemption to stop you having to answer it twice!
[click]

How do FOIA and EIR interact?

Freedom of information Act s39

Environmental information

- (1) Information is exempt information if the public authority holding it—
 - (a) is obliged by [environmental information regulations] to make the information available to the public in accordance with the regulations, or
 - (b) would be so obliged but for any exemption contained in the regulations.

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Note: if authority not covered for EIR, this exemption can't apply ("if the public authority holding it is obliged...")* – e.g. BBC covered for FOIA but not EIR – and if only partially covered for FOIA are not covered by EIR.

Most exceptions subject to PIT.

(Don't say this) *Purpose of PIT being so widely applicable probably that drafted pre EIR 2004 so didn't know what would be in it - might have been narrower than it is. In practice not the case. Therefore never likely to be in public interest to consider under both regimes.*

(Do say this) They came in (from request point of view) at same date -1.1.2005.

*NB our guidance "Public authorities under the EIR"

What is environmental information?

Any information on...

- (a) state of the elements of the environment
- (b) factors affecting / likely to affect elements
- (c) measures / activities affecting elements or factors or designed to protect elements
- (d) reports on implementation of env. legislation
- (e) cost-benefit analyses etc. used for measures
- (f) human health and safety & living conditions inasmuch as affected by elements or through elements by factors or measures

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New guidance "What is environmental information?"
published 7.3.2016

Two ways in which the request may fail to be considered under EIR: either, it is obvious from the request that it is or would be environmental (whether or not held); or, the information when located proves to be environmental (e.g. "correspondence between X and Y" on all subjects may turn out to include EI)

Six categories. "Any information on" should be read widely. However when deciding whether information is on emissions: – "information on" should not be interpreted to include information which simply relates to emissions. (see sep. guidance on r 12(9) which also considers definition of emissions)

-It is not necessary for the information itself to have any impact on the environment

- reg 2(1)(d) is "any information *on* reports" hence would cover e.g. emails about drafting. → PTO

-Lots of things can come under more than one e.g. 2(1)(e) is really a subset of 2(1)(c) but is spelled out for avoidance of doubt as had been debatable under previous legislation.

Note this is paraphrase and should look at wording of EIR.

[this slide is not to look at each part – that is coming up]

What is environmental information?

Any information on...

- (a) state of the elements of the environment
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- (c) measures / activities affecting elements or factors or designed to protect elements
- (d) reports on implementation of env. legislation
- (e) cost-benefit analyses etc. used for measures
- (f) human health and safety & living conditions inasmuch as affected by elements or through elements by factors or measures

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The key question in r2(1) EIR.

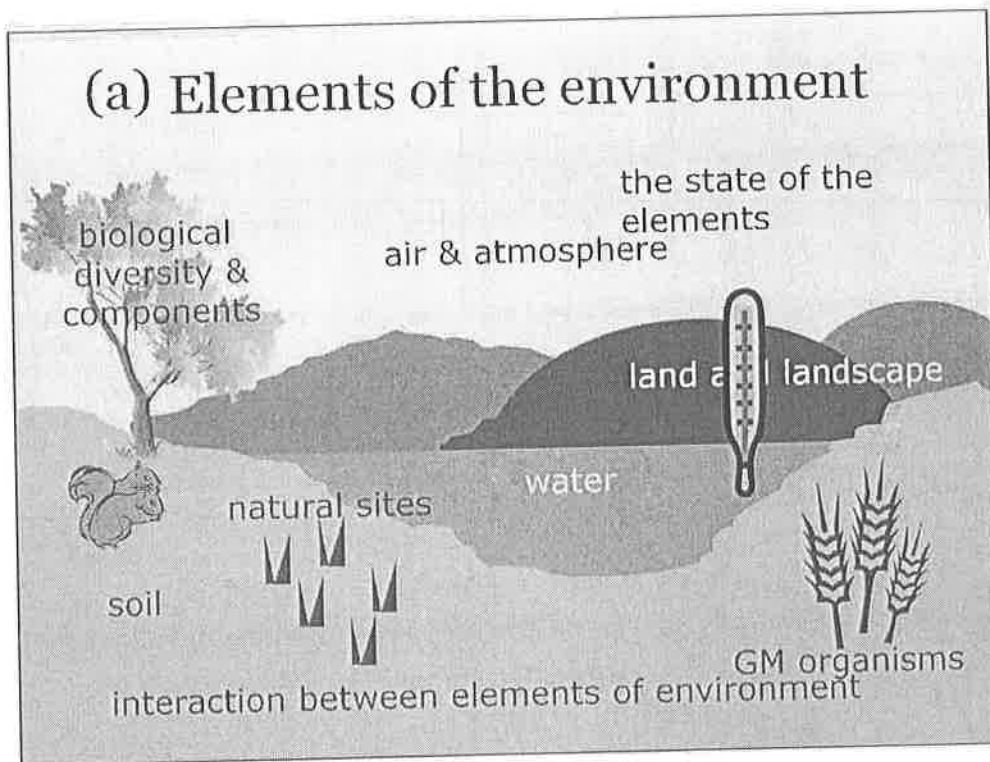
Going back to the list. As you can see from the colours they interlink.

****GIVE OUT HANDOUTS [if not in pack]****

Handout includes diagrams of this. (d) is a special case (and doesn't appear on diagrams) because it stands alone.

Note that info may fall in more than one category

For all the others except (d) you need to understand the concept of *elements* of the environment and *factors* which affect elements.



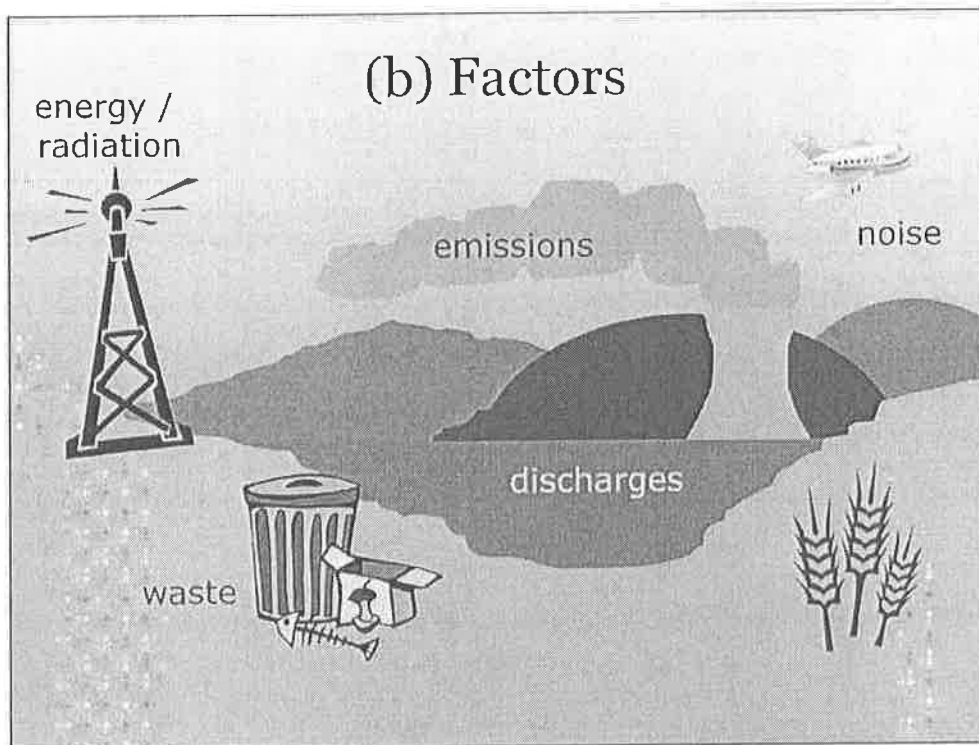
Elements “such as” – not complete definition. Includes air, land, water etc. Note that “landscape” goes beyond “land” – includes visual impact.

Natural sites = types of habitat e.g. wetlands or coastline.

“Biological diversity and components” is all one thing – not just one species but balance between species or interaction of biodiversity and elements of environment. GM organisms are specifically listed.

As well as “state” it includes “interaction”

Relatively few examples of (a) come to us, perhaps because tend to be more obvious. Less likely to cover whole documents / files – but there is always a link to (a)



Factors again is "such as" so in theory could be anything "affecting or likely to affect" the elements. Generally includes anything released into the environment.

[click] obvious ones such as substances, waste, discharges etc. but also

[click] less obvious ones such as noise, radio waves, light pollution etc.

(note that many of these factors are also "emissions")

Note that though the factors all appear negative here, that isn't a necessary part of the definition; a factor could affect the natural world in a neutral or positive way.

(c) Measures and activities

- Measure or activity likely to affect environment – information does not have to refer to environment
- Past, current, future or abandoned plans
- Likely to cover most planning issues – construction, demolition, major external changes

Examples:

- Sales figures of minerals from a quarry
- Consultation on Thames Gateway Bridge
- Footpaths / rights of way

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Commonest one, most likely to cover whole documents / files

Covers measures, policies, plans, activities etc. – v broad.
Can include plans for things which didn't come to pass.

Key point is that this is not just "environmental policy" but any measure or activity which *affects or is likely to affect* environment whether or not this is its purpose

(c) covers planning matters – though note less likely to cover internal changes, minor external features (depends if affects 'landscape') or some buildings regs. See guidance "What is environmental information?")

NOTE: we would consider planning regs per se to be the "measure", not the specific decision

Rem. not mutually exclusive – if all comes under (c) don't worry about if some may come under another as well

(d) and (e) are rarely used, largely because overlap with (c).
However if the info is statistics it may be easier to use (d) or (e) as the link with the measure may seem distant.

(f) Human health and safety etc

- Human health and safety - e.g. health problems caused by pollution or radiation
- Conditions of human life - e.g. sanitation and housing conditions
- Cultural sites & built structures
- Narrower than (c): information must explicitly make the link with environment

(f) Human health and safety etc

Environmental

Info on...

Damage to a building
caused by mining

Health effects of aviation
noise

Contamination of the
food chain caused by
contaminated land

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Not environmental

Info on...

Food poisoning caused
by failure to cook meat
thoroughly

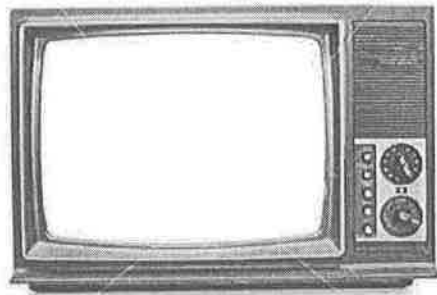
Outbreak of flu –
information does not
spell out any
environmental link

Mining is a measure – causes subsidence in this case which is an effect on the environment – and this environmental impact in its turn affects built structure

Food poisoning – in this case no environmental factors described

Flu – sneezing does not count as a “release into the atmosphere”!

Example



r2(1)(a) complaint to Ofcom
about inaccuracies in a
programme about climate
change (see FS50242937)

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Four examples of DNs. Not looking here at whether excepted or not – but looking mainly at whether within definition of environmental information.

TV programme denying aspects of climate change – complaints made to Ofcom – our examination of complaint showed it did support interpretation of env info in these circumstances. Info was representations about the carbon cycle, CO2 emissions – we said it was info on the state of the elements of the atmosphere and therefore covered by EIR.

r2(1)(a) – directly about state of env – relatively rare for these to come to us. This is an example of how something initially appearing not very

environmental could fall in definition. [explain the specific case]

Note that we will not always consider which section of r2(1) applies where there is no dispute that the information is environmental – though it is necessary for it to get in directly via (b) if going to go on to find it is on emissions.

The cases are on CMEH (references on slides)

Example



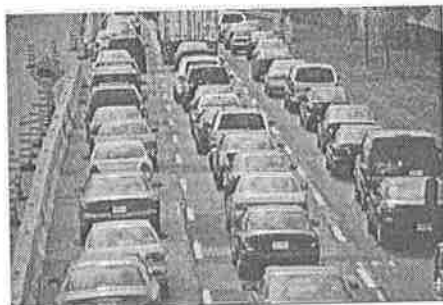
r2(1)(b) information
relating to the
measurement of flows
entering a sewage works
(see FER0230659)

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Info was environmental -r2(1)(b)- (and therefore could be withheld under r12(4)(b) manifestly unreasonable rather than vexatious under s14 FOIA)

R2(1)(b) as related to waste and other releases into the environment including water and coastal areas

Example



r2(1)(c) legal advice relating to the introduction of a "low emissions zone" in London (see FER0178169)

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Request to TfL – info re legal advice and correspondence in relation to introduction of Low Emission Zone. We agreed r12(5)(b) applied (course of justice – LPP) and PIT lay in maintaining the exception.

Was env info under r2(1)(c) – information on a measure (such as policies, legislation, plans etc) likely to affect the elements and factors referred to in 2(1)(a) and (b).

Example



r2(1)(f) Health and Safety
Executive report into an
accident at a pharmaceutical
nicotine factory (see
FS50106658)

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r2(1)(f): Accident at work – employee sprayed with solution containing nicotine – led to serious injury. Request to HSE Northern Ireland – by person whose accident it was – HSE withheld under FOIA. But we said it was escape of nicotine solution into the air – it was env. info because it was info on the state of human health and safety inasmuch as it is or may be affected by the state of the elements of the environment referred to in 2(1)(a) (or through those elements, by any of the matters referred to in r2(1)(b) and (c)).

r2(1)(f) is quite difficult and again not that common; this is a fairly clear-cut example because the health risk was directly related to a “discharge into the environment” which affected the “state of the air” AND the information was specifically on the effect on health and safety.

Exercise 1: environmental information



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EXERCISE 1: All the examples are environmental, but work out why (note that there are a couple of tricky ones).

Tutor:

Either

Suggest people attempt on own then get into pairs to discuss

OR split them into groups, doing 2-3 questions in each group – say Qs 1-4, 5-7, 8-10?

And All look at question after Q10.



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· Coffee break – 10 mins

Key differences from FOIA

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This blank slide is just for the handout printing

Key differences from FOIA

verbal requests

internal review obligatory

up to 40 days for complex / voluminous

no PIT extension

no fixed fees –
“reasonable” charges

no cost limits

European

overrides other legislation /
no equivalent s.44

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[remember not to print this in delegates' copies of slides]

Before clicking to reveal the coloured words, ask them to recall (from Intro to FOI session). **Write it up on white board / flipchart - or if running session as single trainer, get a delegate to volunteer to do this..**

NB they will need time to note these down.

[click]

These are the minimum they should remember – they may remember more.

Fees and costs covered under Module 4

Note that although no equivalent to s44 FOIA there may be relevant exceptions eg 12(5)(d) or (e)

Right to information: reg 5

- No reference to confirm / deny in EIR – but it's implied (see later slide on r12(6))
- Where produced by authority, should be "up to date, accurate and comparable"
- Category 2(1)(b) (factors): if asked, should direct to info re procedures for collecting and analysing data
- Reg 5(6): overrules any other legislation preventing disclosure

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Equivalent s1 FOIA but has more things in it and some differences

Point out that it tends to be stronger: explicit presumption in favour of disclosure; "interpreted in a restrictive way" [directive, referring to exceptions], overrides stat bars.

Remember also background in Aarhus which included the production / collection as well as disclosure of info

NB Later slide on NCND.

Requests

- No requirements about validity of request
- Unclear requests: provision in EIR refers to requests formulated "in too general a manner".
- Must ask for more details and give assistance
- 20 days to ask and 20 days from clarification
- If authority has asked for further details, can refuse the request under r12(4)(c)

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Where authority *decides* request is too general
(note that where it is too big we tend to treat as manifestly unreasonable instead)

Slightly different from FOIA – under EIR they can refuse the request and comply with reg 9 at the same time, as we would with a reg 12(4)(c) reformulation, so the clarified request will definitely and clearly be a second request. Cannot refuse unless have given advice and assistance.

Other provisions

- Regulation 6 form and format
 - like s.11 FOIA but does not give list of forms
 - right of inspection
 - can act as equivalent s.21
- Refusal notice as in FOIA but different time limits
- Advice and assistance – also refers to code of practice but code requirements more open-ended
- Some things good practice in FOIA, but required in EIR:
 - transfer of requests (reg 10)
 - internal reviews (reg 11)



The right of inspection is crucial because it's free (right of inspection not explicit but we consider it to be a right)

Reg. 6 can act as equivalent to s21 which is an exemption under FOIA for information which is reasonably accessible to the requester

Reg 5 time limits – reg 7 no extension for PIT, up to 40 days for complex and voluminous (but still tell them this within the 20)

Advice and assistance (reg 9) – as with FOIA, if you comply with the code (here the “regulation 16” code, normally called just EIR code) it means you’ve met the requirement, but since code is more open-ended there is more judgement required.

Transfer of a request (reg 10) – either directly or give the requester the contact details

Refusing a request

Can refuse a request if:

- An exception applies (r12)
 - this includes where information is not held
- The information is personal data (r13)

Most exceptions are subject to the public interest test.

Regulation 12(9) = some exceptions don't apply to information on emissions.

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Unlike FOIA, in the EIR the fact information is not held is an exception. Obviously it would not be appropriate to apply the PIT to that.

EIR Exercise 2: how does it all fit together?

2: definitions /
scope

6-11: request handling
procedures

4: publication

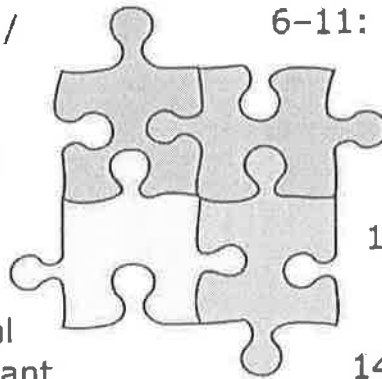
12: exceptions

5: requests

13: personal data
of 3rd party

5(3): personal
data of applicant

14: refusal notices



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Give out exercise first before displaying all this detail.

EXERCISE 2: give out the handout with gaps. NB these are not direct equivalents to FOIA. – exercise is simply to find which regs in EIR cover which subjects.

** Explain that NCND means “neither confirm nor deny”

Then [click]

EIR: how does it all fit together?

Personal data: not classed as an exception but split over r5(3) and r13

Not held, manifestly unreasonable and too general all under exceptions

r3(3) and r3(4): exclusions for judicial & legislative activities and parliamentary privilege

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Some things exemptions in FOI and procedural in EIR, some vice versa

Note exclusions in reg 3

Basic point is – you may find bits all over the EIR that in FOIA would be together.

Emissions reg.12(9)

- Narrower than other parts of the definition.
 - Emissions are:
 - the by-product of an activity or process
 - added (or potentially added) to and affecting the elements of the environment;
 - over which control is relinquished.
- E.g. nickel levels in water being returned to a river following use in an industrial processing plant
- Will include assumptions used to calculate emissions or predicted emissions and direct consequences of them
 - Must fall within reg 2(1)(b) of the definition of EI

See our guidance: Regulation 12(9) information on emissions

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See guidance : **Information on emissions**

Note: not everything "released" such as organisms (seeds, animals) – emitted 'from itself'. Not fall within the definition given on screen- the seeds are not a by-product of an activity. Any gases released as seeds grow would be.

Will also include:

- Very low level emissions (e.g. domestic) because (a) we can't make that decision scientifically as to whether it will have an effect or not and (b) even if it doesn't have an effect, information determining that would still constitute 'information on emissions' and be relevant to the environmental debate.

(PDARF in case FS50301488)

Note that r2(1)(b) is narrower – information on, not info which relates to info on

Includes assumptions and calculations used to reach a conclusion about the level of emissions. Also information on emissions is wide enough to cover direct and immediate consequences of them - see the guidance page 6 and WRATE example

Information that relates to emissions eg the cost of a programme to reduce CO2 levels will still be environmental and fall within r2(1)(c)

but it won't be on emissions and r12(9) therefore won't apply..

Not quite exceptions

r5(3) personal data of applicant

r13 personal data of third party

Note: specifies "shall not" disclose in breach of DPA

r3(3) judicial and legislative capacity

r3(4) parliamentary privilege

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Other things not in reg.12 which operate similarly to exceptions – they disapply the regs

Eg EIR don't apply where invoking parliamentary privilege

But end result is similar to FOIA

Don't have public interest test, except as specified in parts of reg.13.

Confirming and denying (“NCND”)

Unlike FOIA, the requirement to confirm or deny whether information is held is not explicitly spelled out in the EIR as a requirement... but it's implied by the existence of an exception at r12(6):

A public authority may only refuse to confirm or deny (NCND) if:

- confirmation or denial would adversely affect international relations, defence, national security or public safety (r12(5)(a) exception) **AND**
- the public interest favours maintaining the exception

NB FOIA has many more exemptions where the duty to confirm or deny is excluded.

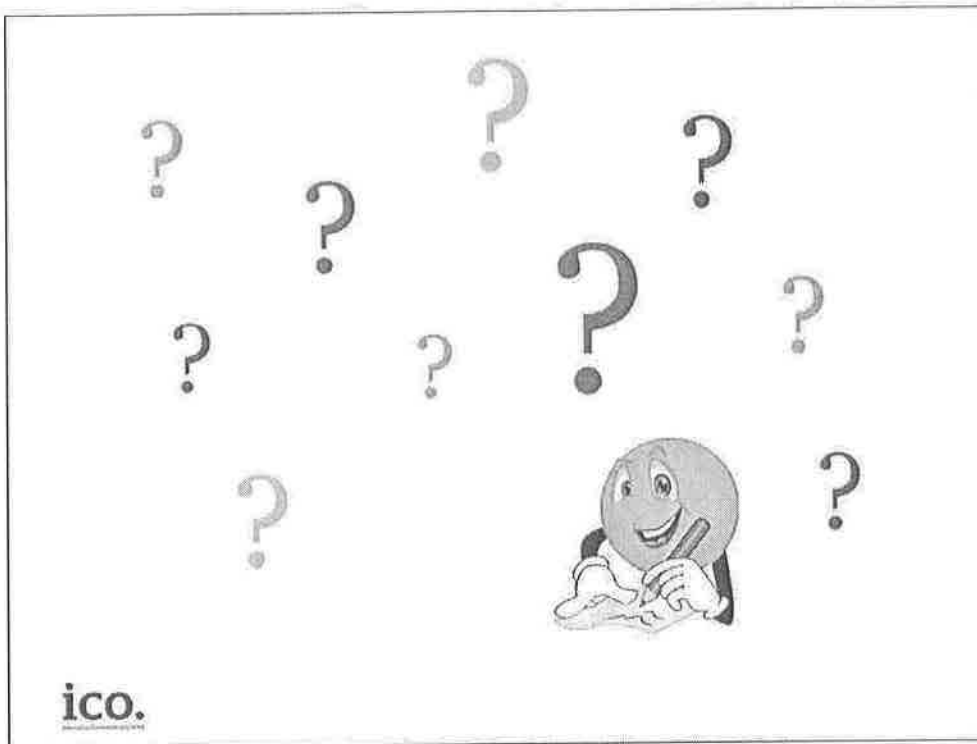


The EIR allow for fewer situations than FOIA in which an authority can refuse to confirm or deny whether information is held.

The EIR provide in r12(6) for only one circumstance where a PA can NCND: where the confirmation or denial would adversely affect international relations, defence, national security or public safety (r 12(5)(a)).

By implication this means that under the EIR in other circumstances a PA must confirm or deny whether it holds the requested information.

However we would not necessarily expect an authority to confirm or deny whether information is held in relation to a request which is manifestly unreasonable (this might also apply where the request is vexatious or where the cost and burden of determining whether information is held would be manifestly unreasonable).



Quiz time

You can confer, you can look it up – it's to make you think about it and we'll talk it through after

For more information, see our
guidance page on www.ico.org.uk

and the FOI Policy knowledge base
on ICON

FOI module 2: EIR overview

Trainer's Checklist

Handout and other instructions for L&D

The handout pack for each attendee should contain one copy each of the following documents, which are on Meridio 1.17.04.03:

- objectives and timetable
- slides – print using the “handout” option (3 per side of paper) BUT first un-hide slide 18 which is hidden in the slide show but needs to be printed on the handout. ENSURE slides 17 and 19 are hidden and that you have opted **not to print** hidden slides. Don't forget to un-hide the slides again afterwards, but to hide slide 18 once more.
- definition of EI page 1 and definition of EI page 2
- exercise 1 on env info
- exercise 2 on structure
- quiz
- **Please don't forget to ensure there is a flipchart in the training room on the day.**
- **L&D should have asked delegates to bring a copy of the EIR and FOIA with them – their own, borrowed or printed off from legislation.gov.uk.**

Note

- list of delegates provided by L&D
- feedback sheet currently provided in hard copy/ emailed out separately by L&D

The trainer will need:

- Lesson plan
- SLIDES – print out a copy with the speaker notes on, using the “Notes pages” option. You will need to tick the box “print hidden slides”.
- Exercise 1 on env. info with answers
- Structure exercise 2 with answers
- Quiz with answers
- Flipchart

The master folder is in cupboard PD2 behind Lisa Atkinson and Viv Adams in Policy Delivery, West Wing, First Floor.

NB Trainer: Before loading and showing the slideshow, please “un-hide” the hidden slides (currently 17 and 19) – these needed to be hidden when printing the handouts. Please “hide” slide 18 for the slideshow.

Module 2: EIR overview

Objectives

This session is an introduction to the Environmental Information Regulations 2004 (EIR). This session will refer to concepts introduced in the FOI introductory session and in other modules of this course, in particular the public interest test (which you will attend later on) and the procedural provisions of the FOIA.

By the end of this session, you should be able to:

- find your way around the EIR
- explain the interaction between the EIR and FOIA
- identify when information is likely to be environmental and seek advice if necessary
- describe the procedural differences between the EIR and the FOIA

This session will not cover how to apply specific exceptions.

Schedule for today

Today's session should last approximately three hours.

Introduction

Identifying environmental information

Exercise 1: environmental information

Break

Procedural differences from FOIA

Exercise 2: how the EIR and FOIA fit together

EIR exceptions (in basic outline)

Emissions

Quiz

Resources

FOI workbook – see the Learning and Development pages on ICON.

We recommend that you read the guidance document **What is environmental information?** which can be found on the ICO website.

You can also follow up today's points on the **Policy Knowledge Base**.

There are further training foundation modules on related EIR and FOIA topics
– see the Learning and Development pages on ICON.

Content	Objectives (what the learners should be able to do)	Estimated maximum times
Start: Outline the objectives and timetable for the session. 5 minutes		
Introduction to the Environmental Information Regulations 2004		
EIR basics	Describe the purpose of the EIR; begin to get a 'feel' for its ethos and differences from FOIA	10 minutes
s.39 FOIA	Explain how the FOIA and EIR interact. In particular, be aware of the need to apply EIR whenever the request is for environmental information.	
Identifying environmental information		
reg.2(1)- definition of environmental information	Identify when information may be environmental (including non-obvious examples) and seek advice if necessary Approach this question methodically according to the interlinked categories not a general 'green feel'. Spot mistaken arguments that information falls in category (f) Exercise 1	25 - 35 minutes
Tea / coffee break 10 minutes.		
Key procedural differences		
regs.6, 7, 9, 10 and 11	Describe the procedural provisions of the EIR and how they are similar to or different from those in the FOIA <u>Not</u> wrongly read across from FOIA, but know where to go for equivalent or similar provisions	20 minutes
How the EIR and FOIA fit together		
EIR basics	Find the various procedural provisions in the EIR	25-35 minutes

	Find where personal data is dealt with (but this will not be covered as is basically same as FOIA) Exercise 2	
Exceptions		
reg.12	Have a general awareness of the exceptions in the EIR, and in particular recognise the importance of applying the correct regime. (Separate module covers these and FOIA exemptions) Know to check whether information relates to “emissions” when considering the application of certain exemptions Correctly define “emissions”	20-25 minutes
Quiz – 20 minutes		

Information on...

(f)	(e)	(c)	(b)	(a)
				state of the elements
			factors	likely to affect elements
		a measure	likely to affect factors	designed to protect elements likely to affect elements likely to affect elements
	cost / benefit & economic analysis	in the framework of a measure	likely to affect factors	designed to protect elements likely to affect elements likely to affect elements
state of human health and safety inasmuch as			affected by factors	affected by elements through elements
state of human health and safety inasmuch as		affected, through the elements, by a measure	likely to affect factors	designed to protect elements likely to affect elements likely to affect elements

Exercise 1: Environmental Information

The following are all examples of environmental information. Under which subsection do they fall and why?

1. A map, showing the geography of an area
2. Planning application for housing development
3. ICO report on compliance with EIR
4. Local authority contract for waste disposal services
5. Statistics about projected landfill requirements for the next five years
6. Percentage of vehicles of different makes and models failing their MOT on the grounds of exhaust emissions
7. Policy documents relating to the failed proposals for congestion charging in Manchester
8. Research into the economic impact of hydroelectric developments in the Middle East and China, prepared as part of the government's energy review
9. Met Office data about the volcanic ash cloud
10. Investigation into a possible link between low frequency noise generated by wind turbines and health problems suffered by local residents

Question for everyone to think about:

Is the following environmental information? What more might you need to know? – for discussion

Post-mortem carried out on pigs which died of a disease dangerous to humans.

Exercise 1: Environmental Information WITH ANSWERS

The following are examples of environmental information. Under which subsection do they fall and why?

1. A map, showing the geography of an area

r2(1)(a)- it is information about the state of the elements of the environment, specifically the landscape and the existence of natural sites, coast, water etc.

2. Planning application for housing development

r2(1)(c)- it relates to a measure, specifically planning regulations, which affect the elements, specifically the land and landscape.

3. ICO report on compliance with EIR

r2(1)(d)- it is about implementation of environmental legislation

4. Local authority contract for waste disposal services

r2(1)(c)- it is information relating to a measure or activity which affects a factor, specifically waste. It may not come under (b) since it may not actually be about waste per se.

5. Statistics about projected landfill requirements for the next five years

r2(1)(b)- this is specifically about a factor, the quantity of waste, which will affect the landscape through landfill.

6. Percentage of vehicles of different makes and models failing their MOT on the grounds of exhaust emissions

r2(1)(c)- the purpose of including this element in the MOT is to protect the elements of the environment (the air and atmosphere) from a factor (emissions). This information "relates to" the measure, albeit not in the obvious way that e.g. a policy document might.

7. Policy documents relating to the failed proposals for congestion charging in Manchester

r2(1)(c)- a measure which would have had an effect on the factors of pollution which in turn would have had an impact on the quality of air and atmosphere. The fact that the proposals didn't go ahead is irrelevant. It is also not generally relevant whether the aim of the congestion charging is to reduce pollution, unless it is solely going to raise money and not affect the actual number of vehicles on the road.

→PTO

8. Research into the economic impact of hydroelectric developments in the Middle East and China, prepared as part of the government's energy review
r2(1)(e) and r2(1)(c) - the fact that it relates to a different country is irrelevant. The important point is that it is a measure (government energy policy) and the economic analysis will inform this. Note that only economic and cost benefit analyses are included.

9. Met Office data about the volcanic ash cloud
r2(1)(b) and possibly r2(1)(a) - the volcanic ash is a factor affecting the air and atmosphere

10. Investigation into a possible link between low frequency noise generated by wind turbines and health problems suffered by local residents
r2(1)(f) - it relates to the state of human health as potentially affected by the factor of noise (via, presumably, the elements of the air or the earth). Some of this information will also be r2(1)(b) - relating to the emission of noise.

Question for everyone to think about:

Is the following environmental information? What more might you need to know? – for discussion

Post-mortem carried out on pigs which died of a disease dangerous to humans
In the actual case, the post mortem raised the possibility that the disease might have been caused by contaminated land (an element in r2(1)(a) and a factor in r2(1)(b)) and that there could be an impact on human health (thus linking to r2(1)(f)) However only a small amount of the information – that which actually discussed the impact on human health – would be under r2(1)(f).

Exercise 2: structure.

How it all fits together: comparing EIR and FOIA

Find where the topic is covered in the EIR and fill in the gaps...

Important: this shows where the topics are covered in the two pieces of legislation. It does not mean that the provisions are the same.

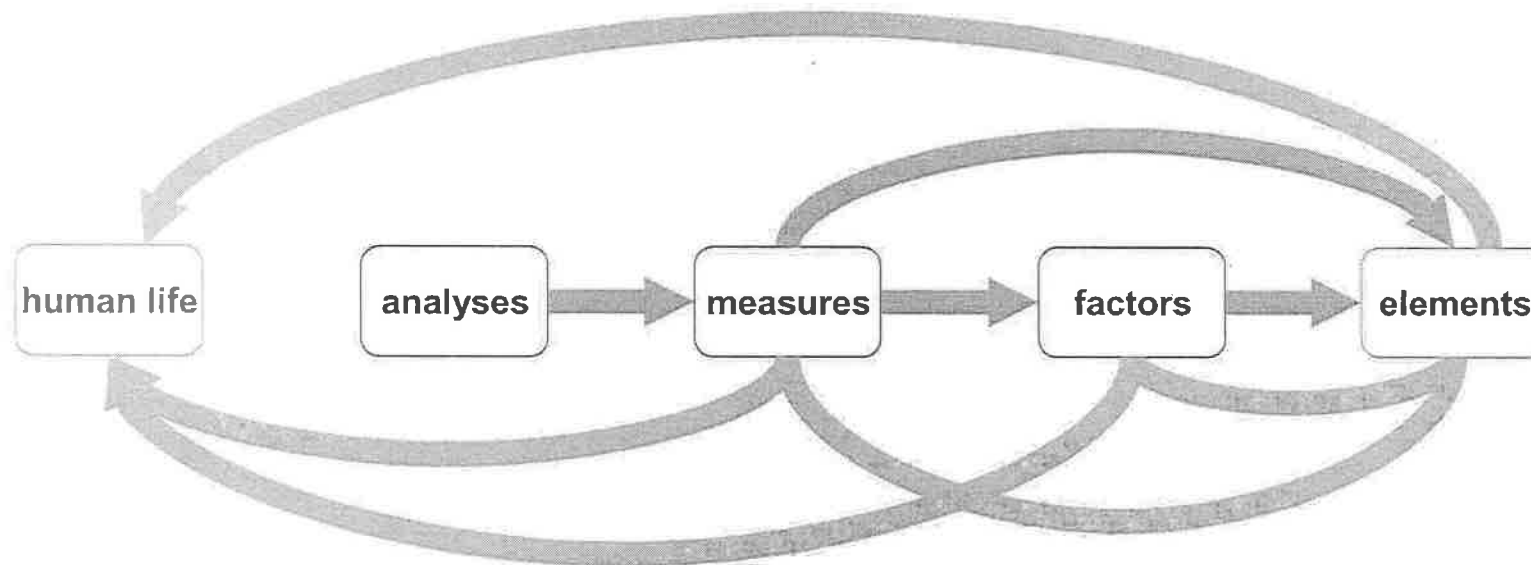
Topic	FOI	EIR
confirmation / denial	1(1)(a)	No direct equivalent; covered by reg. 5, referred to in 12(6)-(7)
Right to information	1(1)(b)	
Information not held	1(1)(a)	
unclear requests	1(3)	
Requirements for a valid request	8	None – though requests are at reg 5
fees	9, 13	
Time limits	10	
Means of communication / form and format	11	
Cost limits	12	None, but can consider cost as a factor in 12(4)(b)
Vexatious	14(1)	
Repeated	14(2)	
Advice and assistance	16	
Refusal notice	17	
Internal review	17	
Proactive publication	19 - 20	4
Personal data of applicant	40(1)	
Personal data of third party	40(2)	
Exemptions from duty to disclose information	21-44	
NCND	21 - 44	
Transferring a request	s.45 Code of Practice	
Parliamentary privilege	34	
Information already available or in public domain	21	

Exercise 2: structure. **WITH ANSWERS**

How it all fits together: comparing EIR and FOIA

Topic	FOI	EIR
confirmation / denial	1(1)(a)	No direct equivalent; covered by reg. 5, referred to in 12(6)-(7)
right to information	1(1)(b)	5
Information not held	1(1)(a)	12(4)(a)
unclear requests	1(3)	9(2); 12(4)(c) also relevant
Requirements for a valid request	8	None – though requests are at reg 5
fees	9, 13	8 (very different)
Time limits	10	5(2) basic, 7 extensions Could mention 11 which is time for IR
Means of communication / form and format	11	6 But is different
Cost limits	12	None, but can consider cost as a factor in 12(4)(b)
Vexatious	14(1)	12(4)(b)
Repeated	14(2)	No direct equivalent Though could describe as manifestly unreasonable
Advice and assistance	16	9
Refusal notice	17	14
Internal review	17	11
Proactive publication	19 - 20	4
Personal data of applicant	40(1)	5(3)
Personal data of third party	40(2)	13
Exemptions from duty to disclose information	21-44	12 - exceptions
NCND	21 - 44	12(6) & 13(5)
Transferring a request	s.45 Code of Practice	10(1) Requirement rather than good practice
Parliamentary privilege	34	3(4)
Information already available or in the public domain	21	6

Information on...



Information in categories (b), (c) and (e) links back to the factors in (a), either directly or indirectly. In category (f), the links go in the opposite direction. Human health and safety and conditions of human life must be affected either directly by the elements, or through the elements by the factors or measures.

EIR quiz - delegates' version

1. Which of the following are *likely* to be environmental information?

Listed building consent to demolish a barn

A report on the effect of intensive farming methods on the populations of various insects

A local authority investigation into alleged contravention of fire safety regulations relating to an internal staircase

A letter stating that a rare bird has been seen in a garden

A contract with a waste disposal company

Minutes of a meeting to discuss the local authority's recruitment strategy

Revenue from a toll road

A complaint about asthma caused by emissions from a factory

Statistics relating to industrial accidents caused by faulty equipment

2. Fill in the blanks using the numbers in the box (there will be some left over):

13	41	40	6	21	5
44	22	20	4	6	
12	60	7	39		

Section of the FOIA provides an exemption for information which is covered by the EIR.

Regulation applies to personal data of an individual other than the requester

The normal time for compliance is 20 working days, but an authority can take up to days where the information is particularly complex or voluminous

If the authority considers the request to be formulated in too general a manner, it must request more details within days.

Regulation 6(1)(b) is the nearest equivalent to FOIA section

3. True or false?

(a) the EIR require an authority to confirm or deny whether information is held

(b) the EIR do not apply to a public authority which is acting in a judicial or legislative capacity

(c) Internal communications include communications between government departments

(d) an authority can refuse a request which is phrased in too general a manner; the only condition is that it must do so within 20 working days

4. Multiple choice questions

4(i) Which of these is/are a requirement of the EIR?

(a) the authority must provide an internal review if the requester does not accept that the authority has handled the request correctly

(b) if the authority does not hold the information but believes that another authority does, it must either transfer the request or give the requester the contact details of the other authority

(c) the authority must ensure as far as possible that information it has compiled is up to date and accurate

(d) the authority must inform any other party which is likely to be affected by a disclosure of information

4(ii) If asked to do so by the requester, an authority should:

(a) direct the requester to information about methods of measurement and analysis used to compile information on factors affecting the environment

(b) provide the requester with sufficient background information to determine whether the information is accurate

(c) inform the requester promptly if information relating to the state of the elements of the environment is changed or updated

4(iii) Which of the following is **not an exception**?

(a) the request relates to unfinished documents or incomplete data

(b) the disclosure would adversely affect intellectual property rights

(c) the disclosure would adversely affect the interests of the person who provided the information....

(d) the disclosure is prohibited under national law

4(iv) Information relating to information on emissions cannot be withheld under:

(a) regulations 12(5)(d) to (g)

(b) regulations 12(5)(a) to (d)

(c) regulations 12(4)(b) to (e)

(d) regulation 13

5. NCND

An authority can refuse to confirm or deny whether information is held if:

(a) confirming or denying would adversely affect public safety

(b) disclosure of the information would adversely affect national security

(c) confirming or denying would adversely affect national security and would not be in the public interest

(d) confirming or denying would adversely affect criminal investigations and would not be in the public interest

EIR quiz with answers

1. Which of the following are *likely* to be environmental information?

Listed building consent to demolish a barn yes – a measure or activity which will affect the landscape

A report on the effect of intensive farming methods on the populations of various insects Yes – biodiversity and factors and activities affecting it

A local authority investigation into alleged contravention of fire safety regulations relating to an internal staircase Probably not

A letter stating that a rare bird has been seen in a garden Probably not, although it sounds like it would be – it only relates to one bird

A contract with a waste disposal company Yes

Minutes of a meeting to discuss the local authority's recruitment strategy no

Revenue from a toll road Yes it could be – a road is a measure affecting the environment, as potentially is the strategy of road charging

A complaint about asthma caused by emissions from a factory Yes

Statistics relating to industrial accidents caused by faulty equipment No probably not – although some may have environmental factors involved.

2. Fill in the blanks using the numbers in the box (there will be some left over):

13	41	40	6	21	5
44	22	20	4	6	
12	60	7	39		

Section 39..... of the FOIA provides an exemption for information which is covered by the EIR.

Regulation 13..... applies to personal data of an individual other than the requester

The normal time for compliance is 20 working days, but an authority can take up to 40..... days where the information is particularly complex or voluminous

If the authority considers the request to be formulated in too general a manner, it must request more details within 20..... days.

Regulation 6(1)(b) is the nearest equivalent to FOIA section 21.....

3. True or false?

(a) the EIR require an authority to confirm or deny whether information is held True – although it isn't spelled out, it is clearly implied. There are exceptions at r12(6) and also we might not require if manifestly unreasonable

(b) the EIR do not apply to a public authority which is acting in a judicial or legislative capacity True – r 3(3)

(c) internal communications include communications between government departments True – r12(4)(e) (see r12(8))

(d) an authority can refuse a request which is phrased in too general a manner; the only condition is that it must do so within 20 working days False – it has to request more details within 20 days, and also there is a public interest test – r12(4)(c) and r9

4. Multiple choice questions

4(i) Which of these is/are a requirement of the EIR?

(a) the authority must provide an internal review if the requester does not accept that the authority has handled the request correctly (r11)

(b) If the authority does not hold the information but believes that another authority does, it must either transfer the request or give the requester the contact details of the other authority (r10)

(c) the authority must ensure as far as possible that information it has compiled is up to date and accurate (r5(4))

(d) the authority must inform any other party which is likely to be affected by a disclosure of information

4(ii) If asked to do so by the requester, an authority should:

(a) direct the requester to information about methods of measurement and analysis used to compile information on factors affecting the environment (r5(5))

(b) provide the requester with sufficient background information to determine whether the information is accurate

(c) inform the requester promptly if information relating to the state of the elements of the environment is changed or updated

4(iii) Which of the following is **not an exception**?

(a) the request relates to unfinished documents or incomplete data (r12(4)(d))

(b) the disclosure would adversely affect intellectual property rights (r12(5)(c))

(c) the disclosure would adversely affect the interests of the person who provided the information.... (r12(5)(f))

(d) the disclosure is prohibited under national law - remember r5(6)) - EIR prevail.

4(iv) Information relating to information on emissions cannot be withheld under:

(a) regulations 12(5)(d) to (g)

(b) regulations 12(5)(a) to (d)

(c) regulations 12(4)(b) to (e)

(d) regulation 13

5. An authority can refuse to confirm or deny whether information is held if:

(a) confirming or denying would adversely affect public safety

(b) disclosure of the information would adversely affect national security

(c) confirming or denying would adversely affect national security and would not be in the public interest (r12(5)(a))

(d) confirming or denying would adversely affect criminal investigations and would not be in the public interest

For this last one, (a) and (b) are semi-right but need reference to public interest; NB might also be able to avoid if manifestly unreasonable.