Wimbledon and Putney Commons

POLICY ON PUBLIC ADMISSION TO MEETINGS AND PUBLICATION OF AGENDAS, MINUTES AND RESOLUTIONS (APPLICABLE FROM 1 OCTOBER 2021)

1. Introduction

As a public body, funded in part by a levy payable by local residents, WPCC understands the need for transparency and accountability. The Board will therefore, where appropriate, (a) hold meetings in public and (b) publish minutes of meetings and/or resolutions agreed at meetings. WPCC will seek to conduct meetings using practices and procedures set out within the Public Bodies (Admission to Meetings) Act 1960, which states:

> *Subject to subsection (2)* below, any meeting of a body exercising public functions, being a body to which this Act applies, shall be open to the public.*

Subsection (2) states:

> *Where a meeting is open to the public, a body may, by resolution exclude the public from the meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings; and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies.*

Therefore, the Board's policy is to allow public access to meetings unless the business being transacted is confidential or there are 'other special reasons' to exclude the public.

2. Definitions of Confidentiality

For the purposes of its meetings, and in the interests of transparency, a clear definition of confidentiality is needed. WPCC will define confidential items using the categories of exempt information set out in the ICO's 'Guide to the Environmental Information Regulations'. The criteria listed by the ICO which are relevant to WPCC are as follows:

i. Protection of personal data
ii. Protection of work in progress
iii. Protection of internal communications
iv. Protection of public safety
v. Preventing adverse impact on a criminal or disciplinary inquiry
vi. Commercial confidentiality
vii. Protection of legally privileged material
viii. Protection of professional advice
ix. Protection of external advice which a body does not have consent to share publicly
x. Protection of the environment

The full details of categories of exempt information under EIR can be found in Appendix 1.

Furthermore, the Public Bodies (Admission to Meetings) Act 1960 states 'A body may under subsection (2) above treat the need to receive or consider recommendations or advice from sources other than members, committees or sub-committees of the body as a special reason why publicity would be prejudicial to the public interest, without regard to the subject or purport of the recommendations or advice'. Therefore, where a meeting is considering external advice, whatever the circumstances, it may be appropriate for the public to be excluded.

3. Meeting Procedures

WPCC holds Board meetings, Committee Meetings and Working Group/Forum Meetings. The policy and procedure for each is outlined below.

3.1 Board Meetings

Board Meetings will be held in two parts – (A1) non-confidential and (A2) confidential. The agenda and papers for the non-confidential (A1) part of the meeting will be published. For the confidential (A2) part of the meeting, only the agenda will be published.

Public admission will be permitted to the non-confidential part of the meeting. This will be the first part of any Board meeting. There will be a no longer than 20 minute item on the agenda in order to allow members of the public in attendance to ask questions of the Board and senior staff in respect of items discussed at the non-confidential part of the meeting.

The minutes of the non-confidential (A1) part of the Board meetings will be published on the WPCC website once agreed by the Board.

The minutes of confidential (A2) Board meetings will not be published. Non-confidential resolutions will be published.

Where a discussion relating to a non-confidential item raises queries or concerns linked to a confidential item, these questions or concerns should not be raised until the confidential part of the meeting.

At the end of the non-confidential section of the meeting and before the start of the confidential part of the meeting, the public will be excluded by resolution. This resolution will be as follows:

> *'The Board resolves to exclude the public for discussion of item(s) under Part 2 of the agenda, on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons.'*

Part B Board meetings, which are meetings held by the Board without any staff present, are held solely to discuss confidential matters and therefore the public will be excluded by resolution, the wording of the resolution to be as follows:

> *'The Board resolves to exclude the public for discussion all items considered by Part B Board meetings on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons'*

Notice of Part B meetings will be published. Agendas, minutes and resolutions, of the Part B meetings will not be published.

3.2 Committee Meetings

There are four Board Committees:

- The Audit and Risk Committee
- The Constitution Committee
- The Finance and Investment Committee
- The Friends of WPCC Committee

Items being discussed by these Committees fall into categories of exempt/confidential information as defined above – the relevant criteria being protection of work in progress, commercial confidentiality, protection of legally privileged material, protection of professional advice and protection of external advice. Committee meetings will therefore be treated as confidential; the public will be excluded by resolution, as follows:

> *'The Board resolves to exclude the public for discussion of all items considered by WPCC Committees on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons'*

Agendas and minutes of Committee meetings will not be published.

3.3 Forums and Groups/Working Groups

Currently there are two such groups:

- The Wildlife and Conservation Forum
- The Stakeholder Group

These are made of volunteers, representatives of external groups and interested individuals. They are not meetings of the Board. Therefore, the public will not be admitted and there is no requirement for a resolution to exclude the public. However, agendas and minutes of these meetings will be published on the WPCC website.

3.4. Meeting Venue

The venue for the Board meetings will be advised in advance of the meeting.

3.5 Notice of Meetings

Three days clear notice of any Board meeting will be given by the placement of a notice on the noticeboard adjacent to the Ranger's Office. The notice will include details of how to access the meeting and how to obtain any paperwork for the meeting.

The responsibility for the posting of notices will lie with the EA and Communications Officer.

Notice of meetings open to the public will also be posted electronically, again at least three clear days before a meeting takes place. The notice must include details of how to access the meeting. Electronic notices will be posted on the WPCC website by the EA and Communications Officer at the same time as Board/Committee papers are uploaded to the portal.

The agenda for Board meetings (which can exclude any items deemed under WPCC's policy to be confidential) will be published electronically three days prior to the meeting taking place.

4. Policy Review

This policy will be reviewed after six months and thereafter annually or if an incident or changein circumstances necessitates a review.

Refusing a request

In brief...

A requester may ask for any environmental information you hold, but this does not mean you always have to provide it. In some cases, there will be a good reason for not making public some or all of it.

The Environmental Information Regulations state exceptions that allow you to refuse to provide requested information. Some of the exceptions relate to categories of information, for example, unfinished documents and internal communications. Others are based on the harm that would arise from disclosure, for example, if releasing the information would adversely affect international relations or intellectual property rights. There is also an exception for personal data if providing it would be contrary to the UK General Data Protection Regulations (the UK GDPR) or the Data Protection Act 2018 (the DPA 2018).

Under the Regulations, most exceptions are subject to the public interest test. This is an extra stage in the process of deciding what information to provide, which requires you to balance the public interest arguments for disclosing the information against those for upholding the exception. This means that even if disclosing information would harm, for example, international relations, you must still release the information if the public interest arguments for disclosing it are stronger. The public interest is not necessarily the same as what the public finds interesting.

If you are refusing all or part of a request, you must send the requester a written refusal notice. This includes when you need to inform a requester that you don't hold the information they have requested.

In more detail

What exceptions are there for personal data?

The information is the personal data of the applicant – regulation 5(3)

Under the Regulations, you don't have to make available environmental information that is the requester's personal data – you should deal with any part of any request for this type of information as a data protection 'subject access request'. You should not require requesters to make a second, separate subject access request, but you are entitled to ask for proof of identity and charge an administration fee for dealing with the subject access request. See our Guide to the UK GDPR – Right of Access for advice on how to handle subject access requests.

If the requested information is a mix of the requester's personal data and other environmental information, you will need to consider some under data protection and some under the Regulations.

Requested information may involve the personal data of both the requester and others. For further information, read our guidance:

Further Reading

- How to disclose information safely – removing personal data from information requests and datasets ☐
  External link

- Personal data of both the requestor and others
  External link

The information is the personal data of a person other than the applicant – regulation 12(3) and regulation 13

When information is the personal data of someone other than the applicant, regulation 12(3) requires you not to disclose that personal data, except in accordance with regulation 13. Regulation 13 prohibits you from disclosing third party personal data if this would contravene the UK GDPR or the DPA 2018. To learn more about the UK GDPR and the DPA 2018, read the Guide to Data Protection.

The most common reason for refusing to provide third party personal information is that disclosure would contravene UK GDPR principle (a) because there is no lawful basis for processing. Regulation 12(3) is not subject to the public interest test. However, some public interest considerations are relevant when deciding whether you can disclose third party personal data in accordance with regulation 13.

Regulation 13(5A) and 13(5B) remove the duty to confirm whether or not you hold third party personal data if:

- doing so would breach the data protection principles;
- it would contravene an objection to processing; or
- the data subject would not be entitled to know if their own personal data was being processed.

This exception applies only to personal data about people who are living; you cannot use this exception to protect information about people who have died.

For further information, read our guidance:

Further Reading

- Access to information held in complaints files ☐
  External link
- Information exempt from the subject access right ☐
  External link
- Neither confirm nor deny in relation to personal data ☐
  External link
- Personal information ☐
  External link
- Requests for personal data about public authority employees ☐
  External link

How does the exception work when we don't hold any information?

Regulation 12(4)(a)

When you don't hold the information that has been requested, you need to tell the applicant. Under the Regulations this counts as a refusal of the request. Information is 'held' if, at the time you received the request:

- it is in your possession; and
- you have produced or received it; or
- another person holds it on your behalf.

You do not have to create information to answer a request, but you may have to bring it together from different sources.

Before you claim this exception you should make sure you have done adequate and properly directed searches, and that you have convincing reasons for concluding that you hold no recorded information. If an applicant complains to the ICO that you haven't identified all the information you hold, we will consider the scope, quality and thoroughness of your searches and test the strength of your reasoning and conclusions.

Most of the exceptions under the Regulations are subject to the public interest test, but we recognise that it can be impossible to do a meaningful public interest test if you don't hold the information.

There is further advice on determining whether information is held available under 'What happens if we don't have the information?'.

When can requests be refused as 'manifestly unreasonable'?

Regulation 12(4)(b)

In most cases, the public use the access rights provided by the Regulations responsibly and reasonably, but

there may be circumstances where requests:

- are too burdensome to deal with;
- disrupt a public authority's ability to perform its core functions; or
- seem to be aimed at disrupting the public authority's performance.

Regulation 12(4)(b) allows you to refuse requests that are 'manifestly unreasonable'. Requests may be manifestly unreasonable if:

- dealing with a request would create unreasonable costs or an unreasonable diversion of resources; and
- an equivalent request would be found 'vexatious' if it was subject to the Freedom of Information Act.

These are the most common types of manifestly unreasonable requests, but there may be other circumstances where the exception could be applied.

How do we work out whether the costs of dealing with a request are 'manifestly unreasonable'?

The Regulations do not define a 'reasonable' amount of money or time that a public authority should spend on a request, or a linked series of requests from the same person or group – there is no legal equivalent to the 'appropriate limit' provided under the Freedom of Information Act.

To work out whether the costs of dealing with a request can be treated as manifestly unreasonable, you should consider whether dealing with the request would place unreasonable demands on your resources – this may depend on the size of your organisation.

Currently, the cost limit set by Parliament for complying with requests under the Freedom of Information Act is £600 for central government, Parliament and the armed forces and £450 for other public authorities. Staff time is currently rated at £25 per person per hour, regardless of who does the work, including external contractors. You can use these limits only as an indication of the costs you might reasonably take into account when complying with a request for environmental information. The cost of complying may exceed the Freedom of Information Act costs limit, but this doesn't mean it would be manifestly unreasonable under the Regulations for you to comply with the request. You should also bear in mind that there is a presumption in favour of disclosure under the Regulations.

If you decide that a request is manifestly unreasonable, for example because it places an unreasonable burden on your resources, you still have to consider the public interest test. The fact that the request is manifestly unreasonable doesn't mean there can't be strong public interest arguments in favour of disclosure.

The code of practice on public authorities fulfilling their obligations under the Regulations does not cover the advice and assistance you should give when you refuse this type of request. However, we would expect you to help a requester to rephrase their request in a way that would allow you to provide some information.

Remember that the Regulations say you can extend the 20-day period for complying with a request for information to 40 working days, to give yourself more time to locate and provide the information:

- when a request is for a large amount of information that is complex; and
- it would be impracticable to comply with the request or decide to refuse to comply within 20 working

days.

In this case, you should let the requester know within 20 working days that you need more time to respond.

For further information, read our more detailed guidance:

Further Reading

> Manifestly unreasonable requests ☐
> For organisations
> PDF (355.78K)

> Calculating costs where a request spans different access regimes ☐
> For organisations
> PDF (215.23K)

How do we work out whether a request we think is vexatious is 'manifestly unreasonable'?

Sometimes you will receive requests that interfere with your organisation's ability to perform its core functions – often these types of request are found to be 'vexatious' under the Freedom of Information Act. Under the Regulations, you may be able to use the exception at regulation 12(4)(b) to refuse such requests as manifestly unreasonable. We recommend that you consider such requests under the same criteria used to assess whether a request is vexatious under section 14 of the Freedom of Information Act, namely, is the request likely to cause a disproportionate or unjustified level of distress, disruption or irritation?

You should consider the above in light of the Regulations' presumption in favour of disclosure. Even if you find the request is manifestly unreasonable because it is vexatious, you will still need to consider the public interest test.

For further information read our more detailed guidance:

Further Reading

> Manifestly unreasonable requests ☐
> For organisations
> PDF (355.78K)

How do we deal with requests that are unclear?

The request is too general – regulation 12(4)(c)

The exception under regulation 12(4)(c) allows a public authority to refuse requests that are 'formulated in too general a manner'. We interpret this to mean requests that:

- have more than one possible interpretation; or
- are not specific enough to allow you to identify what has been asked for.

When you refuse a request under regulation 12(4)(c), you must go back to the requester and ask for more information within 20 working days of receiving the request (see regulation 9(2)). You must give the requester relevant advice and assistance to help them rephrase or clarify their request. Once you've received more information you'll have 20 working days to deal with the request, provided the new information enables you to understand what the applicant wants.

When you refuse a request as too general, it may be difficult to carry out a meaningful public interest test. As long as you have complied with the duty under regulation 9(2) to offer appropriate advice and assistance, we consider that in most cases you will be able to give significant weight to the public interest in favour of maintaining the exception.

For further information, read our more detailed guidance:

Further Reading

Requests formulated in too general a manner (regulation 12(4)(c)) ☐
For organisations
PDF (253.28K)

Regulation 9 – Advice and Assistance ☐
For organisations
PDF (280.88K)

What other class-based exceptions are available to us?

The request is for unfinished documents – regulation 12(4)(d)

If a request relates to material that is still being completed, unfinished documents including drafts, or incomplete data, you can refuse to provide the information under regulation 12(4)(d). You must consider the status of the information at the time the request is made.

The aims of the exception are to:

- protect work you may have in progress by delaying disclosure until a final or completed version can be made available. This allows you to finish ongoing work without interruption and interference from outside; and
- provide some protection from having to spend time and resources explaining or justifying ideas that are not or may never be final.

Even if you are applying the exception, you still need to consider the public interest test. We consider drafts to be incomplete documents even after a final version has been completed, but the public interest in maintaining the exception will decline once the final version of a document is finished or published. This is because you will no longer need safe space to complete the work.

If you are aware that another public authority is preparing the requested information and you are relying on the exception, then under regulation 14(4) your refusal notice must:

- specify that public authority's name; and
- provide an estimated time for when the information will be completed.

For further information, read our more detailed guidance:

Further Reading

Information in the course of completion – regulation 12(4)(d) ☐
For organisations
PDF (232.96K)

The request involves the disclosure of internal communications – regulation 12(4)(e)

When a request is for information that is an internal communication, you can refuse it under regulation 12(4)(e). The purpose of this exception is to allow you to discuss the merits of proposals and the implications of decisions internally without outside interference. It allows you to have a space to think in private when reaching decisions, and in this respect it overlaps with the purpose behind the exception for unfinished documents. However, the focus here is on protecting internal decision-making processes rather than protecting unfinished work, and it can apply to completed documents.

In general, communications within one public authority will constitute 'internal communications'. Some general principles you should consider when applying regulation 12(4)(e) to information include:

- The definition of a communication is broad and will include any information intended to be communicated to others or to be placed on file where others may consult it.
- Communications between a public authority and a third party will not be internal communications except in very limited circumstances.
- All central government departments (including executive agencies) are treated as one public authority for the purpose of this exception.

You don't have to refuse every request for information that is an internal communication. The exception is subject to the public interest test – if disclosure would harm the way your organisation makes decisions or gives advice, this will be a factor in favour of maintaining the exception.

For further information, read our more detailed guidance:

Further Reading

Internal communications – regulation 12(4)(e) ☐
External link

How do the 'adversely affect' exceptions work?

The exceptions listed under regulation 12(5) are based on harmful consequences of disclosure. You may refuse to disclose information if disclosing it would 'adversely affect' (harm) one of the interests listed in regulations 12(5)(a) to 12(5)(g).

The adverse effect test under the Regulations is similar to the prejudice test under the Freedom of Information Act.

To show that disclosing information would harm one of the interests in 12(5)(a) to (g) you must:

- identify a negative consequence (adverse effect) of the disclosure that is significant (more than trivial) and is relevant to the exception claimed;
- show a link between the disclosure and the negative consequence, explaining how one thing would cause the other;
- show that the harm is more likely than not to happen.

For more information, read our more detailed guidance:

Further Reading

How exceptions and the public interest test work in the Environmental Information Regulations ☐
For organisations
PDF (354.08K)

Information in the public domain guidance ☐
For organisations
PDF (352.94K)

What are the 'adversely affect' exceptions?

International relations, defence, national security, public safety – regulation 12(5)(a)

Regulation 12(5)(a) provides an exception to disclosing requested information if it would adversely affect international relations, defence, national security or public safety.

- 'International relations' means relations between governments or international bodies such as NATO, the EU, or the United Nations, or an international court.
- 'Defence' means protecting a nation against attack. This part of the exception will usually cover information that, if disclosed, would adversely affect the capability, effectiveness or security of the armed forces.
- 'National security' relates to some defence matters, but will extend to wider non-military, constitutional or economic security, such as information about royal protection.
- 'Public safety' may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public's health and safety.

Even where the exception is engaged, you will still need to consider the public interest test.

Under regulation 12(6), you don't have to confirm or deny whether the requested information exists and is held, if this would adversely affect the matters listed under regulation 12(5)(a). This is subject to the public interest test.

Regulation 15 allows a government minister to certify that the reasons for refusing to disclose information under regulation 12(1) are that this would harm national security and would not be in the public interest.

For further information, read our more detailed guidance:

Further Reading

- International relations, defence, national security or public safety- (regulation 12(5)(a)) □
  For organisations
  PDF (295.39K)

- Interests of the person who provided the information to the public authority (regulation 12(5)(f)) □
  For organisations
  PDF (328.57K)

The course of justice, the ability of a person to receive a fair trial or the ability of the public authority to conduct an inquiry of a criminal or disciplinary nature – regulation 12(5)(b)

Under regulation 12(5)(b), you can refuse to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. The meaning of 'the course of justice' is broad – it covers a range of information, such as court documents and documents covered by legal professional privilege. The meaning of 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations you conduct about a potential breach of legislation, for example, planning law or environmental law. To apply this exception, the disclosure must adversely affect the inquiry by causing some real harm.

This exception is subject to the public interest. There is a strong public interest in ensuring that the Regulations do not undermine other legal procedures that govern access to court records and information held for inquiries, such as the Civil Procedure Rules and Criminal Procedure Rules.

For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

Under regulation 3(3), when a public authority is acting 'in a judicial or legislative capacity', it is not covered by the Regulations.

For further information, read our more detailed guidance:

Further Reading

- The course of justice and inquiries exception (regulation 12(5)(b)) □
  For organisations
  PDF (322.33K)

Intellectual property rights – regulation 12(5)(c)

Intellectual property rights are granted to those who create and own works that are the result of human intellectual creativity, in areas like industry, science, literature and the arts. Intellectual property rights (IPR) include copyrights, database rights, patents, trademarks and protected designs. These rights do not prevent you disclosing information under the Regulations.

Our view is that disclosing information under the Regulations does not change the fact that IPR, database rights or copyright restrictions may apply. However, where disclosing environmental information would adversely affect those rights, regulation 12(5)(c) does offer some protection. To apply the exception, you must show that disclosing environmental information will harm the ability of the rights holder to exploit or control their IPR – technically infringing IPR is not enough to apply the exception. The IPR can be yours or a third party's. For you to apply the exception, the public interest in maintaining the exception must

outweigh the public interest in disclosure.

You cannot place any conditions or restrictions on information you disclose, but you can include a copyright notice. You can then make a claim if the requester or any third party uses the information in breach of copyright.

For further information, read our more detailed guidance:

Further Reading

Intellectual Property Rights – regulation 12(5)(c) ☐
For organisations
PDF (350.73K)

Confidentiality of proceedings where confidentiality is provided by law – regulation 12(5)(d)

You can refuse to disclose information if this would adversely affect the confidentiality of proceedings. 'Proceedings' means your organisation's formal meetings and procedures – it's unlikely to include every meeting you hold or every procedure you have. The proceedings may be those of your public authority or any other public authority and the confidentiality of those proceedings must be provided by law. This includes common law or a specific piece of legislation. If the law does not provide confidentiality of the proceedings, regulation 12(5)(d) will not apply.

Types of proceedings will include (but are not limited to):

- legal proceedings;
- formal meetings where attendees deliberate over matters within a public authority's jurisdiction; and
- circumstances where a public authority exercises its legal decision-making powers.

You cannot use this exception for environmental information on emissions. See Information relating to emissions below for more details.

For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

For further information, read our more detailed guidance:

Further Reading

Confidentiality of proceedings (regulation 12(5)(d)) ☐
For organisations
PDF (331.39K)

Confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest – regulation 12(5)(e)

You can refuse to disclose information if this would adversely affect the confidentiality of commercial or industrial information. To apply this exception, you must consider the following:

- Is the information commercial or industrial?

- Is the information subject to confidentiality provided by law?
- Is the confidentiality protecting a legitimate economic interest?
- Would disclosure adversely affect the confidentiality?

You cannot use this exception for environmental information on emissions. See Information on emissions below for more details.

For more information, read our more detailed guidance:

Further Reading

☐ Confidentiality of commercial or industrial information (regulation 12(5)(e)) ☐
For organisations
PDF (310.26K)

The interests of the person who provided the information – regulation 12(5)(f)

This exception allows you to refuse disclose information if this would adversely affect the interests of someone who supplied the information, and that person:

- was not under, and could not be put under, any obligation to supply it;
- supplied it expecting that it would not be disclosed to a third party; and
- has not agreed to the information being supplied.

This exception protects the free flow of information to public authorities and will often apply to information sent to an ombudsman or other regulators for their investigations. It may also cover:

- circumstances where an individual provides information in response to a survey (where they have not given consent to release it into the public domain); or
- privately owned papers deposited in an archive.

You cannot use this exception for environmental information on emissions. See Information on emissions below for more details.

For the purposes of this exception, the term 'public authority' includes Scottish public authorities.

For more information, read our more detailed guidance:

Further Reading

☐ Interests of the person who provided the information to the public authority (regulation 12(5)(f)) ☐
For organisations
PDF (328.57K)

Information about the deceased – the UK GDPR and the DPA 2018 do not cover information about people who have died, so you cannot rely on regulation 13 to withhold this type of information (unless the personal data of third parties is involved). Where you have a request for sensitive information about someone who has died, the most appropriate exception is likely to be regulation 12(5)(f). This is because the information may have originally been provided in confidence and disclosure would be inappropriate. For

less sensitive information, and where it is already in the public domain, disclosure is more likely to be possible.

For more information, read our more detailed guidance:

Further Reading

Information about the deceased guidance ☐
For organisations
PDF (240.41K)

The protection of the environment to which the information relates – regulation 12(5)(g)

The Regulations aim to protect the environment by ensuring greater access to environmental information, but also to protect against disclosure of information that could endanger the environment. For instance, it could provide protection for information about the nesting sites of rare birds, or the locations of vulnerable archaeological sites.

You cannot use this exception for environmental information on emissions. See Information on emissions below for more details.

For more information, read our more detailed guidance:

Further Reading

Protection of the environment (regulation 12(5)(g)) ☐
External link

How is information relating to emissions treated differently? – regulation 12(9)

The Regulations stress transparency and openness in relation to information about emissions. They provide a greater right of access to information about emissions – regulation 12(9) removes the right to rely on certain exceptions if someone requests information is on emissions.

When requested information is on emissions, you cannot rely on the exceptions at:

- regulation 12(5)(d) – confidentiality of the proceedings of a public authority
- regulation 12(5)(e) – confidentiality of commercial or industrial information
- regulation 12(5)(f) – interests of the person who provided the information
- regulation 12(5)(g) – protection of the environment to which the information relates.

For more information, read our more detailed guidance:

Further Reading

Information on emissions (regulation 12(9)) ☐
For organisations
PDF (244.88K)

How does the public interest test work under the Environmental Information Regulations?

The public interest test applies to most of the exceptions in the Regulations. Regulation 12(3) (personal data of a person other than the applicant) is not subject to the public interest test. However, when considering whether disclosing such data is in accordance with regulation 13, you have to take account of the public interest.

Sometimes you may not be able to do a meaningful public interest test, such as when you are refusing a request under regulation 12(4)(a) because you don't hold the information.

When an exception is engaged, you must consider where the public interest lies before deciding whether to disclose the information. You can refuse to provide information only when the public interest in maintaining the exception outweighs the public interest in disclosure. When considering the public interest test, you should bear in mind the presumption in favour of disclosure under the Regulations – that you should release information unless there is a good reason not to.

You must consider the circumstances at the time the request was made. When considering the public interest arguments in favour of maintaining the exception, you can take into consideration only arguments that are directly relevant to the interests that the exception protects. You cannot rely on general arguments for the public interest in withholding the information.

In addition to the public interest in transparency and accountability, there is a further public interest in disclosing environmental information because it supports the right of everyone to live in an adequate environment, and ultimately contributes to a better environment. Normally, public interest arguments in favour of the exception have to be specifically related to what that exception is protecting, but this is a general public interest argument for disclosure, and it does not have to be related to the specific exception.

Under the Regulations, when more than one exception applies to the information, you can combine the public interest arguments in maintaining the exceptions against the public interest in disclosure. This is different from the approach required under the Freedom of Information Act.

For more information, read our more detailed guidance:

Further Reading

☐ How exceptions and the public interest test work in the Environmental Information Regulations ☐
External link

How long do we have to consider the public interest test?

You must consider all relevant public interest arguments within the normal time for compliance – no later than 20 working days after the date you receive the request.

Unlike the Freedom of Information Act, the Regulations do not permit any extension beyond this for you to specifically consider the public interest.

The only circumstance under which you can have more time is if the complexity and volume of the information make it impracticable for you to comply, or decide to refuse to do so, within the 20 working days.

Is there anything else we need to know about exceptions?

If requested information (or some related information) is already in the public domain, it can affect:

- whether the disclosure would still cause an adverse effect;
- whether the test for a class based exception is still met; and
- where the balance of the public interest lies.

These will be important considerations in many cases.

For further information, read our more detailed guidance:

Further Reading

Information in the public domain guidance □
For organisations
PDF (352.94K)

What if we are withholding only parts of a document?

Often you can withhold only some of the information requested. In many cases you can disclose some sections of a document but not others. Or you may be able to release documents after removing or redacting (editing out) certain names, figures or other sensitive details because they are subject to an exception or are outside the scope of the request.

Under the Regulations, you have a duty to consider whether information you are withholding under one of the exceptions provided by regulations 12(4), 12(5) or 13 can be separated from other information that can be released, and if possible, to disclose that information. For example, if sections of a requested report fall under regulation 12(5)(c), but other sections don't and can be disclosed, you should give the requester those sections. You can do this by redacting (editing) the sections of the report that are subject to regulation 12(5)(c).

The following are guidelines for good practice.

- Make sure redaction is not reversible. Words can sometimes be seen through black marker pen or correction fluid. On an electronic document, it is sometimes possible to reverse changes or to recover an earlier version to reveal the withheld information. Take advice from IT professionals if necessary.
- Give an indication of how much text you have redacted and where from. If possible, indicate which sections you removed using which exemption.
- Provide as much meaningful information as possible. For example, when redacting names, you might still be able to give an indication of the person's role, or which pieces of correspondence came from the same person.
- As far as possible, ensure that what you provide makes sense. If you have redacted so much that the document is unreadable, consider what else you can do to make the information understandable and useful for the requester.
- Keep a copy of both the redacted and unredacted versions so that you know what you have released and what you have refused, if the requester complains.

For further information, read our more detailed guidance:

Further Reading

> How to disclose information safely – removing personal data from information requests and datasets ☐
> External link

You may also wish to refer to the Redaction Toolkit ☐ produced by the National Archives.

If we are relying on an exception to refuse the request, what do we need to tell the requester?

If you are refusing to answer a request because an exception applies to the requested information, you must provide the requester with a written 'refusal notice'. Regulation 14 sets out what your refusal notice needs to include.

A refusal notice should:

- be in writing;
- be issued as soon as possible, and no longer than 20 working days after the date you received the request;
- specify the reasons for the refusal, including:
  - the exception you are relying on under regulation 12(4); 12(5) or 13
  - everything you considered in reaching the decision under the public interest test
- inform the requester of:
  - their right to complain to you if they disagree with your decision;
  - their right to complain to the ICO, including relevant contact details.

For further information, read our guidance:

Further Reading

> Refusing a request under the EIR ☐
> For organisations
> PDF (242.78K)

What if the requester is unhappy with the outcome?

Regulation 11 entitles a requester to complain about your response to their request for information, if they think that it is not in line with the legislation. A requester must complain in writing within 40 working days of receiving the refusal letter.

To deal with such complaints you should have a complaints procedure, known as an internal review.

You should:

- ensure your complaints procedure is triggered whenever a requester expresses dissatisfaction with the

outcome;

- make sure your complaints procedure is a straightforward, single-stage process;
- make a fresh decision based on all the available evidence that was relevant at the date of the request for information, not just a review of the first decision;
- ensure the review is done by someone who did not deal with the original request, where possible, and preferably by a more senior member of staff; and
- communicate the outcome of the review to the applicant within 40 working days of receiving their complaint.

Any refusal notice you issue must include details of the complaints procedure and information about how to complain to the ICO.

For further information, read our guidance:

Further Reading

Internal reviews under the EIR □
For organisations
PDF (226.75K)