

How can this toolkit help me?

This toolkit includes useful guidance and further information on how you can meet your responsibilities.

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Introduction to Access to information - FOI and EIR

Individuals have a legal right to request and be given access to records held by the Council providing there is no legal reason why the information should not be disclosed. These records could be 'structured' information (e.g. files) or 'unstructured' information (e.g. emails, notebooks, diaries, electronic documents). Anyone can request information for any purpose including members of the public, journalists, campaign groups, legal advisers and businesses. Requests for marketing purposes are, therefore, valid requests under the Act.

Legislation

Freedom of Information Act 2000 (in force from 01/2005).

Grants individuals a right of access to information held by a public body, e.g. the Council. The response must be sent within 20 working days. However, if the request is unclear and clarification is required then the clock can be stopped until clarification is received and the 20 days starts again from receipt of the clarification

Additionally, if the Council is considering an exemption which requires it to consider whether or not it is in the public interest to disclose it can extend the deadline by up to a further 20 working days provided it does so before the expiry of the initial 20 working days.

Environmental Information Regulations 2004 (in force from 01/2005).

Grants individuals a right of access to environmental information.

Response must be sent within 20 working days except in certain cases (involving complex and voluminous requests) when a response can be sent within 40 working days (the Authority has to notify the requester within the initial 20 working days that they are going to extend the deadline). Again, the clock can be stopped and re-started as before if clarification is needed.

Freedom of Information (FOI) Requests

FOI requests must be received in writing, but do not have to mention the FOI Act. All they need to include is a name, an address (or email address) and a description of the information required. However, we only log and monitor those requests that

- refer to the legislation and/or
- we are considering refusing the request and/or
- we may not be able to respond to within 20 working days Otherwise we treat as 'business as usual'

Points to remember,

- Ensure language used in any recorded information is appropriate as it could be made available on request
- NB It is a criminal offence to conceal, damage or destroy records after they have been requested - liable to a personal £5,000 fine!

Environmental Information Regulation (EIR) requests

Extended the existing legal right for the public to access 'environmental information' held by public authorities and some other organisations. The definition of "environmental information" is broad and covers elements of the environment, such as land, water, biological organisms etc, but also measures and activities that may affect these, including economic analysis of such measures and activities. Most highway information is environmental information.

See **Annexe**

The process of handling requests is broadly the same (including when we log and monitor requests), but where we wish to refuse to provide environmental information, we need to be clear that the refusal is based on exceptions within the EIR, rather than FOI exemptions.

If request relates to environmental information then it is exempt under FOI but is subject to EIR instead. Requests should be handled in the same way as FOI requests.

NB: EIR requests can be made verbally or in writing.

Duty to Advise and Assist requesters

Under both FOI and EIR we have a duty to advise and assist requesters such as

- clarifying their request with them if unclear or too general
- narrowing the scope of a request if the request would impose an unreasonable burden on the Authority or so that it would come within the fee limit
- giving links to information held on the website

Data Protection Requests

Requests made by individuals for information held about them are requests under the General Data Protection Regulation and Data Protection Act 2018 and are dealt with as Subject Access Requests under that Act i.e. exempt under FOI

Refusal of FOI and EIR requests

You can refuse if

- you do not hold the information - NB the legislation only requires you to supply recorded information held by you and does not give the requester the right to ask you to create information or data nor are you required to comment or give advice on any issue raised by the requester.
- one of the exemptions/exceptions in the legislation applies such as
 - o disclosure would be in breach of the Data Protection obligations
 - o disclosure would prejudice the Council's or a third party's commercial interests and it would not be in the public interest to disclose
 - o the information was supplied in confidence
 - o disclosure would prejudice the effective conduct of public affairs/free and frank deliberation and it would not be in the public interest to disclose (exercisable only with the Monitoring Officer's consent)
- the request is vexatious or manifestly unreasonable
- (for FOI requests) it would take you longer than 18 hours to locate retrieve and collate the information

However, you are required to help the requester as much as possible to either clarify the request or re-focus it so that you would be able to disclose some information.

Review/Complaint

Requesters have the right to ask for a review into the handling of the request. These reviews/complaints would normally be dealt with by the Corporate Information Management Team. If the requester is not happy with the review then he/she can appeal to the Information Commissioner who will review the handling and issue a decision notice either upholding or not upholding the complaint. Either the requester or the authority can appeal that decision in the First Tier Tribunal.

Publication Scheme

The Council is required to have in place a Publication Scheme with a Guide to Information routinely published by it. This is managed by the Corporate Information Management Team.

FOIA/EIR - differences/similarities

FOIA	EIR
Request must be in writing	Request doesn't have to be in writing (can be oral). DEFRA advises that it usually helps to clarify the nature of the information requested if it is put in writing.
Where cost of complying with a request would exceed the 'appropriate limit' defined in the Fees regulations, we can refuse to provide information above that fees limit	No equivalent. 'Reasonable' charges may be made for supplying the information or manifestly unreasonable exception may be used
Information held on behalf of another person is not included	ALL information held is included
Limited exemptions from rights of access. Any refusal must be made in writing and provide the reasons for the refusal	Exceptions from rights of access. Any refusal must be made in writing and provide the reasons for the refusal
The 'absolute' exemptions are not subject to the public interest test	All exceptions (save breach of Data Protection exception) are subject to the public interest test – which means information can only be withheld if the public interest in doing so clearly outweighs the public interest in disclosure
Where a 'qualified' exemption applies, information can be withheld if the public interest in withholding it is greater than the public interest in its release	All exceptions (other than personal information) are subject to the public interest test. Requests relating to emissions into the environment cannot normally be refused
Applies to information held by public authorities (including information held by other persons on their behalf) so only	Applies not only to public authorities but also to any other body carrying out functions of public administration or under

FOIA	EIR
public authorities have a duty to respond to requests	the control of a public authority with environmental functions/ responsibilities, such as waste contractors
Time limit of 20 working days can only be extended where we are considering the public interest	Large and complex EIR requests - can extend the response time to 40 working days

Comparison of Exemptions/Exceptions

FOI exemption	EIR exception
Section 21 - Information reasonably accessible by other means	No direct equivalent but Regulation 6 (1) (b) states 6. - (1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless - (a) ...; or (b) the information is already publicly available and easily accessible to the applicant in another form or format.
Section 22 - Information Intended for Future Publication	Regulation 12 (4) (d) - Material still in the - course of completion
Section 23 - Information Supplied by, or Related to, Bodies Dealing with Security Matters	No Equivalent
Section 24 - National Security	Regulation 12 (5) (a) - international relations, defence, national security or public safety;
Section 26 – Defence	Regulation 12 (5) (a) - international relations, defence, national security or public safety;
Section 27 - International Relations	Regulation 12 (5) (a) - international relations, defence, national security or public safety;

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FOI exemption	EIR exception
Section 28 - Relations within the UK	No Equivalent
Section 29 - The Economy	No Equivalent
Section 30 - Investigations and Proceedings conducted by Public Authorities	Regulation 12 (5) (b) - the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
Section 31 - Law Enforcement	Regulation 12 (5) (b) - the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
Section 32 - Court Records	No Equivalent
Section 33 – Audit Functions	No Equivalent
Section 36 - Prejudice to the effective conduct of public affairs	Regulation 12 (4) (e) - Disclosure of Internal Communications
Section 37 - Communications with her majesty	No Equivalent
Section 38 – Health & Safety	No Equivalent
Section 39 - Environmental Information	No Equivalent
Section 40 - Personal Information and Third-Party Information	Regulation 12 (3) - Personal Data and Regulation 13
Section 41 - Information Provided in Confidence	Regulation 12 (5) (f) - the interests of the person who provided the information to the public authority where that person-(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority, (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it, and (iii) has not consented to its disclosure;

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FOI exemption	EIR exception
Section 42 - Legal Professional Privilege	Regulation 12 (5) (b) - the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
Section 43 - Commercial Interests	Regulation 12 (5) (e) - the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
Section 44 - prohibitions on disclosure by an enactment, incompatibility with any Community obligation or contempt of court.	Regulation 12 (5) (d) - the confidentiality of the proceedings of that or any other public authority where such confidentiality
No Equivalent	Regulation 12 (5) (c) - Intellectual property rights
No Equivalent	Regulation 12 (5) (g) - the protection of the environment to which the information relates.
Vexatious Requests	Regulation 12 (4) (b) - Manifestly unreasonable request
Repeated Requests	Regulation 12 (4) (b) - Manifestly unreasonable request
Requests Exceeding the Fee Limit (£450)	Regulation 12 (4) (b) - Manifestly unreasonable request

Please note that Regulation 12(9) of the EIRs states that the following exceptions do not apply where the information in question relates to emissions,

- 12(5)(d) confidentiality of proceedings
- 12(5)(e) confidentiality of commercial/industrial information
- 12(5)(f) information voluntarily supplied
- 12(5)(g) protection of the environment

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Copyright

Introduction

Copyright is a means of protecting intellectual property rights in material. It covers the expression of original ideas and thoughts and includes literary works, music, sound recordings and things such as advertising jingles or TV themes. It also covers policies (such as this one), procedures and other documents provided by council officers in the course of their duties. The copyright in documents etc. produced by council officers is owned by the council and not the officers who drafted or worked on the material.

Copyright is governed by the Copyright, Designs and Patents Act 1988 (CDPA), and automatically applies to items such as, but not limited to, documents, policies, photographs, music and sound recordings. There is no requirement to apply for copyright protection – it applies automatically. The usual symbol for copyright is ©.

When considering some aspects of copyright in photographs, data protection considerations may be relevant.

A copy of the Copyright, Designs and Patents Act 1988 and the Data Protection Act 2018 can be located on the Legislation.gov.uk website here:

<http://www.legislation.gov.uk/>

The council's Data Protection policies and guidance are available on our [intranet](#).

Purpose

This policy is in place to ensure that the London Borough of Barnet ("the Council") complies fully with its legal obligations under the CDPA and also protects the copyright it owns on its own documents.

This policy covers two aspects of copyright. Firstly, it covers the regulation of other's copyright in documents, sound and music that the council and its officers and employees use during the course of council duties. Secondly it also covers the regulation and protection of the council's own copyright in its material. It is therefore both outward and inwards looking.

Scope

The whole of this policy applies to all council employees, temporary staff and contractors. Parts 6.2-6.4 (and no other parts) apply to staff located in schools, CSG and Re employees and any other employees of contracted out delivery units.

This policy will apply to councillors when they are undertaking council related work, but not when they act in their ward member or political capacity. However, they still have a legal obligation to comply with the CDPA in their ward member and political capacities.

Those covered by this policy are termed “Everyone” in it.

Knowingly or recklessly contravening this policy may be considered a disciplinary offence as it may leave the council in breach of copyright law and at risk of legal action.

Policy Statement

The council will comply with its legal duties under the CDPA in respect of the copyright of third parties in material it uses in the course of council business.

The council will protect its own copyright in its own documents in a reasonable and proportionate way. Where a request is made from a third party to use council copyrighted material the council will consider each case on its individual merits, but will have regard to the guidelines below.

Practical Application of the Copyright Policy: the Council’s Copyright

Copyright Notices on Council Documents

It is recommended that council documents are copyright protected by the use of the recognised symbol ‘©’ and the words ‘Copyright of London Borough of Barnet’ and the year in the footer of each page of documents, or as a watermark, or in a convenient location in drawings, plans etc. See the watermark in this policy. It should be noted that a footer may not be compatible with page numbering in which case a watermark can be considered. The lack of a © and copyright notice does not mean there is no copyright protection, but it is helpful to include them.

Request from Others to use Council Copyright Protected Documents

Others e.g. local authorities, individuals, charities etc might wish to use council copyright protected material for example in a training course. To comply with the CDPA they cannot use council copyright material unless they receive our permission.

If members of staff receive a request from any person/ company to use council copyrighted material they should not agree or refuse but pass the request onto the Communications Team for advice.

Where a request is made from a third party to use council copyrighted material the council will consider each case on its individual merits, but will have regard to the guidelines in sections 6.3 and 6.4 of this policy.

The part of this policy covering the council's own copyright applies to everyone (as explained in 3 above) and also to those employed by contractors such as Re or CSG/Capita who draft and produce documents on the council's behalf.

Guidelines for Dealing with Requests to use Council Copyright Material

These are guidelines and are not prescriptive rules and so need not be followed if circumstances require an alternative course.

a) Photographs

There is a presumption that permission will not be given to reuse photographs where the copyright is owned by the council. Permissions are obtained from individuals to be included in council photographs and the terms of those permissions do not generally permit onward processing. In most cases the licensing of further use of council copyrighted photographs will constitute a breach of the Data Protection Act 1998 as the permissions obtained from individuals will be breached. For further details of photography see the council's Photographic and Filming Policy

Where permission is sought to use council copyrighted photographs that contain no recognisable person, this will be considered on a case by case basis. Any permission granted will require appropriate acknowledgement in the form specified in section 6.4 below. For any uses that are granted there will be a presumption in favour of a reasonable and proportionate charge for commercial use. Any queries regarding the use of photographs should be directed to Mark Harewood, Design Manager in Communications at mark.harewood@barnet.gov.uk.

b) All other forms of material

The default position in respect of permission depends on the category of requestor:

Charities and other third sector bodies, other local government authorities, and the press – there is a general presumption of approval of permission to reuse copyrighted material without charge, subject to prior approval being sought and appropriate acknowledgment as in section 6.4 being provided. In certain cases, a reasonable and proportionate charge may be considered appropriate and the council reserves the right to refuse permission where this would be an inappropriate use. (The press's rights to use copyrighted material in news reporting is unaffected by this policy).

For all commercial uses – the council requires prior permission to be requested and received before copyrighted material is used. These requests will be decided on their individual merits. Where permission is granted there will be a presumption in favour of making a reasonable and proportionate charge. All use must be appropriately acknowledged as set out in section 6.4 below.

Where reasonable attempts to obtain permission are not made, or where publication follows permission being refused the council will take the appropriate enforcement action, which may include legal action.

Copyright Acknowledgement Wording

Where the council has provided permission to a third party to use council copyright protected material appropriate wording must be used by the third party.

Approved wordings examples

- Information within this document © London Borough of Barnet
- With thanks to Barnet Council for allowing use of their content in this booklet / paper etc.
- The wording in xxx (insert page or section or appropriate reference) is © London Borough of Barnet
- This map/plan is © London Borough of Barnet

Enforcement of the Council's Copyright

The council expressly reserves the right to take any appropriate action, including legal action against those who wilfully or recklessly breach its copyright or who publish copyright protected material where permission has been refused, irrespective of their sector or commercial status.

Practical Application of the Copyright Policy: Third Parties' Copyright

Third party copyright is copyright which is owned by people who are not the council. This can be copyright protected books, newspapers, internet articles, TV programmes, music and other materials.

The third-party copyright provisions do not apply to those employed by schools as the copyright law applying to schools is different and schools deal with this themselves.

The third-party copyright provisions do not apply to employees of Re, CSG and any other external delivery unit as they are responsible for ensuring their own employees' compliance with the copyright laws.

The Council's Licences

Photocopying/ downloading from internet / scanning.

Copyright protected material may be photocopied, scanned, downloaded from the internet or otherwise reproduced **only** in accordance with the council's copying licence. Copyright licensing is overseen by the Copyright Licensing Agency (CLA).

The council has purchased a CLA licence to permit the lawful copying, downloading and scanning of third party copyrighted material.

This licence has [licence conditions \(click on public administration licence\)](#) conditions which must be adhered to. They are also being displayed next to the MDF copying machines. This is a summary of the conditions:

- All copying/ scanning/ downloading from the internet etc. must be undertaken in accordance **ONLY** with the licence conditions. Pay special attention to the limits on copying.
- There is also a list of documents ([excluded works](#)) which are exempted from the CLA licence. This means that they cannot be copied under the CLA licence. Should you wish to copy items on this restricted list you will need to contact the individual publishers for permission. If you have an item you need to copy or scan that is on this list contact the Information Management Team (IMT) for advice before proceeding.
- To check whether you can copy from a particular title [use this link](#), and complete as many details as possible and then search. The response will tell you whether the council's licence permits copying. If copying is permitted it must be done in accordance with the licence conditions – see above. If copying is not permitted you **MUST NOT** copy and contact [IMT](#) for advice.

Newspapers

The copyright in newspapers is covered by the Newspaper Licensing Agency (NLA). The council has purchased a NLA licence which allows council employees to make copies from:

- UK national and regional newspapers
- newspaper websites
- certain specialist and foreign titles

There is a [list of titles](#) covered by the licence. Making copies includes photocopying, faxing, scanning and emailing.

Music from radios, TVs, and other music playing devices

Copyright applies to music and other copyrighted sounds emanating from a TV or radio. There is no need to have a licence to listen to the radio at home or to listen to sound from a TV at home (apart from a needing TV licence). However, in the workplace

listening to the radio or the TV is a breach of copyright unless the relevant licences are obtained.

The council has purchased a PPL and PSR licence to cover the use of radio in:

- Mill Hill Depot sign workshop
- Mill Hill Depot vehicle maintenance garage and workshop
- Apart from services where an explicit permission has been given to have the radio on as background music, the radio (whether from a battery or mains device, DAB or analogue or internet) must not be played in the office so that it is audible to others.
- Private playing through personal earphones during lunch breaks (or during working hours if permitted by the service management) is permitted so long as it is not audible to any other person.
- If there are work areas where people want to be allowed to listen to the radio at work firstly they need to obtain their management's consent. Then they must contact IMT prior to radio usage to discuss the additional licensing requirements and payments.
- The council does not license the use of sound with any television. All televisions provided in council buildings, for example, in the atrium or communications area must be subtitles only. The use of the sound is strictly prohibited. If you have an occasion where you have a business need to listen to live TV you must contact IMT for advice in advance.

Annex A What is Environmental Information

What is environmental information?

We need to understand the definition of environmental information and use the correct regime for dealing with information requests. Those making requests may not fully understand the definition and may not even know they are making an 'EIR' request but we need to know which information regime applies to be sure we're handling the requests correctly and applying the correct exemption/exceptions.

The definition given in the regulations is given below:

Any information in written, visual, aural, electronic or any other material form on

–

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

DEFRA has issued guidance following experience of implementing the regulations which gives more detail on what information is covered by the regulations – summarised below:

- **Air** should be taken to include the air within buildings and other natural and man-made structures above or below ground and in air conditioning systems
- **Water** should be taken to include underground and surface waters (both natural and man-made structures), sewage and foul water; the latter to include inland waters (i.e. rivers, canals, lakes), estuaries and seas; water table and aquifers
- **Soil** should be taken to include the in situ upper layer of the mantle rock in which plants grow
- **Land and landscape** should be taken to include all land surfaces, buildings, caves and underground strata. Land covered by water is also included
- **A natural site** should be taken to include areas identified by reason of their flora, fauna, geological or physiographical features (e.g. Sites of Special Scientific Interest) or general environmental quality (e.g. Areas of Outstanding Natural Beauty).
- **Biological diversity** should be taken to include species both living and dead.
- **Human health and safety and conditions of human life** include human response to physical, chemical and biological agents delivered through environmental media of water, air, land, and biodiversity etc.

- **Built structures** should be taken to include structures, roads and other infrastructure created by mankind and includes ancient and historic monuments.
- **The state** should be taken to include physical, chemical, electromagnetic, radiological and biological conditions at any moment in time.
- **Emissions**, includes discharges and other releases into the environment wherever they occur and should be taken to include the direct or indirect release of substances, liquids, gases, radiation, vibrations, light or noise from individual or diffuse sources into or onto air, water or land.
- **Measures** include administrative measures and environmental management programmes such as permit schemes, management contracts, land-use planning regimes and permits, regeneration and transport development plans and proposals.
- **Effect** includes direct and indirect effect.
- **Economic analyses** include financial analyses.
- **Land-use planning** (including the reasons for decisions to approve as well as to refuse planning permission) has been defined as environmental information. The definition would also include reports on the implementation of environmental legislation and any analysis resulting from an appraisal of policy, including any RIA

The definition covers information relating to the way information was obtained, and any guidance about its potential accuracy or potential to mislead. The information could be based upon opinion rather than fact, but this should be made clear.

Licensing

APPENDIX 5 Data Sets, Licensing and Pivot Tables

The council has to comply with amendments to the Freedom of Information Act which relate to *how* information is released to requestors. The focus on Freedom of Information has moved from *accessing* information to *re-using* it. These amendments mean that whenever the council receives a request for information in an electronic format, and the response is contained within a data set, the council should publish that data set in an open and re-usable form.

As with usual FOI responses personal, sensitive, and commercially sensitive information must be redacted. You must ensure that exempt information is not hidden, and still contained within the data set before publishing, being careful that trace data or all sensitive data from pivot tables has been removed.

Data sets

Any information which you collect and collate electronically is a data set in some format. It might be listed in a simple spreadsheet with few or multiple columns, or in a data base. The definition under the Act is:

a collection of factual information in electronic form to do with the services and functions of the authority which is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

- You should release *factual information* – information that is quantitative rather than qualitative –i.e. numbers not opinions
- You should *not* release information subject to *analysis and interpretation, other than calculation* – e.g. not predictions, nor attach further information which are not inherent in the data itself. Further calculation is permitted since it produces factual information inherent in the data itself.
- You do not have to release information which has been *materially altered* - the format of the information should not have substantially changed since first being collected.

Quality checking does not count as altering or analysing or interpreting the data set!

Determining which data sets to publish

Once you have verified that the request is for an electronic format, and that the response is contained within an electronic data set as defined by the Act, you must decide whether and how you can publish the data set.

You are not required to turn hard copy into electronic data sets.

If the requester has asked for part of a dataset, you are not obliged to provide the whole of the dataset, only the information that has been requested. However, it may be more useful or easier to provide whole data sets, provided the other information is not exempt.

In some cases, it will be straightforward and involve no expenditure to convert a dataset to an open format such as CSV. If the dataset is held as a relational database, rather than as a single table, then this may be a more complex operation. If the dataset is very large or held in a proprietary system, to convert it to an open format may involve significant expenditure. In this case it may be outside our duty to provide it.

Factors to consider in relation to whether it is reasonably practicable to provide a response in electronic form relate to existing provisions in the FOI Act and include time and cost.¹ However staff should consider that the council is working towards making increasing amounts of information available in open format and that it may be practical to respond and maintain update processes as requests come in as part of this wider work. Information Management Governance Groups will be taking a strategic lead on open data work and you should refer significant numbers of requests for data sets from complex systems to them.

There may also be a situation in which the dataset has been heavily redacted, for example to remove personal data that is exempt from disclosure under FOIA, and what is left may have limited informative value. The requester is still entitled to receive this under FOIA, but if to convert it to a re-usable form would involve substantial cost and effort there may be a case for saying that it is not reasonably practicable to do so. Apart from the cost considerations, there may also be cases where technical issues make it impracticable to convert the data from a proprietary to an open format.

If the public authority decides that it is not reasonably practicable to provide the information in a re-usable form, the requester can ask the authority to review its decision and then, if they are not satisfied with the authority's review, complain to the Information Commissioner.

Redacting Exempt information

Information is redacted under FOI/ EIR exceptions and exceptions in the usual way. You must ensure that exempt information is not hidden, and still contained within the data set before publishing, being careful that trace data or all sensitive data from pivot tables have been removed.

Pivot tables

Pivot tables sort and summarise data, providing a top-level summary of information but still contain underlying data. While the top level summary may be non-sensitive the underlying data beneath it may be sensitive. Pivot tables, both in Microsoft Excel and

other spreadsheet programs, retain a copy of the source data used. This information is hidden from view, but is easily accessible.

You should talk to the providers of the data sets to ensure that you have understood all and any exempt information which may be contained. Ask their advice for removing it.

1. Disclosure of hidden personal data in pivot table spreadsheets may be a breach if the Data Protection Act. The data is not secure and is easily accessible, even if not immediately viewable.
2. Avoid using pivot tables for any disclosures or data sharing involving personal data. Consider using CSV files.
3. Check the file sizes before disclosure – larger than expected file sizes should be a trigger for further checks.

You may also consider anonymising or aggregating information in order to release data sets in a non-sensitive format.

OS (Ordnance Survey) Data – an overview.

If you receive a request for information included in OS data there are some slightly different rules to dealing with the request, because of the license agreement we have with OS to use their maps and data. There are different forms of licenses for different types of data, and what actions are permitted will depend on the license type. This is not always straightforward! Some licenses will permit some manipulation of raw data and others will not.

How will you know if the request is for OS licensed data? It will probably include a request for a map, or mapping data or geographic information such as boundaries.

How do you then deal? Firstly, which category does the request fall into?

A request for just OS licensed data- with no additional information added or overlaid by the Council, e.g. just the map extract

FOI – refuse under section 21 as this information is publicly available. People can buy a map from OS, direct them to www.ordnancesurvey.co.uk. The fact that payment is required doesn't stop it being readily available under section 21.

EIR – maps won't fall within the definition of 'environmental information' under the Regs so refuse as an EIR and deal as a FOI as above.

A request for OS licensed data which contains content created by the council – e.g. an OS Map with information of schools overlaid.

Is this already publicly available? E.g. on the website, or in a document on the website, or publicly available on any of the links from the map pages of the council's website http://www.barnet.gov.uk/info/940326/interactive_maps/912/interactive_maps

If so, then refuse under section 21 FOI as above, or under Reg 6 (information readily available) under EIR.

If it isn't readily available publicly but is held by the council then we need to consider if we could meet the requester's needs by putting the licensed information onto a map and giving them a hard copy, or scanning a hard copy and emailing it so they cannot manipulate or reuse the data then this is an option.

If this cannot be done, or if this would not meet the requester's needs, as they are asking for raw data they can manipulate then we will need to consider the exact terms of the OS license agreement. The terms will allow us to see what information can and cannot be released and in what format. Contact IMT for specialist case specific advice as early as possible

Copyright

The Council may receive requests for information under FOI or EIR which is marked as copyright – usually by a ©. This can be council created information, or information we have bought or been given. This note gives some guidance on how to deal with this information.

Copyright is one of the Intellectual Property rights (IP). It covers items of literary merit, usually written documents but also songs, photographs etc. The legal regime is contained in the Copyright, Design and Patents Act 1988 (CDPA).

It might be thought that copyright protected documents would be automatically exempt from disclosure. However, this is not the case. Section 50 of the CDPA says that where copying or publication is specifically authorised by an Act of Parliament then copyright is not infringed.

Responding to a FOI or EIR request is an act authorised by an Act of Parliament and so there will be no breach of copyright legislation in disclosure.

FOI: Section 44 of the FOI exempts from disclosure information whose release is prohibited by law but this does not apply to copyright protected material due to s 50 CDPA.

EIRs – for EIRs the position is stated clearly in the Regs: Reg 5(6) says that “any enactment or rule of law that would prevent the disclosure of information in accordance with these regulations shall not apply”.

“So, copyright is worthless if you can get the information through FOI or EIR?”

- No, the copyright still attaches to the documents.
- The copyright owner's IP rights still exist and can be enforced by them.
- So, the recipient cannot use this information as they wish, but only in accordance with the CDPA.
- For example, they may use it for private study as that is permitted, but they could not to put into a commercial document and sell it as their own work.
- The original IP holder would be able to take action against the user for breach of copyright.
- The action would be against the person unlawfully using the information, not against the council for releasing it under

FOI/EIR.

What do I say in the FOI/EIR response?

FOI/EIR responses that disclose copyright protected information need to make it clear that:

- The information released is copyright protected
- the use of the information is subject to the CDPA,
- if the recipient breaches this they may be liable to legal action by the IP holder.
- It is up to the person using the information to decide if they will be in breach of copyright or not and if they are not sure they need to seek their own independent advice

"What if disclosure will cause harm, to the council or the IP holder, do I still have to disclose?"

No, the other exemptions/exceptions in the FOI/EIR can still be applied. These are different depending whether it is a request for environmental information under EIR or non-environmental information under FOI.

Freedom of Information. Section 43(2) (disclosure would or would be likely to prejudice commercial interests) may apply.

- If publication of the copyright protected material would, or would be likely to adversely affect the commercial interests of the council or a third party then it may be exempt under section 43(2). This exemption is subject to the Public Interest Test.

The ICO guidance says that copyright attaching to information that has a commercial value may facilitate disclosure as copyright infringement is something that can be enforced. Their guidance suggests that section 43(2) arguments may be difficult to maintain where the copyright holder would be able to take effective action against a breach of copyright.

- If publication of the material would be prejudicial to commercial interests then this exemption may be applied.

Environmental Information. EIR Reg 12(5) (c) exempts information from disclosure where there would be an adverse effect on IP rights.

To establish this, we would have to show that it was more probable than not that:

- The material is protected by IP rights and
 - The IP rights holder would suffer harm – it's not enough to show that IP rights have been infringed. It must be some **real loss**; and
 - The identified harm must be as a **consequence** of the infringement or loss of control
- Where it is argued that disclosure will result in the IP rights holder losing the opportunity to exploit information commercially the ICO will expect us to provide evidence there is a market for it; **AND**
- The potential harm or loss could not be prevented by the IP holder enforcing their IP rights.
- The ICO will take account of an IP right holder's ability to do this. This will be based on the practicality of taking action not the personal circumstances of the IP holder
- If it can be shown that the IP rights holder could not effectively enforce their IP rights then if the other conditions are met the exception will be engaged (subject to the public interest test)
- The fewer people likely to breach the IP rights the easier it would be to detect the infringement.

The ICO summarises this as meaning it has to be more probable than not that:

- Someone would wish to exploit the protected material
- They could successfully do so; and
- Infringements would go undetected or could not be prevented.

The exception is subject to the Public Interest Test which means that the public interest in maintaining the exception must outweigh the public interest in disclosing the material. There is a presumption favour of disclosure under the EIR.

Regulation 12(5) (e) commercial confidentiality might be a relevant exception. This applies where the information is:

- Commercial or industrial; and
- Subject to confidentiality provided by law e.g. in a contract; and

- Is confidentiality protecting a legitimate commercial interest; and
- Disclosure would adversely affect the confidentiality.
- If you think you have a request where this exemption would apply to copyright protected material you should contact the Information Management Team for specialist help on foi@barnet.gov.uk

More information

Guide to FOI Act 2000 <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

Guide to Publication Scheme <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/>

Guide to EIR Regulations 2004 <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>

Guide to Section 45 Code of practice in handling requests <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Consultation on changes to the Code <https://www.gov.uk/government/consultations/revised-freedom-of-information-code-of-practice>

Guide to Section 46 Code of practice on records management <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

FOI Act 2000 can be read in full at:
<http://www.legislation.gov.uk/ukpga/2000/36/contents>

EIR Regulations 2004 can be read in full at:
<http://www.legislation.gov.uk/uksi/2004/3391/contents/made>

Information Management Framework
FOI and EIR Toolkit
London Borough of Barnet

Document Control

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