

London Borough of Barnet

FOI Bitesize

FOI/EIR process

FOI/EIR request are managed through a network of Link Officers, led by Records & Information Management Team (R&IMT)

The process involves:

Getting Started

- Customer Access (web self request portal, email, letter)
- Logging, acknowledging receipt, and allocation

Getting It Done

- Location and Retrieval
- Drafting response, Considering Exemptions, Redacting
- Clearance

Getting The Response Out There

- Link Officer sends response, publish Disclosure log

Getting It Sorted

- Follow Up Queries,
- Internal Reviews,
- Appeal to ICO – Information Commissioners Office

Link Officers -

- Act as the point of contact and take responsibility for all requests for information under the Freedom of Information Act (FOI), Environmental Information Regulations (EIR), and Data Protection Act (DP)
- Provide basic advice and guidance to officers within your service
- Ensure all Requests for information are closed in a timely fashion with all the necessary information recorded
- Provide update to your senior management team
- Identify datasets of routinely requested information for publication on Open Barnet

Guidance from R&IMT

Considerations before responding to a FOI

Knowledge of risks and hazards

Consider ...

- Is information held
- Will it take more than 18 hours officer time to meet request
- Can it be released, if not why not?
- Is the information sensitive/
 - Political
 - Sensitive
 - About an investigation/ law enforcement matter
 - Commercial
 - Legal
 - Personal
- Financial and reputational costs in not answering requests properly

Taking control of your request

Do you...

- Know what information your area holds, who has it and where it is stored.
- Manage your request using the corporate case management system and use templates provided
- Comply with legal obligations under information rights law
- Signpost to Open Barnet portal
- Make sure everyone in your area understands the importance of information rights
- Know the information your organisation has to retain for legal accountability

Know what to do if something goes wrong

Get it right first time, by giving people all the information they want, unless its exempt from disclosure. Put the requested information in context and explain anything that may be unclear.

- trust your intuition when something doesn't feel right?
- Alert relevant line manager/ escalate if you feel a request is being delayed/ hasn't been answered properly.
- extract yourself from a situation as quickly as possible - If customer still unhappy raise to an internal review.

It's an offence to alter, deface, block, erase, destroy, or conceal information with the intention of preventing its disclosure unless an exemption applies

Guidance on taking on information requests

Topics

1. Identifying an information request
2. What is Environmental Information
3. Getting Started
4. Before you respond
5. How to get information out of people
6. Make every search for information count
7. Common reasons people want to refuse requests
8. Cost limit
9. What is the Prejudice Test /Public Interest Test
10. Published/ or intended to be published
11. Commercial
12. Personal data
13. Exempt Investigations
14. Legal Professional Privilege
15. Redaction
16. Drafting response
17. Publishing information
18. Internal Review/ ICO

1. Identifying an Information request

- Business As Usual
- Freedom of Information/ Environmental Information requests
- Subject Access requests under Data Protection
- Member Enquiries

Anyone in the organisation can receive an information request.
Officers must deal with requests for information as soon as possible.

Handle BAU, FOI/ EIR and data access requests, use correct process.

- **BAU.** You need to draw a distinction between formal requests for information and routine enquiries and correspondence that can be dealt as business as usual. You can respond to this if you provide information routinely and can respond quickly.
- **FOI/EIR requests** relate to recorded information held by the Council
 - This would not include enquires as to why the Council are doing something or views, or opinions.
 - If the requestor has asked under FOI/EIR. Pass these requests to foi@barnet.gov.uk for allocation to the correct Link Officer.
 - Vexatious Requests unnecessarily onerous, mischievous, or disproportionate that may cause distress or harassment to colleagues can be labelled vexatious, consult R&IMT
 - Repeated Requests where an identical or similar request was received within the previous 60 days can be refused
- **Subject access requests.** Requests from individuals asking for their own data– for example copy of social services files need to be dealt with under the Data Protection legislation.
- **Members Enquiries.** Requests from Cllrs and MPs are dealt with under a sperate process members.enquiries@barnet.gov.uk

2. What is Environmental information

Decide whether request is asking for environmental information

The requestor does not need to specify whether they are requesting information held by the Council under FOI/EIR.

EIRs can be made verbally, just confirm in writing with the requestor.

The Environmental Information Regulations (EIR) are wide:

- air, water, soil, land and landscape, natural sites, biological diversity
- factors: substances, noise, emissions and discharges and waste released into the environment e.g. **Environmental health, noise and odour nuisance, traffic pollution**
- human health and safety and conditions of human life, including contamination of the food chain e.g. **food safety/ food hygiene**, public health matters such as **flu pandemics**, cultural sites and built structures **e.g. libraries**
- Measures: policies, plans agreements and activities effecting the environment e.g. **Local Development Framework, planning applications, enforcement, construction and development, parking measures, waste and recycling**
- Includes reports, measures and analysis of environmental information e.g. **State of Environment Reports**
- **The FOI Act applies to all other recorded information held by the Council.**

3. Getting Started

- Start the clock
- Clarification
- Extending time limit

FOI/EIR Getting Started

- Anyone can make a request – who the applicant is and motives for wanting the information are not a consideration for the Council.
- **20 working days** to respond from date of receipt.
- Consider who in your service who may hold the information and contact them as early as possible.

Clarification

- The request should describe the information clearly.
- Request must be made in writing (email, letter or fax) and include the requestors name (Pseudonyms can be refused) and postal address or email address to which a response can be sent.
- We can stop the clock and go back for clarification if the request is unclear. Go back for clarification as soon as possible, we don't have to respond until they clarify the request.

Extending time limit

- EIR – we can extend for an additional **20 working days** if the request is complex and voluminous,
- FOI - we can extend for an additional **20 working days** to consider the public interest test if a qualified exemption is engaged.

4. Before you Respond

You may receive a request from your Link Officer or someone in R&IMT for information. Before you respond...

- You need to respond promptly and within the deadline given to you - for most requests, all information held is supplied.
- If the deadline is a problem, contact your Link Officer/R&IMT promptly, explaining why.
- If the response has come to you **in error**, **do not ignore, reply and try and point colleagues in the right direction.**
- Read the request carefully to make sure you know what is being asked - if it's not clear contact your Link Officer and they will seek clarification.
- We should offer the requestor **advice and assistance** so they can clarify or rephrase their request and we should explain the options available to them.
- **Remember** - embarrassment to the council is **never** a reason not to disclose information!
- Any **concerns about disclosing the information** - contact your Link Officer to discuss. R&IMT can also offer **advice** on Information Rights Legislation.

5. How to get information out of people

- Develop list of contacts who holds what
- Requests covering two service areas
- Cross cutting requests covering three areas
- Have back up/ cover in place
- Escalate delays through line management chain

As a Link Officer:

- Ensure information requests get to the right place
- Chase up when a service area fails to respond
- Assist the service in consideration of the request – what we can disclose rather than how we can not
- Think about the cost/time limit and provide information
- Think about the bigger picture rather than the individual request – is it political sensitive or newsworthy? Is it asking about a Cllr, SMT, policy or finance?
- If the request covers another service area as well as your own, send a Get Info task to the relevant Link Office for assistance.
- **If more than 2 service areas are covered by the request, notify R&IMT to take as crosscutting.**
- Establish go to contacts in your service area, delegate searches of information and remember to chase up.
- Ensure you have cover in place for when you/your contacts are out-of-office.
- **Where there are blockages or delays, involve a Senior Officer/ Director through your line manager. Use weekly and monthly reports to raise concerns on meeting performance standards.**

6. Make every search for information count

- Where to look
 - Filing systems
 - Electronic systems
- Retention

Carry out searches to ensure that all information held is provided

- Check functions, activities of service, service plan, Council website, [Open Barnet](#), [previous requests](#)
- In most cases, you can find and retrieve information stored in electronic form.
 - Shared drives for your service area
 - Case management systems
 - Emails
- If you hold information about the requestor in non-electronic format you need to decide whether it is covered by the request.
 - Check relevant paper files stored on site
 - Check offsite storage – get in contact with your records champion.
 - Retention: [LBB's retention policy](#): applies to all information, regardless of format and not limited to paper, electronic, audio-visual. The retention schedule lists all the information which may be created, collected, processed, used, stored and disposed.
 - This information will be destroyed according to the set retention date, however, if information should've been destroyed but hasn't we still have to supply under FOI/EIR.

7. Common reasons people want to refuse requests

- Takes too long
- Already published, soon to be published or for internal use only
- Its Commercial
- Formal Proceedings
- Its personal data
- Charging for information

Is it taking too long to get information?

Ask the service to justify why it will take longer than 18 hours to provide the information, how many files/records to be searched, time per-file and ask how the request can be narrowed to become answerable.

Already published elsewhere or soon to be published or for internal use only?

No need to resupply what is publicly available, simply provide link or details of when and where it will be available.

Is the information commercial?

- There is no blanket exemption for commercial information, some may be withheld if release would damage interest of Council and/ or third party.
- Explain to service:
 - Usually OK to disclose total contract amounts/expenditure as public money.
 - Consult with third parties affected for their views. Bear in mind it is the Council's decision whether to release.

We are bringing formal proceedings (e.g. prosecutions, serving a formal Notice) and these processes have not yet been completed

- Live prosecution cases are usually exempt from disclosure so as not to prejudice the Councils case, offenders, witnesses and victims' interests.

Is it personal data?

- Respect individual's rights to privacy, follow our Redaction Standard

Can I charge requestor for information?

Generally we don't charge for information requests BUT we can charge for information only where we have published a schedule of charges on Council website

8. Cost Limit

- Working out the appropriate limit
 - CANNOT charge for time taken by staff to redact, or inform applicant that information is not held or for them to communicate to you.
- Provide advice and assistance

You don't have to start work collecting information held if you think it will take longer than 18 hours to collate. You don't have to create a new report to extract the information from your systems if an existing report does not exist and to do so would cost more than £450.

[FOI Section 12 \(Exceeds appropriate limit\)](#)

Where cost of complying with a request would exceed the 'appropriate limit', we can refuse to provide information above that fees limit.

EIR R6(1)b (Manifestly Unreasonable)

No equivalent to FOI. 'Reasonable' charges case may be made for supplying the information or manifestly unreasonable exception, subject to public interest.

Working out the Appropriate Limit:

- Determining whether you hold the information
- Locating the information or a document which may contain the information
- Retrieving the information or a document which may contain the information
- Extracting the information from a document containing it
- Disbursements
 - Complying with the applicants request for the information in a particular format (e.g. summary, inspection, copy)
 - Reproducing any document
 - Postage and copying (where a charging schedule exist)

Provide advice and assistance if possible. What steps could be taken by the applicant to make the request fall within the Appropriate Limit (e.g. narrowing the scope of the request). If you unable to narrow the request explains why this is.

9. What is the Prejudice Test/ Public Interest Test

What is the Prejudice test?

- Prejudice (where applicable) to Council or other persons interests need to be real actual or of substance. This will be recorded on the refusal notice
- Three steps to the prejudice test:
 1. Identifying the interests when applying the exemption, who is affected
 2. Where there is a possibility of prejudice, this needs to be tangible not theoretical. Consider the nature of the prejudice – and the burden falls on the Council to prove that there is a prejudice.
 3. Would or would be likely. Consider the likelihood of the prejudice
 - a. Would be likely – needs to be more than hypothetical
 - b. Needs to be more probable than not, **likely** (more than 50% chance) or **definitely will happen** (100%)

What is a Public Interest test?

- Use where the Council needs to consider the public interest in disclosure and outline to the applicant why it is not in the public interest to disclose the requested information. This will be recorded in refusal notice.
- The test considers arguments for release versus arguments for withholding, and take a view on balance whether to disclose or not.
- Common arguments for release
 - Further the understanding of the issues of the day
 - Facilitate accountability and transparency for decisions taken
 - Facilitate accountability and transparency for spending money
 - Allow individuals to understand life affecting decisions
 - Information about public safety
- Arguments against disclosure will be specific to the type of information under consideration but will focus on negative impacts of disclosure to Council or its partners interests and harm that will result.

10. Published/ or intended to be published

Handling requests for:

- How we make decisions
e.g. formal minutes,
Committee Reports,
Public consultations
- Lists and public registers
- Policies procedures
- Council Services
- What we spend and how
we spend it
- Statutory returns

Where material is already published

[FOI Section 21 \(Material already published\)](#)

[EIR R6\(1\)b \(Readily accessible\)](#)

- Simply provide link or details of where information can be located.
- No obligation to respond with a full copy of information held under FOI where information is readily accessible
- FOI/EIR process is not to be used to circumvent existing procedures to access information
- Accessible doesn't necessarily mean free but there needs to be an established charging system in place (either statutory e.g. Land Charges, or on the publication scheme), give details on how to request/ fees apply
- Where inspection is provided, but mobility or access to internet is an issue, you should consider providing a paper copy.

Where material is intended for publication

[FOI Section 22 intended for future publication](#)

- Hold it with a view to publication prior to receiving request
- Intends to publish the information, including by another public authority
- Reasonable to withhold prior to publication
- Subject to Public interest

[EIR R12\(4\)\(d\) Material in the course of completion, unfinished documents or incomplete data](#)

- Subject to a Public Interest test

If in doubt check with R&IMT if considering applying any of these exemptions as they are complex and highly technical

11. Commercial

Handling requests for:

- Procurement decisions
- Contract tenders
- Contract information
- Public Finance Initiatives/ Public Private Partnerships
- Barnet's purchasing position
- Barnet's own commercial activities
- Outline Business cases
- Business Plans
- Planning Financial Viability Assessments
- Audit reports

Where information is commercial or financial in nature.

[FOI Section 43 \(Commercial Interests\)](#)

- Prejudice to commercial interests. For any person (the Council, the requestor, supplier or anyone else).
- Subject to Prejudice Test/ Public Interest test

[FOI Section 41 \(Commercial In Confidence\)](#)

- Has the information come from a third party. Would Disclosure lead to an actionable breach of confidence. Information highly confidential, Imparted in confidential circumstances, Damage to owner, Actionable.
- Subject to a public interest 'defence' test.

[EIR 12\(5\)\(e\) Commercial Confidentiality provided by law](#)

- The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. Subject to a public interest test.

[EIR 12\(5\)\(f\) Interests of person who provided information where they not obliged to provide the information](#)

- Has the information come from a third party, adverse impact on disclosure. Subject to a public interest test.

[EIR 12\(5\)\(d\) Confidentiality in proceedings](#)

- Confidentiality of proceedings of the public authority where provided by law. Proceedings includes a range of activities carried out according to a statutory scheme. Subject to a public interest test.

If in doubt check with R&IMT if considering applying any of these exemptions

12. Requests for personal data

You should not disclose information under FOIA or the EIR if:

- it is the personal data of the requestor; or
- it is the personal data of someone else;

Staff information

When information is personal information, you must first establish whether the information constitutes personal data within the meaning of the Data Protection Act 2018.

- **Personal data** is information that identifies a living individual e.g. name of an individual, contact details, email, address.
- **Special category data** is personal data about an individual's race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes); health, sex life or sexual orientation.
- **Law enforcement processing** is where Council is taking formal action against an individual and intelligence services processing, alleged or actual criminal offence data

[FOI Section 40\(1\) / EIR Regulation 5\(3\) Personal data of the requester](#)

- If the requested information is personal data relating to the requester (or the requester as well as another person when the information cannot be separated), you should deal with the request as a subject access request.

[FOI Section 40\(2\) / EIR Regulation 13 Exemption for 3rd party data](#)

- In most cases we don't disclose. If the requested information is the personal data of an individual other than the requestor (i.e. a third party), you should consider whether disclosing their information would cause unjustified distress or damage to the person who the information is about? Would they expect their information to be disclosed, or believed it would be kept confidential? Has the person refused consent to disclose their information? Is there a legitimate interest in the requestor knowing?

[Employee information](#). As a general rule we do not release the names/contact details of staff held below Assistant Director level unless they are public facing officers and their names and contacts are in the public domain.

13. Exempt Investigations

- Investigations
- Law Enforcement
- Course of Justice

Be careful when you receive requests for live ongoing investigations/ prosecutions conducted by the Council, where release would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings i.e. would identify perpetrators, witnesses and victims or compromise the process

[FOI Section 30 \(Investigations\)](#)

- You cannot apply both S30 and S31 to the same request
- Covers criminal investigations and proceedings where Council has the duty to conduct, e.g. trading standards, licensing, child abuse or neglect
- Information from confidential sources
- Subject to Prejudice test and a Public Interest test

[FOI Section 31 \(Law Enforcement\)](#)

- You cannot apply both S30 and S31 to the same request
- Disclosure would prejudice prevention, detection of crime, apprehension or prosecution of offenders, assessment or collection of any tax, administration of justice, immigration controls, security of individuals.
- Subject to Prejudice test and a Public Interest test

[EIR R12\(5\)\(b\) Course of Justice](#)

- The Course of justice, the ability of a person to obtain a fair trial or the ability to conduct an inquiry of a criminal or disciplinary nature, ongoing planning enforcement investigations/ building regulations or food safety prosecutions
- Subject to Public Interest test

Always consult the R&IMT if considering applying any of these exemptions

14. Legal Professional Privilege

Where legal advice has been given

- **Confidentially**
- **Between the client and his lawyer; and**
- **For the dominant purpose of seeking or giving legal advice or litigation assistance**

Generally legal advice is not disclosed to third parties without the client's consent especially where the legal advice and surrounding documentation is recent, live and still being relied upon.

Privilege can be lost where the underlying confidentiality in a document is lost (for example by sharing with third parties) or where a client waives the right to Legal Professional Privilege (LLP) in a document.

- [FOI Section 42 \(Legal professional Privilege\)](#)
 - Litigation Privilege,
 - Advice privilege
 - Solicitor
 - Barrister
 - Legal Executive
 - Subject to Public interest test

No direct relation to FOI exemption under EIR but where LLP is involved you can consider

- [EIR 12\(5\)\(b\) The course of justice](#)
 - the ability of a person to obtain a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature
 - Subject to Public interest test

If in doubt check with R&IMT if considering applying any of these exemptions

15. Redaction

- FOI exemptions/ EIR exceptions
- Excel spreadsheets
- Redaction standard

Whenever you redact information from a response you will need to advise the requestor why the information has been redacted in the refusal notice

- Redaction is a process which is undertaken to render information unreadable. This is done by blocking out individual words, sentences or paragraphs or by removing whole pages or sections prior to the release of the document
- Redactions must never be undertaken on an original document. A copy must be taken first. Once redactions have been made on copies of documents, you must ensure that the redacted text is permanently and completely illegible on the final copies to be released
- Redaction should be performed ideally by the service who holds the information, or by directing the Link Officer as to what needs to be taken out.
- Common redactions include financial, commercial, exempt investigations, legal professional privilege, personal data such as contact details, signatures.
- It is essential that only exempt material be redacted. Be consistent in carrying through redactions throughout document to ensure that they do not contain details of the redacted material.
- Redacting Excel documents. Check for and remove all hidden personal data in pivot table and spreadsheets.

Follow the [Redaction Standard](#) which specifies common redactions.

16. Drafting Response

The response to the requestor is the final product of all the work that has gone before

We need to ensure that this provides a factually accurate, clear and full response, covering all the bases, whether or not we are providing the information requested.

You should ensure that:

- You have read and fully understood each element of the request.
- You have identified all the information held that's in scope
- You have a clear answer to each part of the request.
- You are using the correct template for the response in the case management system.
- You are using the correct exemptions (if applicable) and that the reasons for the exemptions are clear in the response
- You have used plain English in the response, and it is comprehensible to non-specialist members of the public.
- You have checked the response before sending and received any relevant clearance.
- Where request is from a journalist, make internal Communications team aware that response is being sent out and is for information only.
- You have checked and added all relevant attachments to the final response email.

This “right first time” approach to FOI responses ensures good customer service and minimises the number of follow-ups and Internal Reviews we receive, reducing the work involved. **For more guidance on drafting, refer to the Public Access to Information Policy or contact R&IMT.**

17. Publishing information

And what we can do with these to answer future requests

- Reactive publishing
- Proactive publishing

There are two types of publishing related to the FOI process:

1. Reactive publishing – Disclosure Log

- With very rare exceptions, all our FOI/EIR responses are published on the [Barnet Disclosure Log](#). This ensures full transparency and acts as a reference point for the public.
- FOI responses are automatically published to the council website via case management system. Please make sure you click the “publish on disclosure log” radial button when closing a case.

2. Proactive publication – Open Barnet & Website

- Barnet has a well-deserved reputation for the amount of information and data it publishes.
- Over 40% of all FOI requests are answered with published data and information, either on the Open Barnet portal or the council’s website.
- This has saved officer time in responding and led to big reductions in the number of requests received in areas that publish data.
- When answering an FOI/EIR always remember to check if the information requested is already published.
- If you find yourself being asked for the same data/information on a regular basis, talk to R&IMT about publishing it. It’ll make your life easier!

To find out what’s already published, check out [Open Barnet](#) or the council’s [website](#).

18. Internal Review/ ICO

Internal Reviews

Requestors have the right to complain if they are unhappy with the handling of a request. This could be because:

- They disagree with the application of an exemption;
- the statutory deadline was not met
- a full response was not provided
- the request was otherwise not handled correctly.

Internal Reviews (IRs) are carried out by the Transparency & Information Rights Lead in R&IMT and have a 20-working day deadline.

- IRs will generally come to you as a follow-up response from the requestor. This will re-open the case on your system and send you a prompt.
- Make sure you monitor your cases so you can action these responses immediately, as the deadline is set on receipt.
- If the follow-up is straightforward and can be responded to quickly, feel free to get back to the requestor yourself.
- If this isn't possible, forward the email to the FOIRequests mailbox.
- R&IMT will contact you with a Get Information task and ask for additional information in order to complete the review.
- IR cases must be prioritised, as delays could prompt escalation to the Information Commissioner (ICO).
- If the requestor is still not happy after the IR response, they have the right to complain to the ICO, and we go through the process again.

Internal Review and ICO cases can take up a lot of officer time, you can avoid this happening by getting your response right first time.

Need more information or guidance?



E: foi@barnet.gov.uk Tel: 0208 359 7080

Open Data microsite -

<https://open.barnet.gov.uk>

For more assistance about handling
information requests:

[Records and Information Management
\(sharepoint.com\)](#)