

Consideration of the identity or motives of the applicant.

Freedom of Information Act Environmental Information Regulations

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. The Environmental information Regulations (EIR) give rights of public access to environmental information held by public authorities.
3. Overviews of the main provisions of FOIA and the EIR can be found in [The Guide to Freedom of Information](#) and [The Guide to the Environmental Information Regulations](#).
4. This is part of a series of guidance, which goes into more detail than the Guides, to help public authorities to fully understand their obligations and promote good practice.
5. This guidance explains the principle that requests for information should generally be considered without reference to the identity of the requester or the motives behind the request.

Overview

- In most cases, authorities should consider FOI and EIR requests without reference to the identity or motives of the requester. Their focus should be on whether the information is suitable for disclosure into the public domain, rather than the effects of providing the information to the individual requester.
- Anyone can make a request for information, regardless of who they are or where they live.
- There is no requirement for the requester to explain why they need the information or to provide justification for their request.
- An authority may however take the requester's identity and motives into account in some limited circumstances.
- The requester's identity may be taken into account when;
 - the authority has reason to believe that the requester hasn't provided their real name;

- determining whether the cost of two or more requests can be aggregated under section 12 of FOIA;
 - the requested information contains the requester's own personal data;
 - assessing whether the information is reasonably accessible to the requester by other means; and
 - assessing whether the request is a repeated request.
- The requester's identity and motive may be taken into account when the authority is considering refusing a request as vexatious or manifestly unreasonable.
 - If the request is ambiguous or unclear and knowing the purpose behind it would help the authority to identify and locate the requested information, then a public authority can ask the requester why they want the information. They should remember, however, that requesters do not have to reveal the reason behind their request if they don't want to.
 - If the authority intends to apply a prejudice or adverse effect based exemption or exception, and is concerned about how the requester will use the information, then it should apply the prejudice or adverse effect test in the normal way. This means that it should consider whether releasing the information into the public domain would or would be likely to prejudice the interests protected by the exemption or exception.

6. In most cases, public authorities should consider freedom of information requests and requests for environmental information without reference to the identity or motives of the requester.
7. Authorities should view disclosure as a release of information into the public domain. This means that they must consider the consequences of disclosure to the world at large, and not just the impact of providing the material to the requester.
8. It follows that the key question an authority must ask itself when deciding how to respond is whether the information is suitable for disclosure to anyone and everyone.

9. This principle was endorsed by the Information Tribunal in [S v Information Commissioner and the General Register Office \(EA2006/0030, 9 May 2007\)](#) when it stated;

'We wish to emphasise at this point that the Freedom of Information Act is applicant and motive blind. A disclosure under FOIA, is a disclosure to the public [ie the world at large]. In dealing with a Freedom of Information request there is no provision for the public authority to look at from whom the application has come, the merits of the application or the purpose for which it is to be used.' (Para 80)

10. In most cases, no matter who the requester is, whether a journalist, researcher, MP, business or a member of the public, they should receive the same response, in terms of substantive outcome, as anyone else making an identical request.
11. So for example, a school teacher who asks for 'documents relating to alleged financial irregularities at your organisation' should receive identical material to an MP who requests the exact same information.
12. However, as with many general principles, there are exceptions to the rule. In some situations, it will be appropriate to take the identity or motive of the applicant into consideration. These are covered in more detail below.

Circumstances where an authority can take identity into account

Determining whether the request is valid (FOIA only)

13. Section 8(1)(b) of the FOIA requires that a request for information must include the real name of the requester.
14. If the requester;
- fails to provide a name;
 - can't be identified from the name provided (for example because they have only used their first name or initials); or,
 - is using an obvious pseudonym,

then their request won't meet the requirements of section 8(1)(b) and will technically be invalid.

15. It will therefore be permissible for a public authority to enquire about the identity of a requester if it has reason to believe that they haven't provided their real name. Before doing this however we would recommend that a public authority refers to our guidance [Recognising a request made under the Freedom of Information Act \(section 8\)](#).
16. There is no equivalent to section 8 in the EIR. This means that a request made under the EIR will be valid irrespective of whether the requester provides their real name.

Aggregation of costs under section 12 (FOIA only)

17. Under section 12(1) of the FOIA, a public authority can refuse to comply with a request for information if the cost of compliance would exceed a set limit (the 'appropriate limit').
18. When calculating the costs, the authority can combine the costs of any related requests received within a period of 60 consecutive days from;
 - the same person; or
 - people who appear to be acting in concert or in pursuance of a campaign.
19. Therefore, in some cases the requester's identity will be a relevant consideration in determining whether the appropriate limit has been exceeded.
20. More detailed information on aggregating the cost of requests can be found in our guidance [Requests where the cost of compliance with a request exceeds the appropriate limit](#).

Information comprising the requester's own personal data (FOIA and EIR)

21. If the information caught by a freedom of information request contains the personal data of the requester, then that information will be exempt under Section 40(1), and should be dealt with as a 'subject access request' (SAR) under the Data Protection Act (DPA).

22. Regulation 5(3) of the EIR states that the right to make information available on request doesn't apply to the requester's own personal data. Where the information caught by a request for environmental information contains the requester's own personal data then it should also be dealt with as a SAR under the DPA.
23. In order to consider whether these provisions apply a public authority will need to take into account the identity of the requester. The section 40(1) exemption and regulation 5(3) are covered in more detail in our guidance [Personal information \(section 40 and Regulation 13\)](#).
24. For further information on SARs, please see our [Subject Access Code of Practice](#).

Information accessible by other means (FOIA and EIR)

25. Section 21 of FOIA provides an exemption for information that is reasonably accessible to the requester by other means.
26. The authority may need to take the requester's identity into account when determining if section 21 applies. This is because in some cases, the question of accessibility will depend upon the requester's individual circumstances. Indeed, information that is reasonably accessible to one person won't necessarily be accessible to another.
27. More detailed information on section 21 can be found in our guidance [Information reasonably accessible to the applicant by other means](#).
28. Under regulation 6 of the EIR, the requester has the right to ask that information is made available to them in a particular form or format when they make their initial request.
29. However, if the information is already publicly available and easily accessible to the applicant in another form or format, the authority doesn't have to provide the information in the way the requester has specified.
30. As with section 21 of FOIA, the requester's circumstances will sometimes be a relevant factor in deciding whether the information is easily accessible to them.

31. The issue of accessibility to the applicant is covered in more detail in our guidance [Form and format of information \(regulation 6\)](#).

Repeated requests (FOIA)

32. Section 14(2) of the FOIA stipulates that an authority can refuse a request that is identical, or substantially similar to a previous request submitted by the same individual.
33. The authority will therefore need to be clear about the identity of the requester in order to determine whether section 14(2) is engaged.
34. Further information on the application of section 14(2) can be found in our guidance [Dealing with repeat requests](#).

Circumstances under which an authority may take the requester's identity and motivation into account.

Vexatious/manifestly unreasonable requests

35. An authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious (or manifestly unreasonable if the request falls under the EIRs).
36. The requester's identity and motives may be relevant when considering the context in which the request is made, the burden which it might impose, and the value of the request.
37. The Upper Tribunal considered the relevance of the requester's motives in the case of [Information Commissioner vs Devon County Council & Dransfield \[2012\] UKUT 440 \(AAC\), \(28 January 2013\)](#) when it stated;

'...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious...the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request...' (Para 34)
38. For more detail on how to decide whether a request is vexatious or manifestly unreasonable please see our guidance;

[Dealing with vexatious requests.](#)

[Regulation 12\(4\)\(b\): Manifestly unreasonable requests.](#)

Enquiring about the reasons behind a request to help identify what information is required

39. There is no requirement under FOIA or the EIR for a requester to explain why they need the information or to provide justification for their request.
40. However, it is acceptable for an authority to enquire about the requester's motives where the request is ambiguous or unclear, and knowing the reason for the request would help the authority identify the information the requester needs. This may often make good sense for both sides and if approached correctly, enquiring in this way can be seen as good customer service.
41. Where this is the case, the authority should make clear that it wants the information solely for clarification purposes and no other reason. The requester should not be given the impression that the information is more or less likely to be withheld if they do (or do not) explain the reasons behind their request, and the public authority cannot insist that the motive behind the request is revealed.
42. Further advice on interpreting requests is available from our guidance [Interpreting and clarifying requests](#).

Applying exemptions with a prejudice, adverse effect or other harm based test

43. In keeping with the general principle that disclosure is to the world at large, when an authority is considering an exemption with an associated prejudice test, that test should focus on the consequences of disclosing the information to the wider public.
44. This means that the key question the authority must consider is whether there is a real and significant chance that a member of the wider public will use the information in a manner that would prejudice the interests protected by the exemption.

45. The test is therefore not so much about the identity and motivation of the individual requester, but rather the purposes for which that information is likely to be used if released into the public domain.
46. This same approach will also hold true where the request falls under the EIR and the authority wants to apply one of the 'adverse effect' exceptions in regulation 12(5). These exceptions are subject to an 'adverse effect test' similar to the FOIA prejudice test.
47. However, if the authority has reason to believe that the requester, as a member of that wider public, would use the information in a way that would prejudice the interests protected by the exemption, then it may take this into account when assessing the likelihood that prejudice or adverse effect will occur.
48. The following Information Tribunal ruling, which concerned Section 38 of FOIA (the exemption for information likely to endanger the physical or mental health of any individual), provides an example of a situation where the requester's identity and motives were deemed to be relevant factors.
49. Here, the judge concluded that there was a risk the requester, as a member of the wider public, would use the information in a manner that would prejudice the health and safety of other individuals.

In [*Hepple v ICO and Durham County Council* \(EA/2013/0168, 26 February 2014\)](#) the requester had asked for copy of an investigation report into a pupil referral unit. The Council refused to disclose the report, relying on several exemptions, including section 38.

The Council drew the Information Tribunal's attention to three text messages the requester had sent to one of the individuals involved in the handling of the report. Those texts (which were sent a year after the request) had led the Police to issue the requester with a formal notice under the Protection from Harassment Act. The Tribunal was satisfied that the texts evidenced a state of mind likely to have existed at the time of the request.

It stated;

'...it is frequently said that an information request should be considered without reference to the motive of the person making the request. That certainly ensures that focus is maintained on the fact that disclosure to a single requester is, effectively, disclosure to the world. But assessing an information request on this "motive blind" basis ought not to prevent us from considering the potential risk to safety posed by the requester him/herself.

In this case we drew the clear impression that the texts had been transmitted with the purpose of menacing those whose addresses the Appellant had acquired. We are satisfied that they disclose an attitude of mind that justifies our concluding that disclosure would have created a risk to the safety of those mentioned in the text messages...(Paras 36 & 37)

50. Even though section 38 refers to endangering rather than prejudicing health and safety it contains a harm based test and so the same principles as covered in the prejudice test will apply.
51. Similarly, although section 40(2) of FOIA and regulation 13 of the EIR (the provisions for third party personal data) don't contain an explicit prejudice test, considering whether disclosure of third party personal data would breach the DPA principles may involve some consideration of harm or detriment to the data subject. The same principle will therefore apply and the test will be whether putting the third party personal data into the public domain will breach of the DPA principles.
52. For more detailed information on how to carry out a prejudice based test please see our guidance [The Prejudice Test](#).
53. More detailed information on the application of the adverse effect exceptions can be found in our guidance [How exceptions and the public interest test work in the Environmental Information Regulations](#).
54. For further detail on the provisions for third party personal data please see our guidance [Personal information \(section 40 and regulation 13\)](#).

More information

55. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other FOIA exemptions, or EIR exceptions.
56. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
57. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
58. If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at www.ico.org.uk.