

# Environmental Request Procedure

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## INTRODUCTION

Environmental Information Regulations (EIR) are concerned with an individual's right of access to environmental information which is held by the Association. The Environmental Information (Scotland) Regulations 2004 came into force on January 2005 and imposed a duty upon Scottish public bodies to make environmental information available on request.

The Scottish Information Commissioner ruled that housing associations can be considered as public bodies as they are under the control of the Scottish Housing Regulator and exercise public functions and responsibilities relating to the environment. With this decision, housing associations now come under the ambit of the legislation and have a duty to comply with requests made for environmental information.

## DEFINITION OF ENVIRONMENTAL INFORMATION

A broad definition is applied in the regulations as to what may be considered to be environmental information. This includes any information in written, visual, electronic or any other material form on:

- The state of the elements of the environment - such as air, water, soil, land.
- Substances - Energy, noise, radiation or waste, emissions, discharges and other releases into the environment affecting or likely to affect the state of any of the elements of the environment outlined above.
- Measures - Including administrative measures such as policies, legislation, plans, programs, environmental agreements, and any activities affecting or likely to affect the state of any of the elements outlined above.
- Reports - Cost-Benefit and other economic analyses used in these policies, plans, programs, agreements and other activities.
- The state of human health and safety, contamination of the food chain and cultural sites and built structures.

In relation to the day to day operations of housing associations the interpretation of what environmental information can cover, can refer to a very wide range of issues, and requests received for information must be considered with this in mind. To ensure that requests for information are handled correctly it is also important to note the distinction between 'personal information', which falls under the Data Protection Act 2018, and environmental information which falls within the scope of EIRs. For further guidance on processing requests for personal information, please refer to the Viewpoint Privacy Policy.

## HANDLING REQUESTS

A request for environmental information does not have to be made in writing. Verbal requests (received in person or by telephone) should be recorded and logged as an EIR request in the EIR Audit Log, by the Information Governance Business Analyst. The name and address of the individual making the request must be recorded.

Requests for environmental information must be handled as applicant and motive blind. This means that it does not matter who the individual making the request is or the reason why they are requesting the information. Requests for information can be made by anyone and from any geographical location including from outside the United Kingdom.

### Interpreting a Request

If a request is not clear or is too general to progress further, then the individual making the request must be asked to clarify their request and be assisted to do so. This is a legal requirement laid out in Regulation 9 of the EIR. The timescale for responding is paused while further clarification is being sought and recommences when the individual making the request has provided the clarification requested. If the request for information remains too general or otherwise unclear to progress further, then the request may be refused in line with Regulation 10(4) C of the EIR. The individual must be notified of this decision.

### Repeat Requests

The Association is not obliged to comply with a request which is identical or substantially similar to a previous request made by any individual. If the repeat request is received from the same individual then their request will be turned down communicating this reason to them. No further correspondence in relation to their repeat request will be required. If a repeat request is received from a different individual, then a copy of the previous response with the personal details of the individual who made the previous request redacted, will be issued to the individual making the request.

## Responding to Requests

- Requests Submitted by Email

If a request for environmental information has been submitted by email. Communication with the individual will normally also be by email. Paper only copies of any documents must be scanned and sent as attachments. All attachments must be sent as PDF files and not as raw MS Word/ Excel files, which can be subject to manipulation. The standard email response template will be used and any standard response letter should be attached as a PDF file.

- Requests Submitted by Letter

Communication and any final response will also be made in writing by letter. It is appropriate in certain circumstances however in terms of cost to suggest to the individual who has made the request that the information is issued in a more cost effective format.

- Requests Submitted Verbally

The individual making the request must be asked to provide their preferred format for the Association to respond to their request. The individual must be asked to provide their name and a form of correspondence address.

- Right of Review/Appeal

If an individual is dissatisfied with the response to their request provided by the Association, or by the way their request has been handled, then they may request a review of the response provided by the Association. A request for a review must be logged by an individual within 40 working days of a response being communicated to them by the Association. A review will be carried out by a member of the Executive Team. Any review and the outcome of the review will be completed within a 20 working day timescale.

Any request for a review will be acknowledged within three working days by the responsible Manager and an appropriate member of staff will be identified to carry out a review. If an individual remains dissatisfied following the outcome of any review then they may appeal to the Scottish Information Commissioner. This will be indicated to an individual in any response communicated with regard to their request for environmental information.

## Timescales

The timescale for responding to a request for environmental information is 20 working days. The 20 working day timescale commences on receipt of a request. This means that a request made via voicemail is recorded as being received on the day the message was left. An email request is received when it arrives in the Viewpoint email system.

A request is not considered as received and the timescale does not commence until clarification has been provided, if a request is considered too general or unclear to progress.

Similarly the timescale for response does not commence until the individual making the request has provided a name and a form of correspondence address.

If the request made entails substantial resources and cost is required, then the individual must be advised of this. The timescale for response to the request does not commence until the individual has agreed to pay the costs which have been advised.

If a request made by an individual is complex and will require a considerable amount of work which means a response may not be possible within the 20 working day timescale, then an extension of the timescale to a maximum of 40 working days can be made.

If it is not possible to respond to a request within the 20 working day timescale, then the Information Governance Business Analyst must be notified. The responsible person for dealing with the request **MUST** communicate the reasons and the new timescale for response to the individual.

## Charges for Providing Environmental Information

There is no upper or lower limit placed upon organisations under EIR with regard to charging for providing environmental information. EIR states only that the fee shall not exceed a “reasonable amount”, and must not exceed the actual costs of producing the information requested.

If the Association is going to make a charge for providing the information requested, this must be advised in advance to the individual who has made the request. This should be provided in writing to the individual, who has 60 working days to make the payment. The 20 working days

timescale for response to a request will not commence until payment has been received by the Association.

If the individual agrees to the charges being made for provision of the information, then an invoice for the cost will be generated by the Finance Department and issued to the individual.

The request for information will lapse if payment is not made within the 60 working days timescale and will not be progressed further.

See [Appendix 1](#) for details.

## **Exceptions to Disclosure under Environmental Information Regulations**

EIR provides clear guidelines for the Association with regard to where exceptions may apply to the Association's duty to provide access to environmental information. The Association may not progress a request made for environmental information if the requests meets any of the following criteria:

- **Information is Not Held - Regulation 10(4)(a)**

If the Association does not hold the environmental information then it is not covered by EIR. If the information is not held then it should not be created in order to fulfil a request for information. Advice and assistance should be given to the individual making the request if an organisation is known who may hold the information requested. The contact details of that organisation should be provided to the individual.

- **The Request for Information is Manifestly Unreasonable - Regulation 10(4)(b)**

Environmental information is exempt if fulfilling the request would place a substantial burden on the Association by providing the information. The fact that a request is detailed, complex or contains a volume of work which may tie up resources does not in itself make the request manifestly unreasonable. Reference should be made to the costs that may be charged in providing information and careful consideration must be applied before a request is refused under this criteria.



- **The Request is Too General or Otherwise Unclear - Regulation 10(4)(c)**

If the request for environmental information is considered too general or unclear to progress further clarification should be sought from the individual who has made the request. If the request remains too general or unclear following receipt of further clarification then the Association may refuse the request citing regulation 10(4)(c).

- **Information is in the Course of Completion, Unfinished Documents or Incomplete Data - Regulation 10(4)(d)**

A request for information can be subject to an exception if the Association is currently working on a document and the document can be expected to have more work carried out in relation to it within a reasonable timeframe. A document which is in draft format or status is not automatically subject to the terms for exception. The regulation refers to documents that are actively being worked on. If this exception is applied then the Association must inform an individual making a request of the timescale when it reasonably expects the information or document to be completed to allow the individual to make a request for the information in the future.

- **Internal communications - Regulation 10(4)(e)**

Internal communications can be exempt under EIR. The definition applied to internal communications includes internal email exchanges, draft letters to an external organisation and a file note prepared for internal use. Any communication between two or more staff members within the Association is considered internal communication. It is also possible for communications between the Association and a third party to be considered internal communication, however the onus is on the Association in this situation to demonstrate that aspects of the administrative or legal relationship with the third party show why communication should be considered internal.

- **International relations, defence, national security or public safety - Regulation 10(5)(a)**

Disclosure of environmental information is excepted where disclosure would substantially prejudice international relations, defence, national security or public safety.

- **The course of justice - Regulation 10(5)(b)**

Environmental information is exempted from disclosure where disclosure would substantially prejudice the course of justice, including law enforcement, impair the ability of an individual to

receive a fair trial, or the ability of a public body to conduct an inquiry of a criminal or disciplinary nature.

- **Intellectual Property rights - Regulation 10(5)(c)**

Environmental information is exempt from disclosure where disclosure would substantially prejudice intellectual property rights including registered rights such as patents, trademarks and designs and unregistered rights such as copyright and design rights.

- **Confidentiality of the proceedings of the Association where such confidentiality is provided for in law - Regulation 10(5)(d)**

Environmental information is exempt from disclosure where disclosure would substantially prejudice the confidentiality of the proceedings.

- **Confidentiality of commercial or industrial information - Regulation 10(5)(e)**

Environmental information is exempt from disclosure where disclosure would substantially prejudice the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

- **Interests of the individual providing the information - Regulation 10(5)(f)**

Environmental information is exempt from disclosure where disclosure would substantially prejudice the interests of the person who provided the information where it was supplied to the Association on a voluntary basis and where the person supplying the information had no expectation that the information would be disclosed to a third party and has not consented to disclosure.

- **Protection of the environment - Regulation 10(5)(g)**

Environmental information is exempt where disclosure would substantially prejudice the protection of the environment.

- **Personal data - Regulation 11**

Environmental information is exempt to the extent that it includes personal data. Where the Association decides not to disclose information to an individual making a request under EIR, one or more of the criteria listed above must be quoted in correspondence issued to the individual, giving reasons why the information they have requested has not been disclosed.

Use of any of the exceptions outlined above must be applied as restrictively as possible, and a presumption in favor of the release of information must always be adopted.

## APPENDICES

### Appendix 1 – Charges

#### Viewpoint charges for EIR

The charges set out below are based on ICO's Charging for Environmental Information Regulation 8 and guidance for Freedom of Information Requests.

- The upper limit for charges is £450
- A Staff costs charge of £25 per hour will be calculated based on each request. The staff costs relate to - locating, retrieving and extracting information.
- Disbursements will be charged including copying and postage.
- No charge will be made for documents held as public record.
- Documents can be examined on site, however staff costs still apply.
- Fees charged are based on reasonable time in collating the information. No charge is made for processing function including redaction.
- No charge is made for legal advice costs or the time taken to review such advice.
- A quote will be forwarded to the requester and at that time the "clock will stop", that is the 20 working days deadline will be suspended until payment is received. If payment is not received after 60 days, the request will be considered abandoned.

## Appendix 2 – Response Letter

**Insert name**

Ref: **Insert ref**

Address

Postcode

Dear **Insert name**

### Request under the Environmental Information (Scotland) Regulations 2004

Thank you for your correspondence received on **insert date** requesting that the following information be provided to you:

**Insert what the request was about.**

Viewpoint is treating your enquiry as a request under the Environmental Information (Scotland) Regulations 2004

### **\*Outline response to request and information which may be provided\***

Viewpoint considers that it has now complied in full with your request. If you are dissatisfied with the way Viewpoint has handled your request, then you may request that the Association carry out a review of how we have responded to your request. To request a review you must:

- Contact the Association requesting a review within 40 working days of the date of this letter.
- Provide a name and a correspondence address and an outline of the reasons why you are dissatisfied.

Viewpoint will complete any review and communicate the outcome to you within 20 working days of receiving your request. We will also provide details of how you can appeal to the Scottish Information Commissioner if you remain dissatisfied with the Association's response. Please note you must request a review by the Association before an appeal can be made to the Scottish Information Commissioner.

## Appendix 3 – Flowchart

