

Freedom of Information Act and Environmental Information Regulations Policy

NHS Devon

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Equality, diversity and inclusion statement

NHS Devon is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment, we develop, promote and maintain policies, strategies and operating procedures. Every effort is made to ensure that patients, employees, contractors or visitors do not experience discrimination; either directly or indirectly, because of their vulnerability; disadvantage; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender) or sexual orientation.

All staff must comply with this policy. Compliance must reflect our organisational commitment to and policy on, equality, diversity and inclusion. In addition, each manager and member of staff involved in implementing this policy must give due regard to the needs of those protected under law.

If you, or any other groups, believe you are discriminated against under the terms of the Equality Act, the Health and Social Care Act 2012 or Human Rights legislation by anything contained in this document; or you need this document in an alternative format, for example, large print, Braille, Easy read or other languages; please contact our Patient Advice and Complaints Team (PACT):

Tel: 0300 123 1672

Email: pals.devon@nhs.net

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1. Introduction

1.1 The Freedom of Information Act 2000 and Environmental Information Regulations 2004 are part of the Government's commitment to greater openness in the public sector, a commitment supported by NHS Northern Eastern and Western Devon CCG, referred to hereafter as the CCG. The Freedom of Information Act 2000, referred to hereafter as the Act, will further this aim by helping to transform the culture of the public sector to one of greater openness. It will enable members of the public to question the decisions of public authorities such as the CCG more closely and ensure that the services we commission are efficiently and properly delivered. The Acts replace the non-statutory Code of Practice on Openness in the NHS.

1.2 The main features of the Act are:

- A general right of access to all recorded information held by the CCG subject to certain conditions and exemptions set out in part II of the Act.
- In cases where information is exempt from disclosure, except where an absolute exemption applies, a duty on the CCG to;
 - i. Inform the applicant whether we hold the information requested, and
 - ii. Communicate the information to him or her.
- Unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure
- A duty placed upon the CCG to adopt and maintain a Publication Scheme
- The Information Commissioner with wider power to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal
- A duty to the Lord Chancellor to promote Codes of Practice for guidance on specific issues.

2. Purpose and objectives

2.1 The Freedom of Information Act policy is a statement of what NHS Devon intends to do to ensure compliance with the Act. It is not a statement of how compliance will be achieved; this will be covered by internal processes and procedures.

2.2 The Policy supports the principle that openness should be the norm in public life. NHS Devon aspires to create a climate of openness and dialogue with all stakeholders and improved access to information about the organisation and will facilitate the development of such an environment.

- 2.3 NHS Devon recognises that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by the subject access provisions of the Data Protection Act 2018.
- 2.4 NHS Devon will discharge their functions effectively. This means that the NHS Devon will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.
- 2.5 NHS Devon will ensure staff has access to expert knowledge to assist and support them in understanding the implications of the Act.
- 2.6 NHS Devon believes that common standards are required to ensure that the organisation is compliant with the Act.
- 2.7 NHS Devon will use all appropriate and necessary means to ensure that it complies with the Act and associated Codes of Practice issued by the Lord Chancellor's Department pursuant sections 45(5) and 46(6) of the Act.

3. Scope

- 3.1 The Freedom of Information Act Policy will apply to all employees, and where outlined in any contract of employment or services and to Lay members.

The Policy will provide a framework within which NHS Devon will ensure compliance with the requirements of the Act.

The Policy will underpin any operational procedures and activities connected with the implementation of the Act.

This Policy applies to all recorded information that NHS Devon holds that is information created, received and maintained by staff in the course of their work.

Information can be held in a number of different media e.g., paper, electronic (including text and email), audio and video.

4. Definitions

Terms	Definition
FOIA	Freedom of Information Act 2000
EIR	Environmental Information Regulations 2004
DPA	Data Protection Act 2018
GDPR	General Data Protection Regulation 2018

PA	Public Authority: for the purposes of the Act, a Public Authority can be a commissioner organisation, hospital, GP, general dental service, ophthalmic service or pharmaceutical service providing services under part two of the National Health Services Act. These are described under Schedule One: Part three of the Freedom of Information Act and may be subject to additions with the approval of the Freedom of Information (Amendments) Act. Currently organisations that are 51% in private ownership are not subject to the Act.
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5. Publication Scheme

5.1 NHS Devon have adopted the model Publication Scheme that has been produced by the Information Commissioner's Office. This is permissible under section 20 of the Act and ensures compliance with section 19 of the legislation.

The NHS Devon Publication Scheme will be a live document, detailing the information that NHS Devon publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme will be made available through our website and on request in paper copy.

Applications for information listed in the Publication Scheme may be received in writing by letter or email.

6. General Rights of Access

6.1 Section 1 of the Act gives a general right of access to all recorded information held by NHS Devon, subject to certain conditions and exemptions contained in part II of the Act. Any person making a request for information to NHS Devon is entitled:

- a) To be informed in writing whether the information requested is held by NHS Devon, and
- b) If NHS Devon holds the information to have that information communicated to them.

6.2 This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if NHS Devon holds the information, it must provide it, subject to certain conditions and exemptions.

6.3 In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, along with a description of the information requested. The applicant is not required to stipulate any reasoning for submitting a request.

6.4 NHS Devon will establish mechanisms and procedures to process requests for information in accordance with the Act.

7. Conditions and Exemptions

7.1 The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1 (3) the duty to confirm or deny does not arise where NHS Devon:

- a) Reasonably requires further information in order to identify and locate the information requested, and
- b) Has informed the applicant of that requirement.

7.2 NHS Devon will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

7.3 Under section 2 of the Act, NHS Devon does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act, sections 21 to 44. These provisions either confer an absolute exemption or qualified exemption.

7.4 A qualified exemption may be applied if, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether NHS Devon holds the information. The Part II exemptions are listed in Annex A of this Policy.

7.5 The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day which the fees notice is given to the applicant.

7.6 The duty to comply with a request for information does not arise if NHS Devon estimates that the cost of compliance with the request would exceed the appropriate limit established in the national Fees Regulations. NHS Devon will work with applicants to keep compliance costs down to a minimum but reserve the right to either a) refuse the request or b) charge for a communication of the information that exceeds this limit.

7.7 NHS Devon is not obliged to comply with a request for information if the request is vexatious. Where the organisation has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and making of the current request. NHS Devon will log all requests for information for monitoring purposes in order to identify repeated or vexatious requests.

8. Charges and Fees

8.1 The publications are generally free however NHS Devon is permitted to charge a reasonable fee to meet some of the costs of providing information. NHS Devon may charge for reasonably incurred costs to:

- Inform the applicant whether NHS Devon holds the information and
- Communicate the information to the applicant.

The fee may include:

- The cost of providing the information in the applicants requested format e.g. audio, CD
- Photocopying and printing costs
- Postage costs

8.2 In calculating the costs, NHS Devon is not permitted to take into account staff time required to carry out the work.

8.3 NHS Devon is not obliged to charge a fee in meeting its duties under the Act and the Department of Constitutional Affairs suggests that where the costs incurred are minimal should be waived.

8.4 NHS Devon will not charge a fee for putting the information into another format if we are under a duty to make information accessible under other legislation such as the Race Relations Amendment Act or Disability Discrimination Act 2005.

8.5 There may be instances where the costs of meeting the request would exceed the appropriate limit set at £450 or two and a half working days (18 hours). If this is the case, NHS Devon is permitted to refuse to answer the request.

8.6 The limits are applied firstly to NHS Devon's duty to confirm or deny that it holds the requested information and then to its duty to supply the requested information. If it would cost more than £450 or take in excess of two and a half working days, there is no duty to confirm or deny.

8.7 NHS Devon is permitted to estimate whether the cost of meeting a request would exceed the limits of £450 or two and a half working days. NHS Devon will take into account the following to determine those limits:

- Identify if the information is held.
- Locate and retrieve the information.
- Extract the information.

Staff costs are based on £25 per hour per person.

9. The Limits for Compliance with Requests

9.1 NHS Devon will establish robust systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide

information requested within twenty working days in accordance with section 10 of the Act. All staff will be required to comply with the requirements of these procedures.

9.2 Instances where requested information incur a charge or a fee and the applicant has paid this in accordance with section 9 (2), the working day notice in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

9.3 Where NHS Devon chooses to apply an exemption to any information or to refuse a request as it appears vexatious or repeated, or exceeds the appropriate limits for costs of compliance, the Freedom of Information Office will issue a response letter within twenty working days informing the applicant of this decision.

10. Means by which information will be conveyed

10.1 An applicant can make a request to receive information in a preferred means such as:

- a) The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant
- b) The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- c) The provision to the applicant of a digest or summary of the requested information in permanent form or in another form acceptable to the applicant.

10.2 NHS Devon will as far as reasonably possible, supply the requested information in the preferred format in line with section 11 of the Act.

10.3 Where information has been requested to be supplied in a preferred format NHS Devon will consider all circumstances, including cost of doing so. If NHS Devon determines it is not reasonably practicable to supply the requested information in a preferred format the Freedom of Information Office will inform the applicant explaining why it is beyond practicable for NHS Devon to supply the information in the format requested

11. Refusal of requests

11.1 NHS Devon is not required to confirm or deny information is held if NHS Devon has:

- a) Issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months from fees notice issued to the applicant

- b) Estimated the cost of compliance with a request exceeds section 12 appropriate limits
- c) Demonstrated the request for information is vexatious or repeated as set out in section 14 of the Act

11.2 In cases where a request for information is refused the Freedom of Information Office will inform the applicant with reasoning for NHS Devon's decision, this will be completed within twenty working days. As set out in section 17(7) the applicant will be informed of the procedures for making a complaint about the discharge of the duties of NHS Devon under the Act and of the right by section 50 of the Act.

12. The Duty to provide advice and assistance

12.1 NHS Devon will ensure robust systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as reasonable to expect the organisation to do so, to persons who have made requests for information. This is an obligation under section 16 of the Act.

12.2 In cases where NHS Devon does not hold requested information but has sufficient knowledge to an alternative organisational source and that organisation is subject to the Act the Freedom of Information Office will direct the applicant accordingly within twenty working days. The request for information is not transferred.

13. Consultation with third parties

13.1 NHS Devon recognises in some cases disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes `personal data` within the meaning of the Data Protection Act 2018. Unless an exemption provided for the Act applies in relation to any particular information, NHS Devon will be obliged to disclose that information in response to a request.

13.2 Where disclosure of information cannot be made without the consent of a third party (e.g. information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence) NHS Devon will consult with the third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example the third party cannot be located or because the costs of contacting them would be disproportionate. Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

NHS Devon will undertake consultation where:

- Views from the third party may assist NHS Devon to determine whether an exemption under the Act applies

- View from the third party may assist NHS Devon to determine where the public interest lies.

13.3 If a third party has not responded to consultation it does not relieve NHS Devon of its duty to disclose information under the Act or its duty to reply within the statutory time frame. In all instances it is for NHS Devon, not the third party to determine whether or not information should be disclosed under the Act. A refusal to consent from a third party does not in itself mean information should be withheld.

14. Public Sector contracts

14.1 NHS Devon will not enter into contracts which purport to restrict the disclosure of information held by NHS Devon and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption is applicable NHS Devon will be obliged to disclose the requested information regardless of the terms of the contract.

14.2 When entering into contracts with non-public authority contractors NHS Devon will not be pressured into creating clauses within the contract to protect terms such as value and performance. This is in line with the Lord Chancellors Department recommendation.

14.3 It is at the discretion of NHS Devon whether to disclose information or not.

15. Appeals and Complaints

15.1 NHS Devon will establish a procedure for dealing with appeals and or complaints made about the handling of requests for information.

15.2 Part of the procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of NHS Devon following attempts to resolve their complaint.

16. Records Management

16.1 NHS Devon has a separate policy with supporting systems and procedures to ensure compliance with the NHS Code of Practice on Records Management.

16.2 The Policy and procedures will ensure active records management in creation, keeping, maintenance and disposal in accordance with the requirements that the law places upon NHS Devon.

17. Training

- 17.1 As part of the induction programme NHS Devon will provide an overview of the Act and employee obligations. The Freedom of Information office will offer advice and assistance to NHS Devon staff and Lay members as required.

18. Audit and Monitoring

18.1 The day-to-day management of FOI requests will be logged anonymously using an excel spreadsheet. Each month a report will be produced and submitted to the Information Governance Committee identifying:

- Number of requests received.
- Time taken to respond and close a request.
- Breakdown by type of requester.
- Impact at directorate level.

19. References

19.1 Information Commissioner`s Office (ICO)

<http://ico.org.uk/>

19.2 Records management: NHS Code of Practice;

<https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care>

APPENDIX A — Exempt Information under Part II of the Freedom of Information Act 2000

There are two types of class exemption: -

- (a) Absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) Qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

With the exception of S21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

The **absolute** exemptions under the Act are: -

- Section 21 Information accessible to applicant by other means
- Section 23 Information supplied by, or relating to, bodies dealing with security matters.
- Section 32 Court Records
- Section 34 Parliamentary Privilege
- Section 36 Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40 Personal Information (where disclosure may contravene the Data Protection Act 2018 and GDPR)
- Section 41 Information provided in confidence (Public Interest Test required)
- Section 44 Prohibitions on disclosure

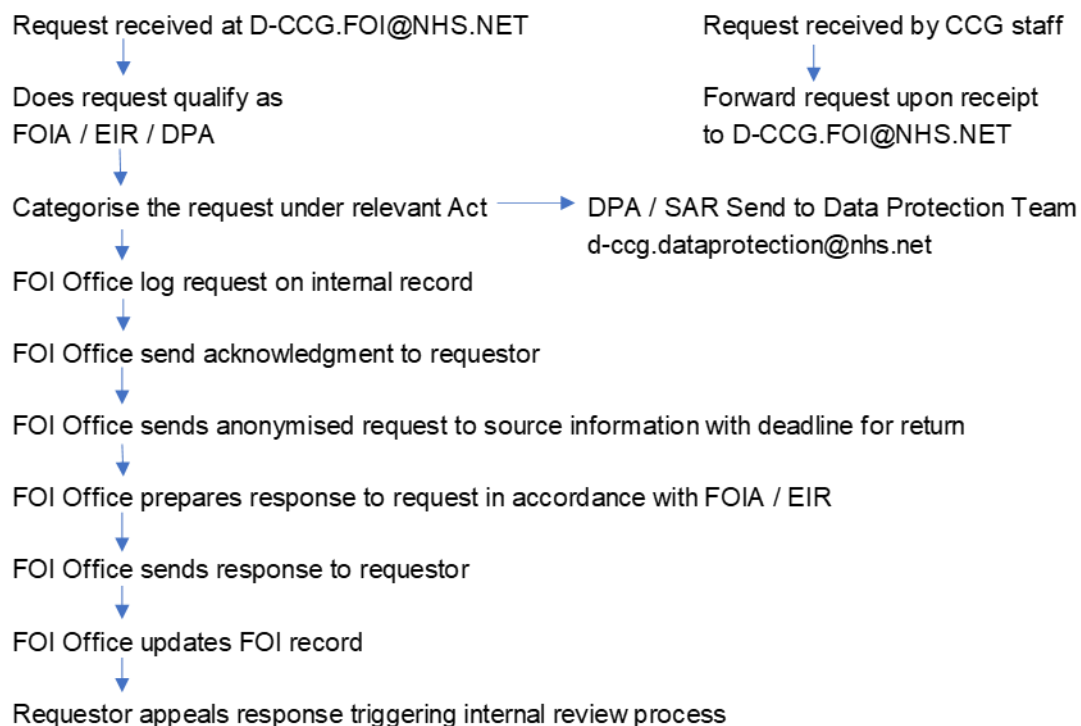
The exemptions that are **qualified** by the public interest test are: -

- Section 22 Information intended for future publication
- Section 24 National Security
- Section 26 Defence
- Section 27 International Relations
- Section 28 Relations within the United Kingdom
- Section 29 The Economy
- Section 30 Investigations and proceedings conducted by public authorities
- Section 31 Law Enforcement
- Section 33 Audit Functions
- Section 35 Formulation of Government Policy
- Section 36 Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37 Communications with Her Majesty, etc. and honours
- Section 38 Health and Safety
- Section 39 Environmental Information
- Section 42 Legal Professional Privilege
- Section 43 Commercial Interests

APPENDIX B – Flow chart management of FOI requests

Flow chart of FOI / EIR and Data Protection (GDPR) process

Key: FOI - Freedom of Information Act 2000
 EIR - Environmental Information Regulations 2004
 DPA - Data Protection Act 2018
 GDPR - General Data Protection Regulations



Part Two: The Environmental Information Regulations

1. The principle

- 1.1 The CCG support the principle of improving citizen access to information where it does not affect an individual or businesses' right to privacy. It is happy to within this framework of legislation share the environmental information it holds.

2 Definitions

2.1 Environmental information

It is crucial that staff recognise a request for environmental information, as an individual may not and is not required to mention the regulations.

The Regulations define environmental information as information in written, visual, oral, electronic or other material form about relating to:

a) The state of the elements of the environment (such as air, water, soil, land, landscape and natural sites, Genetically Modified Organisms, biological diversity) and the interactions between them.

b) substances, energy, noise, radiation or waste including radioactive waste, emissions, and discharges into the environment affecting **or likely to affect the elements in a).**

c) Measures (including administrative measures, policies, legislation, plans, programmes and environmental agreements) and activities **affecting or likely to affect the elements and factors in a) and b).**

d) Reports on the implementation of environmental legislation

e) Cost benefit and other economic analyses used within the measures and activities **covered in c)**

f) The state of human health and safety, conditions of human life, contamination of the food chain, cultural sites and built structures **in as much as they are or may be affected by a), b) or c).**

The **state** should be taken to include physical, chemical and biological conditions at any moment in time (i.e. past, present or future). **Water** should be taken to include underground and surface waters (both natural and in manmade structures). **Air** extends to the limits of the atmosphere and should be taken to include the air within buildings and other natural and fabricated structures above or below ground. **Fauna** and **flora** should be taken to include species both living and dead. **Land** should be taken to include all land surfaces, buildings, land covered by water, and underground strata. **Soil** should be taken to include the in situ upper layer of the mantle rock in which plants grow. A **natural site** should be taken to include areas identified because 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).

2.2 Public Authority

We as a Public Authority (called a 'relevant person' in the Regulations) are within scope of the Regulations because it has environmental responsibilities and holds environmental information. (Regulation 2(3))

2.3 Human Health

The Regulations do not make explicit reference to information relating to human health. Nevertheless, the environment clearly affects human health - directly or through the food chain - and to this extent, information affecting the state of human health should be covered. This would be achieved indirectly

insofar that humans respond to physical, chemical and biological agents delivered via the environmental media of water, air, land, etc.

2.4 Available information

Available information means any information held by the accountable organisation whether or not it was obtained because of its environmental responsibilities. It includes information collected before the Regulations came into force (on 31 December 2004) including information passed for safekeeping to the Public Record Office (because ownership still rests with the accountable organisation until such time - 30 years normally - that it is released for general inspection). It includes information held in written, visual, aural or database form within the organisation's buildings or elsewhere. It includes information contained in documents, pictures, maps and records where records are taken to include registers, reports, returns, computer records (e.g. databases) and other non-documentary records (Regulation 2(4)). It does not include non-existent information that could be created by manipulating existing information. It does not include information destroyed in accordance with the Department of Health's Retention and Disposal Schedule.

2.5 Reasonableness of requests

The Environmental Information Regulations state that requests can be refused where they are manifestly unreasonable or formulated in too general a manner.

3. Publicity

The public needs to know the range and extent of environmental information held by accountable organisation. Without this knowledge, the public may not be able to formulate a properly targeted request for information. To this end, it will from time to time review and state the principal areas in which it holds environmental information within the meaning of the Regulations. This statement will be contained in the Publication Scheme. It will use the Freedom of Information Office as its contact point for enquiries and assistance.

4. Disclaimers

The accountable organisation will consider the validity of any information it holds because the information could be based upon opinion rather than fact. It could be inferred, dependent on forecasts, or derived from samples. It could come from a third party and be of unspecified reliability. The supplier could deliberately bias it. In all cases, validation could be costly. For these and other reasons, the accountable organisation protects itself by issuing a disclaimer where appropriate about the accuracy of information that they release to the public and its source.

5. Published reports

The accountable organisations will consider its environmental reports for publication and where and when appropriate publish them on their website.

Reports on the environment may be commissioned by bodies from outside organisations. In general, bodies should seek to ensure that the copyright of any such completed reports rests with them. If not, it should be made clear to the organisation that, under the terms of the Regulations, the accountable organisation may be obliged to make copies of their reports, or parts thereof, available to the public.

6. Personal requests

The organisation may hold environmental information that is not released in reports or through public registers. Requests for this information might be satisfied through correspondence or by allowing personal inspection. Where the request is for information that is readily available (i.e. does not require collating or editing), it should be possible to give a quick verbal or written response or allow inspection to personal callers on an ad hoc basis; no special arrangements need be made. Where a request for information involves the collating and editing of records, significant staff time may be involved; in such cases, the request is probably best handled through correspondence.

Note: Different to Freedom of Information and Data Protection Act requests because the request from the public can be verbal or in writing. Staff must obtain a correspondence address for the request to be processed.

7. Response Times

Regulation 3(2) requires bodies to give a response to requests for information as soon as possible and at the latest within two months. The response can take the form of: providing the requested information; or refusing to supply the information.

Regulation 3(2)(c) requires that refusals be given in writing and that they should specify the reasons for the refusal.

It is the recipient organisation receiving a request to meet the timetable. Monitoring the timeliness of response is easiest if requests for information are made in writing. Where the accountable organisation accepts requests made over the telephone or in person, they will on that day be deemed to receive the request. The countdown to the date by which we must release information begins on the next working day.

8. Who may apply?

Regulation 3(1) states that the organisation shall make information available: "...to every person who requests it".

Any person or organisation may apply for access to information. Access is not confined to UK citizens and permanent residents; foreign nationals may

apply. The applicant is not required to prove an interest; in other words, they need not say why they want the information. It follows that accountable organisation may not attach any importance to any stated interest, or lack of it, when judging whether a request is reasonable or not.

9. **Monitoring**

The Freedom of Information Office will record the number of requests received and refused by the organisation. It will also collate the types of request so we might find better ways of ensuring that type of information is shared. Where possible it will calculate the total applications of both corporate and personal requests for a given period.

10. **Exempted categories of information**

Under the Environmental Information Regulations there are two exceptions to the right to information - which relate to information that is capable of being treated as confidential:

- i. **Discretionary** - the regulations do not require disclosure of information that is capable of being treated as confidential - but it is Health and Safety Commission and Executive's policy normally to release such information unless doing so would cause **significant harm**). Under the Environmental Information Regulations, information capable of being treated as confidential must relate to: -
 - international relations, national defence, public security;
 - legal or other proceedings (whether actual or prospective);
 - confidential deliberations and internal communications;
 - uncompleted documents or records;
 - commercial or industrial confidentiality or intellectual property.
- ii. **Compulsory** - the Environmental Information Regulations do not authorise disclosure of any information that **must** be treated as confidential – i.e: where there is a **legal prohibition** on disclosure of information covered by any of the discretionary exemptions.
Personal information relating to an individual who has not consented to its disclosure; information given in confidence (i.e. where the provider was not and could not have been placed under a legal obligation to supply the information)

11. **Practical arrangements**

Regulation 3(5) makes it clear that the accountable organisation is only required to supply information in a reasonable form and at reasonable times and places. The accountable organisation requires all staff receiving requests for environmental information to advise the Freedom of Information Office of the request at the first opportunity during office hours. They will then manage the request by: -

- sourcing the data
- liaising with the applicant
- logging the date of application and ensuring timeliness

12. Third Party Information

There is an important distinction to be made between information collected by the accountable organisation itself and that derived from a secondary source. In the latter case, there is a further distinction to be made between that supplied to the accountable organisation under some statutory power and that supplied voluntarily. These distinctions affect the conditions under which the information may be released to a third party.

13. Charging

Actual costs will be agreed separately. However the principles are: -

- That there is a cost in supplying information and Regulation 3(4) provides a discretionary power for this to be defrayed by the imposition of charges on applicants, provided that any charge does not exceed the costs reasonably attributable to the supply of the information.
- That the payment of any such charge may be made a condition of supplying information. The accountable organisation will seek to avoid setting unreasonable barriers to access. It is open to an applicant to appeal against any charges levied. It will agree its charges in line with Government advice to be issued ready for the Freedom of information Act 2000 and other local Public Authority decisions.
- In the spirit of the Citizen's Charter, the Freedom of Information Office will not levy a charge when advising on the availability of information, when explaining the grounds for withholding information, or when handling requests to reconsider decisions to refuse to supply information.
- It is reasonable to impose a charge, based upon reasonable production costs, for any published reports containing environmental information. Where there is a separate statutory provision, precluding charging for the supply of information that provision will apply: for example, it is generally the case that charges are not made for inspection of registers of environmental information.
- Maintained under statutory obligation (although a charge may be levied for providing copies)
- The accountable organisation will not charge for information that costs less than the charge of processing that information. Where the supply of information may involve more work for the organisation (i.e. information needs to be recovered from archives or processed before release), or the quantities requested are large, or requests are repetitive, or the information will be used for commercial gain organisations may decide to charge for supplying the information. The charge might reflect the resource costs which could include staff time spent in searching, retrieving, reviewing, processing and preparing the information and supervising its supply and might also include the cost of copying, postage, and the use of any special facilities including royalty charges for copyright material (e.g. on maps).

14. Appeals

The organisation may refuse to supply information. Regulation 3(3) requires us to give reasons for refusal to the applicant in writing. These could be: -

- that the organisation does not consider itself a relevant person and thus subject to the requirements of the Regulations;
- that the accountable organisation does not consider that the information requested is "environmental" as defined by the Regulations;
- that the information requested is not held by the accountable organisation;
- that the information is used by the accountable organisation acting in its judicial or legislative capacity;
- that the request is manifestly unreasonable or is formulated in too general a manner; or
- that one of the exemptions applies.

Any applicant dissatisfied with a refusal by a body to make information available, or who considers that a request for information has been inadequately answered or delayed may seek a remedy in a number of ways.

Aggrieved applicants may wish to ask us to review their reasons for refusing or delaying access. In some cases, there may be a statutory right of appeal under other legislation: the applicant should be told of his rights to use such an appeals procedure in any refusal letter. Otherwise, the applicant might appeal to the Freedom of Information Lead or Accountable Officer. The applicant can also use the usual democratic channels (i.e. ask the local MP to pursue the matter). If all else fails, an action to enforce the duty provided for in Regulation 3(6) may be taken in the national Courts whom, in turn, and in appropriate circumstances, may need to refer questions of Communities law to the European Court of Justice. In such circumstances, it would be for the organisation to defend its reasons for refusing access.

Appendix 1 to Part Three: Grounds for refusing a request

1. The presumption is that environmental information should be released unless there are compelling and substantive reasons to withhold it. The Regulations list the conditions under which a body can refuse access. Those judging whether to release or withhold information should aim to interpret the exceptions narrowly and consider the public interest that is served in releasing or withholding information. They should avoid the possibility of legal proceedings (e.g. for breach of confidence or failure to supply); if in doubt, they could seek legal advice.
2. There are some general grounds for refusing access. Environmental information held for the purpose of any judicial or legislative functions is

deemed not to be covered by the Regulations and need not be released (see Regulation 2(1)(b)). The accountable organisation may refuse a request for information that is manifestly unreasonable or is formulated in too general a manner (See Regulation 3).

3. Manifestly unreasonable requests could include requests for information that place a substantial and unreasonable burden on the resources of a body.
4. When a request for information is formulated in too general a manner to permit information to be identified and supplied, the body should explain this to the applicant. It is then open to the applicant to reformulate the request in such a way that the required information can be isolated and supplied.
5. There are further specific grounds for refusing access: some of these are discretionary, some mandatory regulation 4(2) lists those circumstance where the release of information may be refused; Regulation 4(3) lists those circumstances where the release of information must be refused. When access is refused, Regulation 4(4) requires us to supply information in part where it is possible to separate out the restricted items.
6. May be treated as confidential - Regulation 4(2) lists those circumstances where information may be classed as confidential and its release refused. Put another way, bodies have discretion in deciding whether to withhold or release the information.

The specific circumstances are listed below.

International relations, national defence, public security

Information relating to matters affecting international relations may be withheld.

Information relating to matters affecting national defence may be withheld. Bodies may restrict access to environmental information when its release would damage national security.

7. **Information relating to matters affecting public security may be withheld.** There are unlikely to be many cases of environmental information whose release could compromise public order. Examples might include information collected for the enforcement of the Public Order Act 1936 as it relates to processions and assemblies

8. Legal proceedings

Information relating to, or to anything that is the subject matter of, any legal or other proceedings (whether actual or prospective) may be withheld. By virtue of Regulation 4(5), legal or other proceedings include any disciplinary proceedings and the proceedings at any local or other public enquiry or hearing. Examples include information collected and to be used for the purpose of investigative proceedings (e.g. police proceedings); the subject

matter of appeals to a Secretary of State; information that could reasonably be expected to interfere with enforcement proceedings; information, which would deprive a person of a right to a fair trial or an impartial adjudication. However, every effort should be made to release information once legal proceedings have been concluded unless there are statutory restrictions to the contrary.

9. Confidential deliberations - Internal communications

Information relating to the confidential deliberations of anybody may be withheld. Bodies must be allowed to think in private. The background deliberations, papers and reports leading up to policy statements or decisions are frequently confidential and where they are, they would not normally be released. Other properly classified documents should not be released. However, the exemption should not cover transactions of business, which are merely administrative or routine - any environmental information contained therein should be released.

- 10. Under the Local Government (Access to Information) Act 1985**, the public has rights of access to council, committee and subcommittee meetings and to the papers and background papers relating to these meetings. Therefore, rights of access to information are triggered by rights of access to meetings. However, not all information is accessible in this way: that defined as 'confidential' by Section 100 A(3) of the Local Government Act 1972 (inserted by the 1985 Act) cannot be released and that defined as "exempt" by Schedule 12A to the 1972 Act may be released only at the discretion of the local authority if they resolve that the public should be excluded from the relevant part of the meeting. Under these Regulations, the public may have wider rights of access to any environmental information held by the local authority.

11. Information relating to the contents of any internal communications of a body corporate or other undertaking or organisation may be withheld.

These could include Ministerial and Member correspondence, letters to and from members of the public, information passed between officials in the course of their duties, internal minutes and submissions to Ministers and Members.

- 12. Unfinished documents** Information contained in a document or other record that is still in the course of completion may be withheld. Bodies may carry out their own studies including inspection, testing, evaluation, monitoring and research; data may be collected in the process. It is reasonable that access to the documents and data should await the completion of the study or report so that analysis and interpretation can proceed unhindered. Of course, this does not stop the accountable organisation granting premature access if it so wishes. If a study is aborted, any interim reports and any completed data sets should be released as soon as reasonable.

13. Completed data set

The test as to what constitutes a completed data set is problematic. If a study depends upon a scientifically selected sample of cases, then the data set is not complete until a satisfactory level of responses has been achieved. The satisfactory level of response will normally have been specified as part of the study requirement, or is the level at which data collection is closed down on grounds of cost or practicality. If a study depends on making a series of tests until a hypothesis is accepted or rejected, so that the number of items tested cannot be specified in advance, then the data set is completed once sufficient items have been tested to confirm or reject the hypothesis. In the case of a longitudinal survey, each individual stage of the survey should normally be regarded as if it were a separate survey and data released at the end of each stage. Data that is part of regular routine monitoring should not be regarded as part of an unfinished set but should normally be released as soon as practicable after it is collected, or according to a planned and published timetable. For example, if readings are taken on an hourly or daily basis, it might be reasonable to release them at least once a month.

14. Commercial confidentiality

Information affecting matters to which any commercial or industrial confidentiality attaches or any intellectual property must not be released if it is the subject of existing statutory restrictions disclosure. When not subject to other statutory restrictions it may be withheld. There will be circumstances where the disclosure of information would prejudice the commercial interests of an individual or business. There might be occasions when information produced for or by a body itself is confidential or whose ownership rests. Bodies may restrict access to information on these grounds. However, they should be careful not to restrict the release of information unreasonably.

15. Third Party Information

In the case of information received from a third party under contract or statute, two ways of proceeding are suggested here: to classify information when it is received or to classify it when access is first requested. Circumstances will vary and bodies will need to decide which offers the more practicable and efficient approach. If adopting the first approach, the supplier of environmental information should be informed that it is subject to public release. If the supplier believes that its release would prejudice his commercial interest, he should be asked to write: identifying the information to be protected; giving, if deemed necessary by the body, cogent evidence of the need for the protection of such information on grounds of confidentiality; and justifying a period of time over which protection is sought. When appropriate, the body can decide on the merits of the evidence whether the release of the identified information would prejudice the supplier's commercial interests. It is not possible to give hard and fast rules for making such a decision. However,

it will not normally be appropriate to withhold information in response to a general claim that disclosure might damage the reputation of the supplier and hence his commercial competitiveness. Neither will it be reasonable to withhold information, which could be obtained or inferred from other publicly accessible sources. Where it is agreed that information should be withheld, this should be limited to the minimum time necessary to safeguard the commercial or industrial interest. Information retained in this way should be kept under review with the intention of early release. Where the accountable organisation believes that the information should not be withheld or the retention period is too long, the supplier should be told and the reasoning given. Bodies should consider taking legal advice before declassifying and releasing information in this way. In some cases there may be statutory grounds for appeal against the decision before the information can be made publicly available. In the event of an appeal, disclosure of information should await the outcome and then be in accordance with any general or specific directions. If adopting the second approach (i.e. classifying the information once a request for access is first received), the body should seek the views of the supplier before releasing any information that might have a commercial value. This approach should also be adopted for historic information (i.e. that supplied to a body before the 31 December 1992 when the Regulations came into force). If the supplier believes that its release would prejudice his commercial interests, the procedure described in paragraphs 57-59 could be followed. The accountable organisation will need to be careful when handling requests for commercially confidential information to avoid the possibility of legal action through wrongful release. When information in its entirety is deemed restricted on grounds of commercial confidentiality, it could be so annotated together with a release date to avoid improper disclosure. When part of supplied information is deemed restricted, an edited version containing any non-sensitive information could be prepared and marked "Public Access Copy". A statement indicating the existence (but not the content) of the withheld information and a release date could be attached to this public access copy. The accountable organisation will need to exercise particular care when handling commercial information for businesses in which they have or had a controlling influence or are in.

16. Must be treated as confidential

Regulation 4(3) lists those circumstances where requested information **must** be treated as confidential. The specific circumstances are listed below.

Information must be treated as confidential if it is capable of being so treated and its disclosure in response to any request would (apart from Regulation 3(7)) contravene any statutory provision or rule of law or would involve a breach of any agreement; such confidential information must be withheld. This is a catch-all case designed to exempt from disclosure information

required or permitted to be kept secret by other statutes etc. However, it is possible to withhold such information on grounds of confidentiality only if it "capable of being so treated". This means that it must fall into one of the exemption cases listed in paragraphs 45-61; if it does not fall into one of these cases, the information must be released. An example would be the Radioactive Substances Act 1960, which makes it a criminal offence to disclose commercial information to third parties.

17. Personal information

Information which is personal information contained in records held in relation to an individual who has not given his consent to its disclosure must be withheld. Apart from being an unwarranted invasion of privacy, if personal data about named individuals were to be made publicly available, few people would be willing to assist in the preparation of surveys. This would place in jeopardy the ability of bodies to monitor the state of the environment. In order to maintain the flow of information, access to personal data and/or files should be restricted; this exemption from disclosure could be waived where the individual or individuals concerned give their written consent. Because of the effect of Regulation 2(1)(c), personal information should not be withheld when there are provisions to the contrary. For example, section 149(8) of the Environmental Protection Act 1990 places a duty on the relevant local authority to keep a register of prescribed particulars of, or relating to, dogs seized under that section: the name and address of the owner being part of the particulars. This personal information would be supplied under the Environmental Protection (Stray Dogs) Regulations 1992 (SI 1992/288). Care should be exercised when handling information containing the addresses of individual properties. When that information relates to an individual occupant, it should be treated as personal information and not released without the occupant's consent. This confidentiality might be secured by other statutes or agreements. For example, section 1 of the Census (Confidentiality) Act 1991 makes it an offence to disclose any information relating to an identifiable household and radon tests are carried out on properties with the understanding that the results will not be released. However, in these and similar cases, it should be possible to release summary information or remove reference to the actual address and release the remaining information.

18. Volunteered information

Information held by a body in consequence of having been supplied by a person who was not under, and could not have been put under, any legal obligation to supply it to the body must be withheld unless the person has consented to its disclosure or there are overriding powers of release. As the Royal Commission recognised, making information that has been volunteered to bodies available to the public could inhibit the present open and constructive discussions between environmental control authorities and

industry and the gathering of information on which environmental studies are based. The supply of volunteered information might well diminish - ultimately to the detriment of the environment. Such information should not be made available except where it is clearly understood that this will be done as in many consultation exercises by government departments or the information is freely available from another source. Unless exempted under another Regulation, volunteered information is not exempted from disclosure if it falls within a category of information that a body could have required to be made available under statute. An example might be information provided to support an application for a licence. Data supplied in support of an application for pesticide approval, or a review of an older pesticide is supplied voluntarily yet consent to the disclosure of this information is not required under Regulation 8 of the Control of Pesticides Regulations 1986. Furthermore, where a statutory responsibility to provide information is introduced, any information previously supplied on a voluntary basis for the same purpose should be released as long as it is not covered by other exemptions (e.g. on grounds of commercial confidentiality). It would not be in the spirit of the Directive to refuse to release all volunteered information as a matter of principle. Suppliers should, therefore be encouraged to waive this exemption. This could be done in advance or when a request for access is first made. Once access permission is granted, the information should be suitably labelled for future reference.

19. Potentially damaging

Where the disclosure of information would, in the circumstances, increase the likelihood of damage to the environment, that information must be withheld. In some cases, the dissemination of environmental information could in fact harm or pollute the environment. For example, information about the location of nesting sites, rare habitats or endangered/protected species should be withheld to avoid the risk of damage. In addition, information about possible Sites of Special Scientific Interest should not be made available until a formal notice is served; making information available prematurely could run the risk of pre-emptive damage being caused to the site before it was protected. Bodies will need to exercise careful judgement when restricting information in this way.