

SUMMARY COVER SHEET - Environmental Information Regulations 2004

**DEVON & SOMERSET
FIRE & RESCUE
SERVICE**

**Information Assurance
Service Policy
Document**

SUMMARY OF MAIN CHANGES

This policy covers the Service's responsibilities and obligations under the Environmental Information Regulations 2004.

There are no changes to the Service's obligations to comply with the Acts from the previous service policies.

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SERVICE**

**Information Assurance
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DOCUMENT PURPOSE:

The purpose of the following document is to enable the dissemination of the Devon and Somerset Fire and Rescue Service's Environmental Information Regulations 2004 policy throughout the organisation.

NOTE – If you are reading a paper copy of this document it may not be the most up to date version. For the latest version view the information on the Service Intranet.

DOCUMENT STATUS:

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Last review or amendment:	
Key consultees:	EMB, SMT, FBU, FOA, FRSA, Unison

Further information:

Information Assurance team

Cross-references:

Freedom of Information Act 2000
Data Protection Act 1998
Computer Security for Employees

POLICY STATEMENT

The Devon and Somerset Fire and Rescue Service (hereinafter called the service) is fully committed to complying with the requirements of the Environmental Information Regulations 2004 (hereinafter called the Regulations) in line with the ethos of the Regulations to promote openness and accountability within public authorities.

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The service expects all employees to comply in full with this policy.

COMPLIANCE STATEMENT

The service will not discriminate against any persons in the application of this policy or any subordinate procedures.

This policy is OPEN under the Freedom of Information Act 2000.

KEY INFORMATION

This policy aims to provide guidance and information on all aspects of the Regulations and how the service and its employees should aid compliance by encouraging open and transparent working practices with regards to environmental information.

This document will look at the following areas of the regulations:

- Definition of the regulations
- How to deal with requests for information
- The roles and responsibilities of the service under the regulations
- Exceptions laid out in the regulations.

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1. INTRODUCTION

Section 74 of the Freedom of Information Act 2000 provides for the Secretary of State to make provision for relating to environmental information.

The Regulations came into force on 1 January 2005 and are fully retrospective. The Regulations provide a general right of access to environmental information held by public authorities, public utilities and certain public/private partnerships and private companies.

The main features of the Regulations are:

- A general right of access to environmental information, subject to certain exceptions (see Appendix A);
- A duty to provide advice and assistance to persons who propose to make, or have made, a request;
- A duty to disseminate environmental information;
- Arrangements in respect of costs and fees;
- Arrangements for enforcement and appeals.

2. LEGISLATION AND GUIDANCE DOCUMENTS

Managers and users must avoid breaches of the Regulations. The Regulations link to the following legislation:

- Data Protection Act 1998
- Freedom of Information Act 2000

3. WHAT IS ENVIRONMENTAL INFORMATION?

'Environmental Information' is 'any information in written, visual, aural, electronic or any other material form on:

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- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction amongst these elements;
- b) factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges or other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) or (b) as well as measures or activities designed to protect those elements;
- d) reports on the implementation of environmental legislation;
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'.

The Regulations contain many exceptions, (see Appendix A) the meaning and extent of which are not always clear or easy to understand. In cases of doubt, guidance should be sought from the Information Assurance Manager.

The Environmental Information Regulations 2004 exist alongside other legislation, including the Freedom of Information Act 2000 and the Data Protection Act 1998, which also provide rights of access to information.

For further information contact the Information Assurance Manager or the IA team.

4. REQUESTS FOR INFORMATION

The Information Assurance Manager is responsible for dealing with requests under the Regulations. A request under the Regulations may be made in any format. Applicants do not have to make reference to the Regulations when submitting a request.

To enable the service to comply with the request within 20 working days any employee who receives a request (see Appendix B) for environmental information must contact the Information Assurance Manager immediately.

5. CHARGES

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The service cannot charge an applicant for viewing a public register or inspecting records on site but is entitled to make a 'reasonable' charge (see Appendix C) for providing information under the Regulations.

6. ROLES AND RESPONSIBILITIES

The overall responsibility for corporate compliance with the Regulations lies with the Senior Management Board.

It shall be the responsibility of the Information Assurance Manager to ensure day-to-day compliance with the Regulations. This includes:

- Providing advice and guidance to members of the public and members of the service at all levels, on issues in respect of the Regulations;
- Providing appropriate training to all members of the service;
- Receiving requests for information and assessing and deciding on the level of disclosure required by the Regulations;
- Setting up, co-ordinating and overseeing administrative procedures necessary to comply with the Regulations;
- Compiling policies for use by the Service in respect of the Regulations and conducting policy reviews and updates as applicable in line with changes in legislation.

It is the responsibility of all employees to:

- Forward requests to the Information Assurance Manager as soon as possible. The Regulations place a duty upon all staff to provide advice and assistance to persons who propose to make, or have made, a request for information;
- Provide the information which is the subject of the request to the Information Assurance Manager as soon as possible;
- Maintain standards of record keeping which support disclosure as required by the Regulations.

7. DISCIPLINE

Failure, on the part of any employee, to comply with any of the requirements of this policy may result in disciplinary action being taken.

Any employee who alters, defaces, blocks, erases, destroys or conceals any record with the intention of preventing the disclosure of information to which the applicant would have been entitled, commits an offence and may be subject to prosecution.

APPENDIX A – EXCEPTIONS FROM DISCLOSURE

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Although exceptions may be applied, they are subject to the public interest test and information may only be withheld where it is demonstrably in the public interest to do so.

- 12(4)(b) The request is manifestly unreasonable.
- 12(4)(d) The request is too general (this can only be used if the applicant has been asked and has failed to provide specific details).
- 12(4)(d) The request relates to material which is still being completed or to unfinished documents or incomplete data.
- 12(4)(e) The request involves the disclosure of internal communications.
- 12(5)(a) Disclosure would adversely affect international relations, defence, national security or public safety.
- 12(5)(b) Disclosure would adversely affect the course of justice, a fair trial or a criminal or disciplinary enquiry.
- 12(5)(c) Disclosure would adversely affect intellectual property rights.
- 12(5)(d)* Disclosure would adversely affect the confidentiality of an authority's proceedings where that confidentiality is provided by law.
- 12(5)(e)* Disclosure would adversely affect commercial or industrial confidentiality which is provided by law to protect a legitimate economic interest. (The exemption only applies where there is a legal basis other than the Regulations for withholding information, e.g. where disclosure would be a breach of confidence).
- 12(5)(f)* Disclosure would adversely affect the interests of a person who has volunteered the information and (a) the authority has no power to compel the person to provide the information and (b) the authority is not entitled to disclose the information and (c) the person supplying the information has not consented to its disclosure.
- 12(5)(g)* Disclosure would adversely affect the protection of the environment.

NOTE: The exceptions marked with * indicate that data relating to emissions cannot be withheld under this exception.

- 13(1) Personal data about an individual other than the applicant is exempt if (a) disclosure would breach any of the data protection principles (b) the information withheld from the person to whom it relates if he or she applied for it under the Data Protection Act; and (c) its disclosure is restricted by a notice under Section 10 of the Data Protection Act on the grounds that its disclosure would be likely to cause substantial unwarranted damage and distress to the individual concerned.
* The public interest test applies to categories (b) and (c).
- 5(3) Personal data about the applicant is not accessible under the Regulations. Access to such information is provided under the Data Protection Act.

The Public Interest Test

The Environmental Information Regulations fall heavily in favour of the disclosure of information and the public's 'right to know'.

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When applying the test, a public authority is simply deciding whether, in any particular case, it serves the interests of the public as a whole (rather than the interests of one or more individuals) best to withhold or to disclose information. The Information Assurance Manager will discuss the 'public interest test' with the relevant Head(s) of Department and, in situations where there is no obvious precedent, seek the authorisation of the Senior Management Board.

In general, the 'public interest' refers to the interests of the community as a whole as opposed to a purely private interest. It does not mean 'what the public is interested in or curious about'.

If the public interest in disclosing outweighs that of withholding, the information should be disclosed. In cases of doubt, presumption will be in favour of disclosure.

The public interest test is not a fixed concept and is likely to change over time. Judging the balance of a public interest test involves weighing up policy and legal interpretation; therefore, the law and application of the public interest test will change and develop over time, subject to decisions made by the courts, the Government and the Information Commissioner.

APPENDIX B – RECEIVING AND RESPONDING TO A REQUEST FOR INFORMATION

9.1 PROCEDURES

The Regulations state that a request for information may be in any format and need not be in writing.

It is important to note that:

- The applicant does not have to mention the Regulations when making the request;
- The applicant need not be a United Kingdom national or resident. A request can be made by anyone, anywhere in the world;
- The service cannot take into account the identity of the applicant when considering the request. The process must be 'applicant blind';
- The service cannot ask why the applicant wants the information, and if the applicant voluntarily provides this information, the public authority cannot take this into account when considering the request;
- As soon as a valid request has been received, the service must respond within twenty working days unless the information requested is particularly complex or large;
- There is a presumption in favour of disclosure. Information may only be withheld if an exception applies;
- It is an offence to alter, deface, block, erase, destroy or conceal any record with the intention of preventing its disclosure under the Regulations.

On receiving a telephone request for access to information not already disclosed as part of routine processes, the caller should be referred to the Information Assurance Manager or the IA team in her absence.

If neither is available please:

- Record the date and time of call; your name and department; and the caller's contact details;
- Assure the caller that the appropriate officer will contact them as soon as it is possible for them to do so.

The person taking the call must pass this information to the Information and Assurance Manager or the IA team as soon as possible. The details of the request should be retained until an acknowledgement of receipt has been received from either of the above officers.

On receiving a written request, the request together with the date and time of receipt must be forwarded to the Information Assurance Manager as soon as possible.

Requests shall be logged by the Information Assurance Manager, who will keep a record of requests to determine the on-going efficiency of the service's compliance with the Regulations.

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Where the requested information is already available to the public, the applicant will be directed to where the information can be found e.g. the service website.

If the applicant does not have access to the Internet, assistance must be given to enable the applicant to receive the information in another format.

Where the information requested is not generally made public e.g. perhaps available only from the service's intranet, the Information Assurance Manager will assist the applicant in acquiring the information in another format.

For requests of a more complex nature, the Information Assurance Manager will contact the applicant and help the applicant to focus their request. This will assist in determining exactly what information is desired, exactly where it can be located and what costs may be involved in complying with the request.

When a request has been received, the Information Assurance Manager will:

- Identify and liaise with the relevant individual(s) or Head(s) of Department who hold the data that specifically matches the information requested.
- Identify whether the relevant information collected to comply with the request falls under any of the exceptions. Where it does, remove this information before disclosure to the applicant;
- Identify whether the information can be supplied in another format that does not incur a charge to the applicant, where the original format requested would incur a charge. If there is, inform the applicant.

If none of the exceptions apply, the Information Assurance Manager will disclose the information to the applicant in the agreed format.

Where the information has been partially/fully accepted, the Information Assurance Manager will respond to the applicant, giving an explanation of the reasons why the request (or part of it) has been refused and quoting the relevant part(s) of the legislation.

9.1.1 What if the applicant has not provided enough details?

The Information Assurance Manager will inform the applicant as soon as possible after receiving the request that the service requires further clarification of the information sought.

The statutory 20 working day limit for complying with requests will not re-start until the further information has been received.

When the additional details have been received, the Information Assurance Manager will make a note of the date of receipt in the request log.

9.1.2 What if more time is needed to consider a request?

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This situation may arise where one or more exceptions are being considered, the nature of the request is complicated, or the information being requested is of a complex nature. In this case, a public authority may extend the 20 working day limit to 40 days if the request is complex or large.

In this case the Information Assurance Manager will inform the applicant of the delay and state when a full response will be provided.

9.1.3 Transferring a request

Where the Information Assurance Manager believes that all or part of the information requested is held by another public authority, the Information Assurance Manager will consider how best to assist the applicant with their request.

The Information Assurance Manager will process the request for information held by the service in the normal way.

If the applicant is likely to object to the request (wholly or in part) being transferred to another authority, the request will only be transferred with the applicant's consent.

If the applicant is not likely to object to the request (wholly or in part) being transferred to another public authority the Information Assurance Manager will consult the second authority to see whether it holds the information before transferring the request. If the information is held by the second authority, the transfer must be made as soon as practicable. The Information Assurance Manager will then inform the applicant that the request has been transferred.

If the service does not hold the information and the Information Assurance Manager is unable to advise the applicant which public authority holds, or may hold, the requested information, the Information Assurance Manager must consider what advice can be given to the applicant to help them to pursue their request.

9.1.4 Logging and recording a request

The Information Assurance Manager will maintain a system which records the request. The database will capture the following information:

- Name and Address of the Applicant;
- Date of request;
- Details of the information requested;
- Details of the information disclosed;
- Details of information denied disclosure and the reason(s) why;
- Date fee received;
- Date of response to the applicant;
- Number of days taken to complete the request.

9.2 GUIDANCE

9.2.1 When is a request 'received'?

A request is considered 'received' when it is delivered to the public authority, or when it is delivered to the inbox of a member of staff. The date of receipt is not the date the request is passed to the appropriate person for processing.

However, in respect of e-mails or voicemail, where an automated 'out of office' message provides instructions on how to re-direct a message or a caller is directed to another telephone number, the request would not be 'received' until it was re-sent to the alternative contact.

9.2.2 What if an overseas request is made in another language?

If the information requested is regularly available from a public authority in the language requested, the public authority should consider using the translation services already available to them.

A public authority is not under a general duty to translate information into other languages if the cost involved is excessive.

9.2.3 Removing excepted data prior to disclosure

If some of the information contained within a document is not the information requested or is excepted information it should be permanently removed from the document.

The Information Assurance Manager will advise the applicant that some of the information has been removed, quoting the relevant exception(s) and public interest test considerations.

The Environmental Impact Regulations apply to the release of information, not to the release of documents. Therefore it may be unnecessary to disclose the actual document with the excepted data removed. If the majority of the document does not fall within the request, the information subject to the request should be extracted. The information may be released by creating a new document if the majority of the information held on the original document does not fall within the scope of the request or is subject to the exceptions.

9.3 TIME

9.3.1 Time limits

- The time limit for responding to a request is 20 working days.
- A public authority is required to comply promptly with the request but not later than 20 working days after the date on which the request was received.
- Working days are defined as all days except:
 - Saturdays and Sundays;
 - Christmas Day;

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- Good Friday;
- Bank Holidays anywhere in the UK as defined by the Banking and Financial Services Act 1971.

A public authority must 'comply with all requests for information promptly' and 'should not delay responding until the end of the 20 working day period if the information could have been reasonably provided earlier.'

The time limit can be extended to 40 working days where the request is particularly large or complex.

9.3.2 When the 20 working day 'clock' begins

- The day after the request is received. Therefore the time limit for compliance would be the twentieth working day following the date of receipt., OR
- The day that the public authority receives the further information it reasonably requires in order to identify and locate the information requested.

9.3.3 When the 20 working day 'clock' stops

This situation can arise where a fee is required. The applicant has sixty days to pay the fee, which starts on the day that the request for payment (Fee Notice) was sent to the applicant.

The period beginning with the day the Fee Notice is sent and ending with the day the payment is received, is completely taken out of the 20 working day calculation. This means that the 20 working day 'clock' would stop the day before the fee notice is sent, and would re-start the day after the payment is received.

If payment is received by cheque the 20 working day clock would re-start once the cheque has cleared. A public authority is not required to comply with a request for information until the fee is 'paid'.

9.4 DISCLOSURE

9.4.1 Disclosing Information from Third Parties

Before disclosing the information, the Information Assurance Manager will check whether that information has been supplied to The Service from a third party, or whether a third party has any direct interest in the information considered for release. Such information may take the form of:

- Personal information about individuals;
- Other information provided in confidence;
- Information of a commercially sensitive nature;
- Information provided by other authorities or services.

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The Information Assurance Manager will consider consulting third party providers of information, as this is an important part of deciding whether the information falls under an exception.

Even where the information is not covered by an exception, the Information Assurance Manager will consider obtaining the views of the third party provider before releasing the information. This is especially important where the third party may consider that the release of the information could be an actionable breach of confidence.

The views expressed by a third party about the release of information provided by them to the service are not binding on the service. A refusal to consent to the release of the information from the third party is not binding on the service.

Despite the provision of information from a third party, it is the service that is the holder of the information. Therefore, it is not the third party but the service who is under a statutory duty to provide access to that information.

It is ultimately up to the service to decide whether to release or withhold information provided by third parties that it holds.

9.5 REPRESENTATIONS, APPEALS AND ENFORCEMENT

9.5.1 Representations Process

The applicant has the right to appeal against or complain about the decision not to disclose requested information or about the actual information provided. The applicant must make their representations in writing within forty working days of receiving the original response.

The applicant must be provided with the public authority's representations procedure. The applicant must be advised that there is an ultimate right of appeal to the Information Commissioner.

The Information Commissioner can only be appealed to if no satisfactory resolution can be found through the public authority's representations procedures.

The applicant must be advised of the public authority's target date for determining the complaint and advised of any delays if the length of time required needs to be extended. The applicant must be advised of the final decision within forty working days of receipt of the representation or complaint being received.

Any written correspondence, including those sent by e-mail, which expresses dissatisfaction with the public authority's response to a request for information must be treated as a complaint. This applies to any complaints about the service and response provided, even where the complainant has not expressed any desire for the public authority to review their decision or handling of the request.

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Representations will normally be considered by the Senior Management Board but in exceptional circumstances may be considered by the level of management above the group involved in the original decision. The outcome should be reported to the Fire and Rescue Authority for consideration prior to a response being sent to the applicant.

9.6 CUSTOMER SATISFACTION

A sample of applicants will be sent a customer satisfaction survey after the request has been completed. The survey will enable the applicant to indicate their satisfaction with the level of service they received in respect of their request.

APPENDIX C – CHARGING FOR INFORMATION

The service cannot charge an applicant for viewing a public register or inspecting records on site but is entitled to make a 'reasonable' charge for providing information under the Regulations. The term 'reasonable' is not defined.

The guidance issued by the Department for Constitutional Affairs in relation to the Freedom of Information Act has been therefore been applied to the Environmental Information Regulations. In accordance with the guidance, charges for photocopying and printing will be no more than 10p per sheet of paper. It is the policy of the service to provide information free if the cost of disbursements is less than £10.

USEFUL WEB LINKS

The Information Commissioner (ICO)

www.ico.gov.uk

Freedom of Information Act 2000

<http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

Data Protection Act 1998

<http://www.opsi.gov.uk/acts/acts1998/19980029.htm>

Environmental Information Regulations 2004

<http://www.opsi.gov.uk/si/si2004/20043391.htm>

Information Tribunal

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