

Precedent responses to Requests for information under Freedom of Information Act 2000(FOIA) and the Environmental Information Regulations 2004 (EIR) V2

- All requests are acknowledged by those monitoring the FOI 'in box'.
- Responses to requests from the press, or which might attract press interest should be checked by the Communications team before they are sent.
- Responses which might create an emergency situation should be copied to emergency@westsussex.gov.uk
- When disclosing spread sheets send as pdf versions otherwise any redactions can be accessed by the recipient.
- Respond to requests for information within 20 working days.
- Under EIR we can extend that period to 40 days if the request is broad ranging and complex. Under FOIA there is no ability to extend the deadline but we can suggest an agreed extension.
- Note we have a duty to 'assist and advise'.
- Note there may be situations where we should 'neither confirm nor deny' that information is held.

EIR will apply where the request relates to:

"... 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 among these elements" [definition-Reg 2(1)(a)]

(...and this includes e.g. consultations over road speed/planning/changes to the look of a neighbourhood.)

Under EIR there is a presumption in favour of disclosure.

In all other cases the FOIA applies.

Instructions:

This set of precedents is designed to support those drafting responses. For support contact Legal Services

They are in five parts:

Part 1 Standard FOI response

Part 2 Wording for exemptions

Part 3 Standard EIR response

Part 4 Wording for exceptions

Part 5 Miscellaneous

Part 1- Standard FOI response

Much of the wording is standard and should not be varied. Words in red and blue are also standard; blue for when we are disclosing information and red for when we are not.

Brackets- either contain instructions or require completion.

Colour key: Generic-black info disclosed-blue info withheld-red.

Response letter template for FOI:

I refer to your request dated (date), which has been dealt with under the Freedom of Information Act 2000.

Your request was for:

(set out exact wording of request)

We have now completed a search for the information which you requested and I confirm the Authority (does not hold/holds) information relevant to the request.

Please find attached the following:

- 1.
- 2
- 3

OR

Please see answers below corresponding with the numbers on your request.

[Insert text of answers]

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by us will be copyright of West Sussex County Council.

Information you receive which is not subject to WSCC continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non WSCC) information.

The Authority declines to disclose the information you have requested (OR in response to points) and has applied the exemption in [**insert here** the exemption being applied from the list below] [**insert here** the wording to add in support of that exemption (see Part 2)]

Section 12 – Where cost of compliance exceeds appropriate limit

Section 14 – the statutory wording we are required to use for this exemption is:’

Vexatious or repeated requests’

Section 21 – Information accessible by other means

Section 22 - Information intended for future publication

Section 30 - Investigations

Section 31 - Law enforcement
Section 32 - Information contained in court records
Section 36 - Effective conduct of public affairs
Section 38 - Health and safety
Section 40 - Personal Information
Section 41 - Information provided in confidence
Section 42 - Legal professional privilege
Section 43 - Commercial interest
Section 44(1) - Disclosure is prohibited by or under any law.

Having applied an absolute exemption I am not required to consider the balance of public interest for and against disclosure.

or

Having applied a qualified exemption/s I went on to consider whether it would nevertheless be in the public interest to disclose the information to you.

The following aims support disclosure (delete those not appropriate):

- To further the understanding of, and participation in the debate of issues of the day.
- To promote accountability and transparency in decision making.
- To promote the accountability and transparency of public authorities in upholding standards of integrity and ensuring justice and fair treatment for all
- To promote accountability and transparency in the spending of public money and in ensuring fair commercial competition in a mixed economy;
- To allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions;
- To bring to light information affecting public safety.

The following aims support the application of the exemption (delete those not appropriate):

- The inherent public interests expressed explicitly or implicitly in the particular exemption applied.
- The need for a "safe space" for government and civil servants to formulate and debate issues away from public scrutiny.
- The need to exchange views without the risk of disclosure inhibiting frankness and candour.
- The integrity of an investigation.
- The need to protect individuals and /or the wider public (beneficial or otherwise) from the impact of disclosure.

We have decided that the public interest in maintaining the exemption outweighs the public interest in disclosure.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the way your request has been handled, you may wish to ask for a review of our decision using the schools complaints process.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted our internal review procedure. The Information Commissioner can be contacted at:

The Information Commissioner's Office,

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Part 2 Wording for exemptions

Instructions:

The following are precedents for inclusion in the standard response (above) when applying exemptions under FOI. Wording in normal type is standard. Wording in italics should be changed depending on the particular request. Additional wording can be used to explain the application of the exemption. (PI) after the title of the exemption means it is subject to the public interest test; (absolute) means the public interest test does not need to be applied; (confirm or deny) means that we may have an option to neither confirm nor deny that we hold information relevant to the request. The ICO website has excellent guidance on the application of each exemption.

Section 12 – Where cost of compliance exceeds appropriate limit. (absolute)

S12 Costs exemption:

I confirm that the authority holds information falling within the description specified in your request. However, we estimate that the cost of complying with your request would exceed the appropriate limit. The appropriate limit has been specified in regulations and for local authorities it is set at £450. This represents the estimated cost of one person spending 2 1/2 working days in determining whether the Department holds the information, and locating, retrieving and extracting the information. Under section 12 of the Freedom of Information Act the Department is not obliged to comply with your request and we will not be processing your request further.

If you were to make a new request for a narrower category of information, it may be that we could comply with that request within the appropriate limit, although I cannot guarantee that this will be the case. You may wish to ask for assistance in narrowing your request.

Section 14 – Vexatious or repeated requests. (absolute)

The request exposes the authority to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.

(Outline history of request) Against this background the Council considers that on-going requests for information around the decision place a burden on the authority and are designed to cause disruption and annoyance, have the effect of harassing the authority and are obsessive and manifestly unreasonable.

Your communications to a large number of recipients in the authority are hostile in tone and designed to cause disruption and annoyance.

This demonstrates obsessive persistence in relation to a matter already dealt with in the following way (list steps taken to deal with request including involvement of senior officers)

This demonstrates an unwillingness to accept or engage with contrary evidence or views and this is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other.

Some further useful wording:

The term “vexatious” is not defined by the Act but following guidance from the Upper Tribunal the ICO considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In considering this the context and history in which the request was made can be a major factor in determining whether the request is likely to have such impact.

The tone of language used by the Complainant to describe (X an individual council officer) and the fact that the Complainant has expressed his anger and dissatisfaction with previous Council decisions demonstrates that the request does have the effect of harassing this individual and that the request is obsessive and manifestly unreasonable.

Section 21 - Information accessible by other means. (absolute)

S21-Information accessible by other means:

Under section 21 of the Act, we are not required to provide information in response to a request if it is already reasonably accessible to you. The information you requested is available on the website (url).

Section 22 - Information intended for future publication (PI)

At the time you made your request the information was held with a view to publication on (date/a date yet to be determined).

Section 30 - Investigations (PI/ confirm or deny)

The authority has a duty to conduct criminal investigations and proceedings under (), and holds the information for that purpose.

And/or the information was gathered from confidential sources in connection with criminal and/or civil proceedings under ().

Section 31 - Law enforcement (PI/ confirm or deny)

Disclosure would prejudice one of the following:

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*
- (c) the administration of justice,*
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,*
- (e) the operation of immigration controls,*
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,*
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2) [the purposes are establishing failure to comply with the law, improper conduct, what regulatory action to take, a person’s fitness or competence, the cause of an accident/protecting charities/securing health and safety at work],*
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any purposes specified in subsection (2) [see above], by or on behalf of the authority by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under an enactment,*

Note: Section 31(1)(a) can protect information on a public authority's systems which would make it more vulnerable to crime . Can also be used by a public authority with no law enforcement function to protect the work of another.

Section 32 - Information contained in court records (confirm or deny) (absolute)

The information you seek is held by this authority only by virtue of being contained in court documents which have been filed and/or served for the purposes of existing court proceedings.

OR

The information you seek has been placed in the custody of a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration.

OR

The information you seek has been created by a court or member of the administrative staff for the purposes of court proceedings, or created by a person conducting an inquiry or arbitration for the purposes of that inquiry or arbitration.

Section 36 - Effective conduct of public affairs (PI/ confirm or deny-completion of a form by Head of Legal Services (qualified person) required-see form in Part 5 'Miscellaneous)

In the reasonable opinion of a qualified person disclosure would be likely to inhibit the free and frank provision of advice or exchange of views or would otherwise prejudice the effective conduct of public affairs.

Section 38 - Health and safety (PI/ confirm or deny)

Disclosure of the information you seek would be likely to endanger the physical or mental health of any individual or the safety of any individual.

Section 40(2) - Personal Information (confirm or deny) (absolute)

The information you seek constitutes third party personal data and I decline to disclose it applying the exemption in s40(2) Freedom of Information Act 2000. Disclosure would be unfair and unlawful as none of the conditions in Schedule 2 of the Data Protection Act 1998 is met (and in the case of sensitive personal data, none of the conditions in Schedule 3 is met).

(after 25th May change to: Disclosure would be unfair and unlawful as none of the conditions in Article 6 GDPR is met (and in the case of special category data, none of the conditions in Article 9 GDPR is met)

Or

Some of the information you seek constitutes third party personal data and I decline to disclose it applying the exemption in s40(2) Freedom of Information Act 2000. Disclosure would be unfair and unlawful as none of the conditions in Schedule 2 of the Data Protection Act 1998 is met (and in the case of sensitive personal data, none of the conditions in Schedule 3 is met). Where this data has been redacted I have marked the section 'personal data'.

(after 25th May change to: Disclosure would be unfair and unlawful as none of the conditions in Article 6 GDPR is met (and in the case of special category data, none of the conditions in Article 9 GDPR is met)

Section 41 - Information provided in confidence (PI)

The information was provided in confidence to the authority and disclosure would give rise to an actionable breach of confidence.

Note: Covers personal data of the deceased.

Section 42 - Legal professional privilege (PI)

The information you seek is confidential communications made for the main purpose of providing or obtaining legal advice about proposed or contemplated litigation.

The information you seek is confidential communications between the client and lawyer, made for the main purpose of seeking or giving legal advice.

Section 43 - Commercial interest (PI/ confirm or deny)

The information you seek is a trade secret.

Note: (Examples of information which could amount to a trade secret: Methodology/unique formula/pricing structure/customer list)

Release of the information you seek is likely to prejudice the commercial interests of the authority and/or contractor.

Note: (Commercial interest include any information; which enables the entity to participate competitively in a commercial activity, about WSCC future procurement plans, provided during a tendering process[including information contained in unsuccessful bids right through to the details of the contract with the successful company.] about performance of a contractor, gathered for WSCC policy development and implementation, about private sector partners in the financing and delivering of public sector projects and services. Prejudice includes damage to reputation or business confidence).

section 44(1) - disclosure is prohibited by or under any law. (absolute)

There is a statutory prohibition in (*specify Act/Regulation*) which requires the authority not to disclose the information you seek.

Part 3 Standard EIR response

Much of the wording is standard and should not be varied. Words in red and blue are also standard; blue for when we are disclosing information and red for when we are not.

Brackets- either contain instructions or require completion.

Colour key: Generic-black info disclosed-blue info withheld-red.

Response letter template for EIR:

I refer to your request dated (date), which has been dealt with under the Environmental Information Regulations 2004.

Your request was for:

(set out exact wording of request)

We have now completed a search for the information which you requested and I confirm the Authority (does not hold/holds) information relevant to the request.

Please find attached the following

- 1.
- 2.
- 3.

OR

Please see answers below corresponding with the numbers on your request.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder. Most documents supplied by us will be copyright of West Sussex County Council.

Information you receive which is not subject to WSCC continues to be protected by the copyright of the person, or organisation, from which the information originated. You must ensure that you gain their permission before reproducing any third party (non WSCC) information.

The Authority declines to disclose the information to you (in response to points) applying the exception in [**insert here** the exception being applied from the list below] [**insert here** the wording to add in support of that exception (see Part 4)]

Regulation 12(4)(a) Information not held

Regulation 12(4)(b): the wording in the Regulations we are required to use for this exception is:'

Manifestly unreasonable requests'

Regulation 12(4)(c): Requests formulated in too general a manner

Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data

Regulation 12(4)(e): Internal communications

Regulation 12(5)(a): International relations, defence, national security or public safety

Regulation 12(5)(b): The course of justice and inquiries exception

Regulation 12(5)(c): Intellectual property rights

Regulation 12(5)(d): Confidentiality of proceedings

Regulation 12(5)(e): Confidentiality of commercial or industrial information

Regulation 12(5)(f): Interests of the person who provided the information to the public authority

Regulation 12(5)(g): Protection of the environment

Regulation 13: personal information

Having applied Regulation 13 I am not required to consider the balance of public interest for and against disclosure.

or

Having applied the exception/s I went on to consider whether the application of the exception outweighs the public interest in disclosure.

The following aims support disclosure (delete those not appropriate):

- To further the understanding of, and participation in the debate of issues of the day.
- To promote accountability and transparency in decision making.
- To promote the accountability and transparency of public authorities in upholding standards of integrity and ensuring justice and fair treatment for all
- To promote accountability and transparency in the spending of public money and in ensuring fair commercial competition in a mixed economy;
- To allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions;
- To bring to light information affecting public safety.

The following aims support the application of the exception (delete those not appropriate):

- The inherent public interests expressed explicitly or implicitly in the particular exception applied.
- The need for a "safe space" for government and civil servants to formulate and debate issues away from public scrutiny.
- The need to exchange views without the risk of disclosure inhibiting frankness and candour.
- The integrity of an investigation.
- The need to protect individuals and /or the wider public from the impact of disclosure.
- The significance or sensitivity of the information.

We have decided that the public interest in disclosure is outweighed by the public interest in applying the exception.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the way your request has been handled, you may wish to ask for a review of our decision using the schools complaints process.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted our internal review procedure. The Information Commissioner can be contacted at:
The Information Commissioner's Office,
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Part 4 Wording for exceptions

Instructions:

The following are precedents for inclusion in the standard response when applying exceptions under EIR. Wording in normal type is standard. Wording in italics should be changed depending on the particular request. Additional wording can be used to explain the application of the exemption. (PI) after the title of the exemption means it is subject to the public interest test; (absolute) means the public interest test does not need to be applied; (confirm or deny) after the title of the exemption means that we may have an option to neither confirm nor deny that we hold information relevant to the request. The ICO website has excellent guidance on the application of each exception.

Regulation 12(4)(b): Manifestly unreasonable requests

The request exposes the authority to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests. *The cost of compliance with your request is too great.*

Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data (PI)

The information you seek is still in the course of completion/is a draft document/was created to formulate and develop policy and that process is not complete.

Regulation 12(4)(e): Internal communications (PI)

Internal communications includes communications between the authority's departments.

Note: communications includes letters, memos, and emails, minutes, notes of meetings or any other documents if circulated or filed so as to be available to others. This doesn't cover a personal note not for communication to others. Once the communication is sent outside this authority this exception no longer applies.

Regulation 12(5)(a): International relations, defence, national security or public safety (PI/ confirm or deny)

Disclosure of the information you seek would adversely affect national security public safety

Note-this exception has been used successfully to prevent disclosure of details of fleet of vehicles used by F & RS. Public safety can be hurt injury to physical or mental health of

a group or an individual. Should be used to protect: details about systems designed to protect public safety, material identifying individuals who might be targeted as a result of disclosure, details about potential targets for terrorists

Regulation 12(5)(b): The course of justice and inquiries exception

Disclosure of the information you seek would adversely affect the course of justice/ a person ability to receive a fair trial/ the ability of the authority to conduct an inquiry of a criminal or disciplinary nature.

Note: this covers information subject to legal professional privilege/ information about law enforcement investigations or proceedings/records of courts, tribunals and inquiries.

'Would have an adverse effect' test-'more likely than not'.

Regulation 12(5)(d): Confidentiality of proceedings (PI/ confirm or deny)

Disclosure of the information you seek would adversely affect the authority's proceedings, the confidentiality of which is provided by statute or the common law.

Note: Council meetings closed because information is 'confidential' under LGA 1972 s100A(2 & 4) or 'exempt' under LGA 1972 Schedule 12A Part 1.

Information involving the exercise of statutory decision making powers, consideration of planning application, internal disciplinary proceedings/audit/LGO complaints (s32(2) LGA 1974).

Note: The LGA sections state which proceedings are considered 'confidential' and do not override the EIR. Under Reg 5(6) "any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply".

'Would have an adverse effect' test-'more likely than not'.

Regulation 12(5)(e): Confidentiality of commercial or industrial information (PI)

The information you seek is commercial or industrial in nature and is confidential under either the common law of confidence, contract or a statutory bar. The confidentiality is protecting a legitimate economic interest, which disclosure would adversely affect.

Regulation 12(5)(f): Interests of the person who provided the information to the public authority (PI)

The information you seek was provided by (), who was not under any legal duty to provide it, on the basis that it would remain confidential. () has not consented to disclosure and disclosure would adversely affect the interests of that person/company.

Regulation 12(5)(g): Protection of the environment (PI)

Disclosure of the information you seek would adversely affect the protection of the environment to which it relates.

Note: this would cover nesting site of rare bird species

Regulation 13: personal information (usually absolute)

The information you seek constitutes third party personal data and I decline to disclose it applying the exemption in Regulation 13. Disclosure would be unfair and unlawful as none of the conditions in Schedule 2 of the Data Protection Act 1998 is met (and in the case of sensitive personal data, none of the conditions in Schedule 3 is met).
(after 25th May change to: Disclosure would be unfair and unlawful as none of the conditions in Article 6 GDPR is met (and in the case of special category data, none of the conditions in Article 9 GDPR is met)

Or

Some of the information you seek constitutes third party personal data and I decline to disclose it applying the exemption in Regulation 13. Disclosure would be unfair and unlawful as none of the conditions in Schedule 2 of the Data Protection Act 1998 is met (and in the case of sensitive personal data, none of the conditions in Schedule 3 is met). Where this data has been redacted I have marked the section 'personal data'.
(after 25th May change to: Disclosure would be unfair and unlawful as none of the conditions in Article 6 GDPR is met (and in the case of special category data, none of the conditions in Article 9 GDPR is met)

Part 5 Miscellaneous paragraphs

Information not held

I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is not held by this Authority.

Extension of time EIR

The Regulations allow us 20 working days to respond to your request from the date of its receipt. However, it is occasionally necessary to extend the 20 working day time limit for issuing a response. In this case, because of the [complexity/ volume] of the request, we are extending the time limit for responding by [X] days [NB: Must not be more than 20 working days] to [date].

Request for more time under FOI

This is a broad and complex request and, having made preliminary enquiries about locating, retrieving and extracting the data, I understand that we may not be able to respond fully to your request within the statutory time frame of 20 working days. I would be grateful if you would confirm agreement to an extension of time for compliance to [insert date-usually no more than two weeks after the statutory deadline]

Clarification Letter

The department is finding it difficult to understand what information you are interested in from your request. I will not be able to take this matter further without extra information from you. In particular, it would be useful to know [give the applicant an indication of the sort of information that you will require in order to proceed with the request]. Time for compliance is suspended until sufficient clarification is received.

Letter to contractor (third party) regarding disclosure of their information:

I am writing to you in connection with a request for information which is being considered under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. The request is for:

(set out exact wording of request)

If you wish to notify us of any particular issues or concerns relevant to the question of disclosure of this information, please do not hesitate to contact me. If you wish information to be withheld under section 41 'information provided in confidence' or s43 'commercial interest' or under the corresponding provisions in the Environmental Information Regulations please detail your reasons. Please also comment on the balance of public interest. All relevant factors will be taken into account when deciding on whether the information should be disclosed, in particular the relevant public interest considerations both in favour of and against disclosure.

I would be grateful if you could respond to me by [date]. In the absence of a response the Authority will process the request in accordance with the appropriate legislation.

Not a request for Information:

I refer to your letter dated [date], which purports to be a request for information held by the Authority, but which appears to be an invitation to debate a number of issues. It falls outside the scope of the Act/Regulations and the authority declines to respond to it. [I have passed your letter on to the Department for consideration]. If you require advice and assistance in making a request for information please contact me.

Repeat request response:

Thank you for your email requesting (details)

We note that on (date) an identical or substantially similar request was made by you.

Under s14(2) the authority is not required to respond to this repeat request, however, for your reference I have attached a copy of the response previously sent to you.

Should you have any queries about this, or if you feel that we have misunderstood your request, then please contact us again.