

EIRs Guidance

Regulation 10(4)(c): Requests which are too general

Exception Briefing



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
The Commissioner	The Scottish Information Commissioner
EIRS	Environmental Information (Scotland) Regulations 2004
FOISA	Freedom of Information (Scotland) Act 2002
SIC	The Scottish Information Commissioner, staff of SIC (depends on context)
The Directive	Directive 2003/4/EC on public access to environmental information
Implementation Guide	UNECE Aarhus Convention: An Implementation Guide (2 nd edition)

The exception

The exception: main points

1. Regulation 10(4)(c) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) allows a Scottish public authority to refuse to make information available if:
 - (i) the request is formulated in too general a manner **and**
 - (ii) the authority has asked the requester to provide more particulars about the request **and**
 - (iii) the authority has assisted the requester in providing more particulars.
2. In common with other exceptions in the EIRs:
 - (i) the exception is subject to the public interest test in regulation 10(1). This means that, even if the exception applies, the information should still be disclosed unless the public interest in withholding the information outweighs the public interest in making it available.
 - (ii) the exception can be relied on regardless of the age of the information.

Steps in applying the exception

3. These are the steps an authority must take once it has located and retrieved the requested information:
 - (i) Decide, does the exception apply? The exception must be interpreted in a restrictive way and the authority must apply a presumption in favour of disclosure (regulation 10(2) of the EIRs).
 - (ii) If the exception does **NOT** apply, the information cannot be withheld under the exception.
 - (iii) If the exception in regulation 10(4)(c) applies, the public interest test must be applied.
 - (iv) If the public interest in making the information available outweighs the public interest in maintaining the exception, the exception does not apply and the information cannot be withheld under the exception.
 - (v) If the public interest in maintaining the exception outweighs the public interest in making the information available, the information can be withheld.

General points about interpreting the exception

4. The EIRs implement Directive 2003/4/EC on public access to environmental information. The EIRs don't define any of the terms used in the exception. However, the Aarhus Convention Implementation Guide, named after the Convention on which the Directive was based, contains useful guidance on interpreting the EIRs and references to the Implementation Guide are contained throughout this guidance. (See **Appendix 1: Resources** for a link to the Directive and Implementation Guide.)

Applying the exception

5. Regulation 10(4)(c) allows a public authority to make environmental information available if the request is formulated in too general a manner and the authority has complied with regulation 9 of the EIRs.

The definition of “too general a manner”

6. The Aarhus Convention and the EIRs don't explain what is meant by “formulated in too general a manner”. Generally, the exception will apply if the way the request is written makes it difficult for the authority to work out what information is covered by the request, for example if the request is too vague, unclear or non-specific.
7. Even if a request is general in terms, a request is unlikely to be “too general” if the authority is able to identify the information requested within 20 working days (or, where the information covered by the request is voluminous and complex, within 40 working days).
8. Just because a request covers a lot of information does not mean that the request will automatically be “too general.” Where a request does cover a lot of information, an authority may be able to claim that the request is manifestly unreasonable. See **Appendix 1: Resources** for a link to the Commissioner's guidance on this.

Advice and assistance

9. Unless a public authority provides advice and assistance, it cannot apply the exception in regulation 10(4)(c). Regulation 9(2) makes it clear that, if a request has been formulated in too general a manner, the public authority must:
 - (i) ask the requester, as soon as possible (and no later than 20 working days after receipt of the request) to provide more particulars in relation to the request and
 - (ii) assist the requester to provide those particulars.
10. Regulation 9(3) says that, provided the authority complies with “a code of practice under regulation 18” when providing advice and assistance, it will be taken to have complied with the duty to provide advice and assistance. This is a reference to the “Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. This Code is often referred to as the “Section 60 Code.” (See **Appendix 1: Resources** for a link to the current (December 2016) version of the Code.)
11. The Code says, at paragraph 5.3.1:

The authority must provide appropriate advice and assistance to enable an applicant to make their request in a way which will describe the information they want reasonably clearly. The authority should remember that applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record. Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.
12. Paragraph 5.3.3 of the Code says:

If the authority is unclear about what information the applicant wants, it should obtain clarification by performing its duty to provide reasonable advice and assistance to the applicant. Where a request is not reasonably clear, advice and assistance could include:

- *providing an outline of the different kinds of information which might meet the terms of the request;*
 - *providing access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority;*
 - *providing a general response to the request setting out options for further information which could be provided on request;*
 - *contacting the applicant to discuss what information the applicant wants.*
13. Although the Code provides useful guidance, the public authority still needs to consider what advice and assistance it is reasonable to give in each case.
14. **Appendix 1: Resources** contains a reference to the only decision the Commissioner has issued so far on regulation 10(4)(c).

Timescales and the exception

15. If a public authority wants to apply the exception in regulation 10(4)(c), it must provide advice and assistance within 20 working days and issue a notice refusing to comply with the request. The notice is a formal refusal notice under regulation 13, so must tell the requester about their right to ask for a review if they disagree that their request is “too general.”
16. Advice and assistance should be given as soon as possible. It can be given at the same time as the formal refusal notice is issued (provided the notice is given within 20 working days). However, it will often be easier to give advice and assistance before issuing the refusal notice: in a lot of cases, a quick telephone call or email to the requester will clear up any confusion. (Any advice given or clarification received should be recorded in case the requester asks for a review or appeals to the Commissioner.) Where the request is clarified, the authority does not have to issue a refusal notice under regulation 10(4)(c), but should simply treat the clarified request as a new request, with the date of clarification as the date of receipt.
17. Below are some examples of how the exception works in practice.

Example 1

- Mrs McDonald asks her local council for planning documents dealing with a development at 192 High Street and for the minutes of the planning committee from this year.
- The Council is not clear what Mrs McDonald wants. Does she want the High Street development documents only for this year or does her reference to “this year” refer only to the committee minutes? Does she want committee minutes regardless of the subject matter, or only those relating to the High Street development?
- The Council decides that Mrs McDonald’s request is formulated in too general a manner. It telephones Mrs McDonald and gives her advice and assistance.
- Mrs McDonald confirms she is only interested in the development at 192 High Street and only wants the 2016/17 planning documents and committee minutes relating to that development.
- The Council no longer needs to apply the exception in regulation 10(4)(c). It has 20 working days (40 if it concludes that the clarified request is voluminous and complex) to respond following the date of clarification.

Example 2

- Mrs McDonald makes the same request as in example 1.
- Again, the Council is not clear what information Mrs McDonald is looking for.
- The Council decides that her request is formulated in too general a manner. It writes to Mrs McDonald and gives her advice and assistance.
- Mrs McDonald does not respond.
- Although Mrs McDonald did not respond, the Council must issue a formal refusal notice under regulation 10(4)(c).
- Mrs McDonald will have the right to ask the Council to review its decision that the request was formulated in too general a manner.

Example 3

- Mrs McDonald makes the same request as in example 1.
- Again, the Council is not clear what information Mrs McDonald is looking for.
- The Council decides that her request is formulated in too general a manner. It writes to Mrs McDonald and gives her advice and assistance.
- Mrs McDonald responds, but it is still not clear to the Council what information Mrs McDonald wants.
- The Council must notify Mrs McDonald that it is not required to comply with the request because it is formulated in too general a manner.
- Mrs McDonald will have the right to ask the Council to review its decision that the request was formulated in too general a manner.

The public interest test

18. The exception is subject to the public interest test. This means assessing whether – in all the circumstances – the public interest in making the information available is better served by the public interest in maintaining the exception. The authority must identify the competing arguments for these two outcomes and must carry out a balancing exercise to determine where the public interest lies in that particular case.
19. In carrying out the balancing exercise, the authority must take account of the explicit presumption in favour of disclosure in regulation 10(2)(b).
20. The EIRs do not define the term “public interest”, but it has been described as “something which is of serious concern and benefit to the public”. It has also been said that the public

interest means what is in the interests of the public, rather than what is of interest to the public (although the two are not always mutually exclusive).

21. Generally, if an authority is unsure what a request is for, it is highly likely that the public interest in maintaining the exception will outweigh the public interest in disclosing what could be the wrong information.
22. The Commissioner has published guidance on the public interest test in the EIRs. See **Appendix 1: Resources** for a link to the guidance.

Appendices

Appendix 1: Resources

SIC Decisions

Reference	Decision Number	Parties	Summary
14	261/2014	Royal Society for the Protection of Birds and the Scottish Ministers	The RSPB asked the Ministers for information about bird populations. The Ministers sought clarification from the RSPB about the information they were looking for. Despite the RSPB clarifying the information it wanted, the Ministers refused to comply with the clarified request on the basis that it was formulated in too general a manner. The Commissioner decided that the exception didn't apply. The term "too general" means that a request is unclear or non-specific. Just because a request captures a lot of information does not mean that the request will be "too general." In addition, despite seeking clarification, the Ministers failed to give adequate advice and assistance to the RSPB.

All of the Commissioner's decisions are available on the Commissioner's website. To view a decision, go to www.itspublicknowledge.info/decisions and enter the relevant decision number (e.g. 032/2014).

If you do not have access to the internet, contact our office to request a copy of any of the Commissioner's briefings or decisions. Our contact details are on the final page.

Other Resources

Paragraph	Resource	Link
4	Directive 2003/4/EC on public access to environmental information	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF
4	The Aarhus Convention: An Implementation Guide (2 nd edition)	https://www.unece.org/env/pp/implementation_guide.html
8	The Commissioner's guidance on the manifestly unreasonable exception in regulation 10(4)(b) of the EIRs	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx
10	Scottish Ministers' Code of Practice on the discharge of functions under FOISA and the EIRs	http://www.gov.scot/Resource/0051/00510851.pdf

22	The Commissioner's guidance on the public interest test in the EIRs	http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/ThePublicInterestTestEIRs.aspx
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Appendix 2: The exception

Regulation 9

- (1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
- (2) Where a request has been formulated in too general a manner, the authority shall –
 - (a) ask the applicant as soon as possible, and in any event no later than 20 working days after the date of receipt of request, to provide more particulars in relation to the request; and
 - (b) assist the applicant in providing those particulars.
- (3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.
- (4) In any case to which paragraph (2) applies, the date on which the further particulars are received by the authority shall be treated as the date of the request for the purposes of regulations 5(2)(a), 6(2)(a) and 13(a) and any period within which the authority is required to respond to that request by these Regulations shall begin on the day following that date.

Regulation 10

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.
- ...
- (4) A Scottish public authority may refuse to make environmental information available to the extent that -
 - ...
 - (c) the request for information is formulated in too general a manner and the authority has complied with its duty under regulation 9;
- ...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info

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