

Environmental Health's Procedures for Providing Public Access to Environmental Information

Background

The Århus Convention¹ establishes a number of rights of the public (citizens and their associations) with regard to the environment. Public authorities (at national, regional or local level) are to contribute to allowing these rights to become effective. The Convention provides for:

- The right of everyone to receive environmental information that is held by public authorities (“access to environmental information”). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Citizens are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
- The right to participate from an early stage in environmental decision-making. Arrangements are to be made by public authorities to enable citizens and environmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it (“public participation in environmental decision-making”);
- The right to challenge, in a court of law, public decisions that have been made without respecting the two aforementioned rights or environmental law in general (“access to justice”).

This policy looks specifically at fulfilling the 1st of the above-mentioned public rights granted by the Århus Convention.

Accordingly, as public bodies^a, local authorities have a statutory duty to provide the public with access to information they hold on the environment. This statutory provision was originally made through the European Communities Councils' Directive 90/313/EEC. In January 2003, in response to the Århus Convention, this Directive was replaced by a new Directive on public access to environmental information [i.e. EC Directive 2003/4/EC], (Defra, 2001)². While, the updated version takes into account new technology and international advances in access rights, the main objectives of both Directives remain the same: Article 1 states "the objective of this Directive are "to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangement for its exercise, ..." (Official Journal of the EU, 14/02/03)³.

The requirements of the Directive are currently implemented through the Environmental Information Regulations 1992 (SI 1992/3240), as amended by the Environmental Information (Amendment) Regulations 1998 (Defra, 2001)². However, as of 1 January 2005, these regulations will be superseded by the Environmental Information Regulations 2004, which will reflect the changes made by the new Directive making provision for the public to request access to environmental information held by public bodies, with certain restrictions.

The Purpose of this Document

In fulfilment of its duties to provide the public with information about the environment, the Environmental Health section shall give full regard to the requirements set down within the EC Directive 2003/4/EC and its subordinate regulations, the Environmental Information Regulations (copies of these have been placed at appendix A for ease of reference), and in particular **regard will be had to the Data Protection Act 1998, and the exceptions listed in the Environmental Information Regulations (1992 & 2004) and the Freedom of Information Act 2000** (http://www.spelthorne.gov.uk/freedom_of_information.htm).

This document sets out the actions that will be taken by the Environmental Health Section to provide the public with information about the environment within its administrative boundary. This document must be read in association with the Directive and its subordinate Regulations.

^a A public body is defined to include any local authority or statutory undertaker, and any trustees, commissioners, board or other person, who, as a public body and not for their own profit, act under any enactment for the improvement of any place or the production or supply of any commodity or service (Defra, 2001)².

Duty to Provide Environmental Information

The Environmental Information Regulations place a duty on public bodies to provide environmental information to the public when requested. Regulation 2 (2004) states that information relates to the environment if, and only if, it relates to any of the following:

- 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 among these elements.

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); the latter to include inland waters (i.e. rivers, canals, lakes), estuaries and seas.

Air extends to the limits of the atmosphere and should be taken to include the air within buildings and other natural and man-made 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 by reason 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);

- b) Factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and 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) and (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 Environmental Information Regulations apply to:

- Information held by the Council, regardless as to whether or not it was obtained as a result of the Council's environmental responsibilities;
- Information collected before the Regulations came into force (on 31 December 1992);
- Information passed to the Public Record Office by the Council (or any other such body) for safekeeping (This is because ownership still rests with the providing body until such time - 30 years normally - that it is released for general inspection);
- Information held in written, visual, aural, electronic or data base form within the Council's buildings or elsewhere;
- Information contained in documents, pictures, maps and records where records are taken to include registers, reports, returns, computer records (e.g. data bases) and other non-documentary records (Regulation 2(4)). Further information about Spelthorne Borough Council's record management policy on the creation, maintenance and management of records, is available on Spelnet at http://www.spelthorne.gov.uk/14sep04_reportn_appendix3.doc

The definition of "environmental information" does not include non-existent information that could be created by manipulating existing information, nor does not include information destroyed in accordance with established office procedures. Consequently, applicants are not entitled to ask the Council to create information. Likewise, the applicant is not entitled to ask the local authorities opinion ~ **NO COUNCIL OFFICER MAY OFFER OR GIVEN AN OPINION ABOUT THE CONTENT OF ANY ENVIRONMENTAL INFORMATION BEING PROVIDED.**

Other Statutory Provisions

Statutory provisions relating to public access to environmental information are also established under various other enactments (e.g. the Environmental Protection Act 1990, and the Pollution, Prevention and Control Act 1999). Where the degree of information required to be provided by the various statutory provisions are different, regulations 2(1)(c) and 3(7) of the Environmental Information Regulations (1992) requires the more liberal regime to be adhered to.

Publicity

The public needs to know the range and extent of environmental information held by the Council. Without this knowledge the public may not be able to formulate a properly targeted request for information. To this end, where practical Environmental Health Services will publish details of the principal areas of “environmental information” that it holds on Spelthorne Borough Council’s website at www.spelthorne.gov.uk

Public Registers

Local authorities are required to maintain “public registers” of environmental information about activities regulated by particular environmental control authorities (largely itself and the Environment Agency). These registers are generally accessible during normal working hours and inspection is free of charge. Details of the statutory public registers maintained by Environmental Health Services will be on Spelthorne Borough Council’s website at www.spelthorne.gov.uk

Published Reports

Environmental studies produced by Spelthorne Borough Council (and those produced on its behalf) will be made available to the public. Where practical these will be published on Spelthorne Borough Council’s website at www.spelthorne.gov.uk

Personal requests

The Council also holds environmental information that is not published in reports or through public registers. Requests for this type of information can be complied with through correspondence or by allowing personal inspection of information.

- Where the request is for information that is readily available (i.e. does not require collating or editing) a short written response will be given at no charge. Members of the public, or their agents can also examine information at the council offices during normal working hours. Where possible this should be by prior appointment, however this does not preclude members of the public from visiting Council offices to look at information on an ad hoc basis.
- Where a request for information involves the processing of records, a considerable staff resource may be required. In such cases, the request will be handled through correspondence and a standard charge will be applied in advance of the information being supplied (see further information below).

While a "request for information" does not need to be made in writing, in some instances it would be useful, as it will clarify the request being made (e.g. a request for information about a specific area of land). Therefore, where necessary, the person requesting the information shall be asked to submit their request in writing, stating the name of the applicant, an address for correspondence, and a description of the information requested (and if appropriate, with maps with marked boundaries). **Do explain that while the request does not need to be in writing it would allow the Council to ensure that the correct information is provided.** Where it is agreed that a request will be made in writing, it can be submitted by hand, through the surface postal system or by electronic means, as long as it is received in legible form and is capable of being used for subsequent reference.

Where a request cannot be made in writing, for whatever reason, the Council will make every reasonable attempt to give the applicant appropriate assistance in making their request. Appropriate assistance might include:

- Providing an outline of the different kinds of information that might meet the terms of the request;
- Providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority; and,
- Providing a general response to the request setting out options for further information that could be provided on request.
- Advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application or make the application on their behalf.

This list is not exhaustive and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

Any person or organisation may apply for access to information. Access is not just confined to UK citizens and permanent residents; foreign nationals may apply. The applicant is not required to prove an interest, or need say why they want the information. As such, when judging whether an applicant's request is reasonable or not the Council may not attach any importance to any stated interest, or lack of it.

Consultation with third parties

In all cases, it is for the public authority that received the request, not a third party (or representative of a third party) to determine whether or not information should be disclosed under the EIR. Public authorities must always consult third parties when

they receive a request for environmental information. However, remember that unless an exception provided for in the EIR applies in relation to any particular information, they will be obliged to disclose that information in response to a request. **Lack of consent of a third party does not necessarily preclude disclosure.** In each case where an exception applies the public interest must be balanced. If the public interest in disclosing the information outweighs the public interest in withholding it, the information should be disclosed.

Consultation with devolved administrations

Public authorities should consult with the relevant devolved administration (e.g. the Welsh Assembly) before disclosing information provided by or directly concerning that administration, except where:

- The views of the devolved administration can have no effect on the decision of the authority; or
- In the circumstances, consultation would be too costly or time consuming.

Similarly, the devolved administrations should consult with the relevant non-devolved public authority before disclosing information.

Commercial Confidentiality

There is a distinction between information collected by the Council itself and that derived from a secondary source. For information obtained from secondary sources, there is a further distinction to be made between that supplied to a body under some statutory power and that supplied voluntarily. These distinctions affect the conditions under which the information may be released to a third party.

- Where information has been given to Spelthorne Borough Council through legal obligation (eg: the information was required to be submitted under the Part IIA contaminated land regime, or in pursuance of a planning Condition under the Town and Country Planning Act 1990) then this information is in the public domain and can be released to third parties.
- If the information was given to Spelthorne Borough Council on a voluntary basis, AND the provider could not have been forced to provide that information to the council (or any other public authority) through any legal obligation, then this information must not be released to a third party IF that information could adversely affect the interests of the person (or company) who supplied it, AND the person/company supplying the information has not consented to its disclosure.

Where information is given to Environmental Health Services on a voluntary basis and the provider could not have been forced to provide that information, the provider **MUST** be told in advance of its receipt (preferably in writing) that the Council may be required to make this information accessible to the public, if so requested under the Environmental Information Regulations or the Freedom of Information Act.

Where reports on the environment are commissioned by outside organisations on behalf of Environmental Health Services, the Service shall seek to ensure that the copyright of any such completed reports rests with the Council. Where this is not possible, it should be made clear to the organisation that, under the terms of the Regulations, the Council would be obliged to make copies of their reports, or parts thereof, available to the public.

Copyright

Information that is disclosed under the EIR might be subject to copyright protection. If an applicant wishes to use any such information in a way that would infringe copyright, for example by making multiple copies, or issuing copies to the public, he or she would require a licence from the copyright holder.

http://www.hms0.gov.uk/copyright/managing_copyright.htm or by telephone on 01603 621000. http://www.hms0.gov.uk/copyright/guidance/gn_19.htm explains more fully the distinction between the supply of information held by public authorities under Freedom of Information legislation and the re-use of that information and those circumstances where formal licensing is required.

Accepting information in confidence from third parties

A public authority should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided. Even in these circumstances it will be necessary to explain the relevance of the public interest test and the fact that there could be circumstances in which the public interest in responding to a request outweighs the desires for confidentiality of a third party. Acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Commissioner.

Transferring requests for information

Where a request for information is made to Environmental Health and Environmental Health does not hold that information, the request must be transferred to the appropriate department or public body WITHOUT DELAY. The applicant must be informed of the transfer.

Timeliness

Regulation 3(2) requires that the information requested be supplied as soon as possible and no later than 20 working days. The response can take the form of:

- Providing the requested information; or
- Refusing to supply the information. Where a request is refused, that refusal must be given in writing and the reasons for the refusal must be given.

Where information requested will be complex to gather, or of such a volume to be time consuming to compile, the 20 working day response time can be extended to 40 working days.

Refusals

Under the FOIA, where refusal is being considered, a public authority must inform the applicant of this within 20 working days. The actual decision as to whether or not to refuse may take longer than 20 working days in cases where the public interest has to be considered. Under the Convention and Directive the time limits for refusal to supply information are similar to those for supply of information i.e. as soon as possible, and within one month, except where complexity justifies up to two months. We took the view that for the sake of simplicity it would be preferable to use the '20 working days' formula instead of 'one month' for refusals as well as supply of environmental information. This is reflected in the new Regulations. In addition, the Directive requires that reasons for refusal to provide a particular form or format must be provided within one month of the date of request. Again, for the sake of simplicity and coherence, the new Regulations have adopted the '20 working days' formula in this respect.

Charging

Spelthorne Borough Council will apply a charge for supplying information where a significant input of resources is required to fulfil that request (i.e. information needs to be recovered or processed before release), or the quantities requested are large, or requests are repetitive, or the information will be used for commercial gain. The

payment of any such charge is a condition of supplying information, and is payable in advance of the information being supplied.

Charges are based upon the resource costs which would 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 (eg on maps).

Where there is a separate statutory provision precluding charging for the supply of information, that provision will apply. As such, no charge is attached to the inspection of public registers maintained under statutory obligation (although a charge may be levied for providing copies).

Where Environmental Health Services collects its own primary information (or data), it can recover the full economic cost of collecting, manipulating and displaying that information. Currently a charge is not requested or applied, however, if demand for such data increases (for example for air quality monitoring data), then an appropriate charge will be made for its supply.

Monitoring

Environmental Health Services will monitor the timeliness of responses and also:

- The total number of requests received (written or other)
- The number of requests for information made under some other statutory powers.
- The total number of requests for environmental information that are refused.

All requests for environmental information, whether they are made in writing or by telephone the full details of the request will be entered onto CAPS along with the date of application.

Accuracy of Information

Consideration must be given to the accuracy of any information that is to be released to the public. 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, or the supplier may have deliberately bias it. For these and other reasons, a disclaimer about its accuracy and its source **MUST BE** issued with the release of the information.

Complaints Procedure

Where an applicant is of the opinion that Environmental Health has failed to comply with the requirements of the Environmental Information Regulations in dealing with their request they may make a complaint to the Council.

Any complaint that cannot be dealt with by the individual dealing with the request for information will be dealt with in accordance with the Council's Complaints Procedure. A copy can be obtained on the Council's website http://www.spelthorne.gov.uk/your_council/suggestions_and_complaints.htm or from the Council's Offices or by phoning 01784 451449.

Any complainant will also be advised that he or she can write to the Information Commissioner concerning any matter. His details are as follows:

Information Commissioner,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF
Telephone 01625 545745
Fax 01625 524510
Email mail@ico.gov.uk

References

- ¹ The Århus Convention (<http://europa.eu.int/comm/environment/aarhus/index.htm>)
- ² DEFRA, Page published 26 October 2001, Public Access to Environmental Information ~ Guidance on the Implementation of the Environmental Information Regulations 1992; (<http://www.defra.gov.uk/environment/pubaccess/guidance/01.htm>).
- ³ Official Journal of the EU, 14 February 2003, DIRECTIVE 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_041/l_04120030214en00260032.pdf
- ⁴ HMSO, The Freedom of Information Act 2000, UK
- ⁵ HMSO, The Environmental Protection Regulations 1992, UK
- ⁶ HMSO, The Environmental Protection Regulations 2004, UK

