

# OADBY & WIGSTON BOROUGH COUNCIL ENVIRONMENTAL INFORMATION REGULATIONS POLICY JULY 2014

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## PART 1: Introduction

Oadby & Wigston Borough Council (“the Council”) is a public authority under the Environmental Information Regulations 2004 (“EIR”).

The EIR came into effect on 1 January 2005 and implemented the European Council Directive 2003/4/EC. Public authorities are required to allow members of the public (“the Applicant”) access to the environmental information held by them.

This policy outlines how the Council will meet the requirements of the EIR. It explains what amounts to “environmental information” and how that information can be obtained from the Council.

## PART 2: What is “Environmental Information”?

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

- The state of the elements of the environment: air, water, soil, the landscape, natural sites, and biological diversity (including genetically modified organisms).
- Factors affecting, or likely to affect, the environment, such as substances, noise, radiation, emissions, discharges and waste released into the environment.
- Measures such as policies, legislation, plans, programmes, agreements, and activities affecting the environment or by factors, measures or activities affecting the environment.
- The implementation of environmental legislation.
- The state of human health and safety, including contamination of the food chain.
- The state of human health and safety and conditions of human life, so far as they are affected by the elements of the environment or by factors, measures or activities affecting the environment.
- Cultural sites and built structures, so far as they are affected by the elements of the environment or by factors, measures or activities affecting the environment.

## PART 3: When is Information Held by the Council?

Environmental information is held by the Council when that information is:

- a) In the Council’s possession and has been produced or received by the Council; or
- b) Held by another person on behalf of the Council.

## PART 4: Duties of the Council Under This Policy

The EIR requires the Council to:

- Make its environmental information available to the public by easily accessible electronic means.
- Take reasonable steps to organise its environmental information with a view to actively and systematically disseminating that information to the public.
- Make the information available upon request subject to the requirements and exceptions of the EIR.
- Provide advice and assistance to the Applicant and prospective Applicants so far as it can be reasonably expected to do so and comply with any code of practice enacted by the Secretary of State under regulation 16 of the EIR.

## PART 5: Requesting Information

Requests for environmental information to the Council can be made in person, by telephone, or in writing by email or letter. It is recommended that requests are made in writing so that the Council can clearly identify the information requested.

Applicants are advised to first search the Council's website for the information requested: [www.oadby-wigston.gov.uk](http://www.oadby-wigston.gov.uk)

Applicants are requested to be as specific as possible in their requests by identifying the information that they require. Whilst the Council will provide advice and assistance, the Council cannot be responsible for the answers provided where the Applicant has not clearly stated the information that they need.

## PART 6: Format of the Information

The Council will provide environmental information to the Applicant in the format requested unless:

- It is reasonable for the Council to make the information available in another form or format; or
- The information is already publicly available and easily accessible to the Applicant in another form or format.

Where information is not provided in the form or format requested, the Council shall explain in writing the reasons why and inform the Applicant as to how they may appeal against that decision.

## PART 7: Time to Respond

The Council will respond to all requests within 20 working days of the request or will extend that period to 40 working days where it reasonably believes that the complexity and volume of the information requested makes it impracticable to respond within that earlier time period. The Applicant will be advised in writing within 20 working days that the Council has extended the time period.

## PART 8: Exceptions to the Duty to Disclose

A request for information under the EIR can be refused if:

- The information is not held by the Council
- The request is “manifestly unreasonable”
- The request is too general
- The request is for unfinished documents or data
- The request is for internal communications

The Council can also refuse to release environmental information if its disclosure would adversely affect:

- International relations, national security, defence or public safety
- The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature
- Intellectual property rights
- The confidentiality of proceedings of the Council or any other public authority where such confidentiality is provided by law
- The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- The protection of the environment to which the information relates
- The interests of a person who provided that information to the Council voluntarily and not with that persons consent to disclose.

The Council will not disclose any personal data that would breach the Data Protection Act 1998. Applicants are referred to the Council’s [Data Protection Policy](#) for further information.

## PART 9: Refusal to Disclose

The EIR creates a presumption of disclosure: it does not necessarily mean that the Council will refuse to disclose environmental information if any of the exceptions listed in Part 8 apply.

The Council will still disclose the information where it is of the view that the public interest in disclosing the information outweighs the public interest in not disclosing the information.

The Council shall notify the Applicant in writing if his request for information is refused within 20 working days of receiving the request (“the refusal notice”). The Council’s refusal notice shall include the reason(s) for refusing the request, and it shall provide details as to how the Applicant can make representations to the Council about the refusal or appeal against the decision to refuse disclosure.

## PART 10: Representations

If the Applicant believes that the Council has failed to comply with the EIR in respect of his request, he can make representations to the Council to that effect.

Representations must be made within 40 working days after the date on which the Applicant believes the Council failed to comply with the EIR. The Applicant should explain clearly in writing what he believes the alleged failure to be.

The Head of Corporate Resources shall consider all representations and any supporting evidence produced by the Applicant before determining if the Council has complied with the requirements of the EIR.

The Council shall notify the Applicant of its decision no later than 40 working days after the date of receipt of representation.

If the Head of Corporate Resources decides that the Council has failed to comply with the EIR, the Applicant will also be provided with a written statement describing the identified failure, the action the Council will take to comply with the EIR, and the period in which that action is to be taken.

## PART 11: Complaints and Appeals

The Council’s Freedom of Information complaint procedure shall be applied in the event of any complaint. This is available on the Council website. Details of the complaint procedure shall be included in the response that the Council sends to the Applicant.

If the Applicant is still unhappy, he may appeal to the Information Commissioner’s Office (“the ICO”), who will decide whether the Applicant’s EIR request has been correctly handled.

## PART 12: Charging

Regulation 8(3) of the EIR permits the Council to charge the Applicant for the requested environmental information, provided that the fee does “not exceed an amount which the [Council] is satisfied is a **reasonable** amount”.

A charge will not be made for environmental information that is held on a public register or on any list of environmental information already held by the Council.

No charge shall be levied if the Applicant wishes to examine environmental information at the Council Offices or, if it is reasonable to do so, at any other building owned by the Council.

It should be noted that the European Court of Justice (“the ECJ”) has yet to adjudicate on certain issues that have arisen concerning public authorities’ ability to charge for environmental information and the costs that could be included as a “reasonable amount”. The issues listed below may affect how the Council calculates a “reasonable amount” for the purpose of charging for EIR requests.

### Staff Time in Dealing with EIR Requests

The ICO has accepted that public authorities’ costs attributable to staff time spent on dealing with a request for environmental information can be included when calculating reasonable costs for the provision of the information.

Where a charge is made that involves a cost attributable to staff time, the Council shall have a clear audit trail showing how its costs have been calculated.

### Overheads

Overheads and other office costs such as staff training, heating or lighting will not be included in any charges that the Council may make for the provision of information under the EIR. The Council shall however reserve the right to revisit this in future should the ECJ rule that such costs can be considered in calculating a reasonable charge.

### Disbursements

The Council is able to charge for disbursements such as postage costs or the photocopying or printing of data records. These costs will be included in any “reasonable amount” levied for the provision of environmental information.

The Council will not charge more than the actual, direct cost of producing the material for the Applicant.

### Publication of Charges

The Council will publish and make available to Applicants a Schedule of Charges. The Schedule will be capable of being scrutinised and tested to ensure that the charges are fair and reflect relevant and permissible costs incurred by the Council.

To reduce the prospect of complaints being made to the ICO (and possibly depriving the Council of the right to impose a fee for dealing with EIR requests), the Council’s Schedule of Charges shall:

- Include the basis on which the charges were calculated.
- State the circumstances in which environmental data can be provided free of charge.
- Feature all the options available for obtaining environmental data (including the circumstances in which data can be inspected for free) and each option’s charge. These options shall be listed in one place on the Council’s website.
- Provide the circumstances in which charges will be waived.

The Council shall take account of the provisions of the EIR, guidance from the ICO, and judicial decisions before reviewing the Schedule of Charges.

## PART 13: Implementation and Compliance

It is the responsibility of each Head of Service employed by the Council to ensure that their services and staff comply with the duties of the Council outlined in Part 4 of this policy and that the environmental information held by their service is treated accordingly. The responsibility for complying with the EIR rests on the Council service or team that holds the environmental information in its most original and unprocessed form.

It is the responsibility of line managers to ensure that their staff receive information and training about this policy, and that the policy forms part of any induction of all new staff.

All staff of the Council will adhere to this policy and are responsible for identifying when a request is for environmental information and falls under the EIR, whether it is expressed by the Applicant in such terms or not. All requests should be logged with the Council's Compliance Officer. Failure to comply with this policy may be a disciplinary offence.

## PART 14: Review and Monitoring

This policy will be reviewed by the Council's Corporate Resources service after two years. The Council reserves the right to change the terms of this policy from time to time in order to comply with legislative and legal requirements or as otherwise necessary.

In the event that this policy conflicts with a decision of the courts or guidance from the ICO, the decision of the courts or guidance from the ICO shall be given precedence.