

How to: use your right to know



Getting hold of information held by public authorities can dramatically transform your campaign and put you in a much better position to argue your point. New rights of access to information come into force on 1 January 2005. Friends of the Earth's Legal Adviser Phil Michaels tells you how to make best use of your rights

Your right to know

From 1 January 2005 you will have a right to see and copy huge amounts of information held by all public authorities and by some private bodies, unless it is protected by a specific exception (ie unless there is a legally stated ground on which an authority is allowed to withhold information).

Knowing how to make use of these powerful new legal rights of access is an essential tool for any environmental campaigner. This guide provides

key tips for using the laws and enforcing your rights.

Environmental information is much more than just data. It can include or be included in expressions of opinions, reports, letters, analyses, studies, notes of meetings, telephone recordings, emails between authorities, and much more.

Making a request for information only takes a few minutes but it may change your campaign forever.

What is Environmental Information?

A very broad definition of environmental information is set out in the Environmental Information Regulations 2004, to cover any information in any form on:

(a) the state of the elements of the environment, such as air, water, soil, land, biological diversity, genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, emissions, discharges and other releases into the environment;

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting

or likely to affect the environment or designed to protect it;

(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 (in (a)) or the factors or measures in (b) and (c).

Your request for information

Access to environmental information is governed by the Environmental Information Regulations 2004 (EIR). Access to all other information is governed by the Freedom of Information Act 2000 (FOIA). Remember, these rights are in addition to the powerful rights that you already have to information held by Local Authorities and your rights of access to information held on public registers.

Some features common to all requests for information

- Authorities must respond as soon as possible and at the very latest within 20 working days (four weeks).
- Authorities must give detailed reasons for any refusal to release information.
- Authorities have a legal duty to provide advice and assistance. This means that they must help you to draft your request where you need such help.
- You have a legal right to a free appeal to the Information Commissioner if you are refused information or if your request is not treated properly. Before you do so you should first of all make a formal written complaint to the authority that refused your request and ask them to reconsider.
- There are limits to the amounts that may be charged for information. Authorities must have a charging scheme which you can consult.
- The Government has published Codes of Practice (see Links below) for how authorities should comply with their new obligations. These are a useful resource for you to check that your rights are being respected and that authorities are behaving properly.

Some key differences with requests for environmental information

- Requests for environmental information need not be in writing (they have exactly the same legal effect if you ask for information by phone or in person).
- The grounds on which authorities can refuse to release environmental information are much narrower (and there are less of them) than for other information.
- The grounds on which authorities can refuse to release environmental information only ever apply where the public interest has been assessed and favours withholding the information.
- The Freedom of Information Act (FOIA) only currently applies to classic 'public authorities'. The Environmental Information Regulations (EIR) also apply to a large number of private bodies including waste companies, water companies, power generating companies, airport operators and others. That means that you can write directly to those companies and request environmental information and they must give it to you.
- Members of the public have a legal right to have a refusal reconsidered (for free) by the same authority that refused to release the information.

Links

Information about the law on Freedom of Information is on the Government's website: www.foi.gov.uk

Information by the Campaign for Freedom of Information: www.cfoi.org.uk

Information Commissioner's website: www.informationcommissioner.gov.uk

Draft Environmental Information Regulations 2004: www.defra.gov.uk/corporate/consult/envinfo/annexc.pdf

Draft EIR Code of Practice: www.defra.gov.uk/corporate/consult/eir-guidance

Copy of the Freedom of Information Act: www.cfoi.org.uk/foiact2000.html

Freedom of Information Act Code of Practice: www.foi.gov.uk/understand.htm

We will be providing a detailed guide to *Your Right to Know* before the end of the year. To get your copy or to get a copy of the introduction of *Your Right to Know* in the last issue of *Change your world*, please email right2know@foe.co.uk or telephone Jo Savy on 020 7566 1695. You can also use these contact details to let us know how you are getting on with the new Right to Know system.

Using Right to Know successfully

In the pipeline

Earlier this year Friends of the Earth wrote to the Export Credit Guarantees Department (ECGD) to request a report which ECGD had commissioned into the safety of the Baku-Tbilisi-Ceyhan pipeline. ECGD refused to release it to us saying that it was commercially confidential and arguing that they were not subject to the (old) Regulations.

Eventually, after many letters and the threat of legal action, the ECGD released the information to us as they were legally obliged to do. The information was hugely helpful in our campaign work.



Nick Cobbing/Friends of the Earth

Pipeline scrutiny: ECGD tried to withhold safety information on the pipeline but couldn't in the end. This sort of information should be easier to get under the new regulations.

Making an impact

Dave Binns of the IMPACT group in Teeside was concerned about a local project that involved the large-scale demolishing of homes. He asked for copies of information sent from the Local Authority to the Deputy Prime Minister about the scheme. The Authority refused to provide this because it had

been advised by the Office of the Deputy Prime Minister not to release the information. Because that advice is irrelevant in law, Dave challenged their refusal by writing again to demand the information and assert his rights. He was given the information he wanted which turned out to be

really helpful to the campaign. Dave said:

“ It gave power to our elbow and showed them that we knew what was going on. The information that we got exposed some of the dealings that we had long suspected.”

Out of site

Earlier this year Friends of the Earth Northern Ireland asked Cookstown District Council for documentation on a recently closed landfill site about which they had serious concerns. Our campaigners had asked for copies of on-site inspections and reports concerning the closure of the above site. The Council responded saying that “the information relating to the closure of [the] Landfill Site is not

available for release to the general public”. No reason was given. When pressed further, the Council wrote back refusing to release the information because “it is deemed commercially sensitive”. Eventually, Friends of the Earth's Right to Know team wrote to the Council. The information was provided within 14 days. The information we obtained highlighted a serious gap in Northern Ireland's regulatory

system. Northern Ireland Campaigner Declan Allison said:

“ It is very empowering to know you have a right to the information. The law is on your side so don't accept any excuses, false claims or delaying tactics. Keep at them, embarrass them in the media, threaten them with the law if you have to, and they will eventually give in.”

▶ Top tips for your information strategy

- ★ Focus your request on what you really want. Asking for “all files relating to” something risks running up costs and creating delay.
 - ★ If your request involves a great volume of records, suggest that the Authority contact you to discuss your request – this could save you time and money.
 - ★ Be specific. Help the authority by giving them as much information as possible.
 - ★ Let the authority know if there is some information you need particularly quickly, so they can release it to you before they have searched for the remainder.
 - ★ If the information is needed particularly quickly set the authority a deadline. They do not have to comply with it but have a duty to respond as soon as possible and to take your deadline into account.
- ★ You do not have to say why you want the information but sometimes it will help the authority to locate exactly what you want if you explain the background. **They have a duty to advise and assist you even if it is not in their interests to do so.**



▶ Practical tips for making a request

- ★ For environmental information you do not have to put your request in writing, although it is best to do so. In all other cases your request must be in writing. Your letter or email must include your name and an address at which the information can be sent to you.
 - ★ Ask that they tell you the cost in advance, or that they need not do so if the cost is going to be less than a specified sum, for instance £10.
 - ★ Remind them that the information must be provided to you “as soon as possible” (EIR) or “promptly” (FOIA) and that you expect to receive the information within two weeks.
- ★ Explain that the information is needed urgently and, if you are happy to do so, why, for example because you need it to prepare your evidence for a public enquiry or because you are working with a journalist on a story.
 - ★ Keep a copy of all correspondence to and from the authority. You'll need it if you appeal later.
 - ★ Keep a record of any phone conversations – the date, what was said, who you spoke to.
 - ★ Follow a phone call up with a letter addressed to the person you spoke with.

▶ Practical tips if you are refused information

- ★ Let us know. Email: right2know@foe.co.uk. We may not be able to help but we will certainly try.
- ★ Look at the Code of Practice and Guidance Notes (see Resources); these will help you to interpret the exceptions.
- ★ Carefully check the letter of refusal against the relevant provision of the law. Do they match up?
- ★ Authorities must first of all weigh up the public interest in withholding information against the public interest in the particular exception. In such cases, they may only withhold information where the public interest in withholding information is stronger. Have they done this? Are there public interest reasons that they have not considered?
- ★ When in doubt send them a letter asking them to reconsider their refusal and explaining clearly why you think that they have got it wrong. If you are still refused then you should consider applying to the Information Commissioner.