



Freedom of Information Act 2000

Environmental Information Regulations 2004



1. Introduction to information rights legislation

This advice note provides guidance on the implications of the Freedom of Information Act 2000 (FoIA) and Environmental Information Regulations 2004 (EIR) for all award partners managing grant schemes on behalf of the Big Lottery Fund (BIG).

1.1 Freedom of Information

The FoIA received Royal Assent on 30 November 2000 with access rights commencing on 1 January 2005. The FoIA gives any person, of any nationality, anywhere in the world the right to request official information from a variety of public authorities (and select other bodies), subject to certain exemptions. Over 100,000 public authorities fall under the FoIA including all Government departments, the Police, schools Local Authorities, schools and non-departmental public bodies. Schedule one of the FoIA is a list of all organisations falling under its provisions.

BIG is legally bound to comply with FoIA, and has a rigorous policy in place to do so. By entering into a contract with BIG, to deliver grant schemes on our behalf, we would expect that award partners do all they can to deal with requests for information in accordance with the spirit of the FoIA, regardless of its legal obligations to do so.

Where BIG receives a request for information held by an award partner we are still required to comply with the FoIA. This advice note provides some basic information on FoIA, which can be viewed at: <http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

1.2 Environmental Information Regulations 2004

The EIR provide very similar access rights to FoIA and also came into force on 1 January 2005, however it only relates to information regarding changes to the state of any elements of the environment. The definition of environmental information is very wide and the exceptions to release are narrower. The definition includes any information held on the state of the elements of the environment, such as air and

atmosphere, water, soil, land, landscape and natural sites. It also includes information relating to energy, pollution, the state of human health and safety and environmental policy.

We would recommend that where award partners feel they hold information, which could be categorised as environmental information, they ensure they are aware of the obligations the EIR imposes. Importantly the EIR does not just cover public authorities listed in schedule one of the FoIA it also applies to “any other body or other person, that carries out functions of public administration” and “any other body or person that is under the control of a public authority and has public responsibilities relating to the environment; exercises functions of a public nature relating to the environment; or provides public services relating to the environment.”

Two important further distinctions from the FoIA are that:

- ▶ EIR requests can be made verbally; and
- ▶ There is an explicit presumption of disclosure in response to all requests.

The EIR can be viewed at: <http://www.opsi.gov.uk/si/si2004/20043391.htm> and DEFRA provide detailed guidance on its website <http://www.defra.gov.uk/corporate/opengov/eir/index.htm>

2. Implications for award partners

2.1 Our obligations

This section explains how BIG's obligations under information rights legislation might affect you.

Any individual can make a request in writing for any information held by a public authority. Unless an exemption applies, the authority has a duty to inform the individual whether or not it holds the requested information, and if so, to provide a copy of that information within 20 working days of receiving the request.

2.2 What we would expect from you

Although your organisation may not have the same legal obligation to respond to requests under the legislation, our expectation is that you would follow its principles when distributing money on behalf of BIG. Furthermore, information held by us about your organisation may be subject to disclosure if requested by any third party. BIG will disclose this information unless any relevant exemptions are applicable (see annex A); we would expect you to have an equally open approach.

2.3 If we receive a request regarding your organisation

If we receive a request for information about your organisation, as a courtesy, we will contact you before its release. We would expect you to do the same if you are releasing information about BIG.

If we receive a request for information held by your organisation we would either ask you to release the information directly or transfer the information to us to consider the use of exemptions. If we request that you transfer the information we would expect this to be done as soon as possible.

The only occasions where we would not expect you to transfer the information are where either:

- ▶ The information is already in the public domain

- ▶ We are happy for the information to be routinely released; or
- ▶ Locating the information would be over the cost limit (Section 12 of the FoIA, see annex A).

2.4 What you should expect from your grant recipients

When awarding grants you should also make your grant recipients aware of the possible implications of the FoIA and EIR. Your terms and conditions should not include confidentiality agreements which prevent documents being shared with you should you require them and that you may be required by law to make information public.

2.5 Openness is the key

The contents of this advice note should not be alarming. Experience of responding to FoIA and EIR requests at BIG has shown that openness is the best policy. For example, when an organisation requests a copy of its assessment report under FoIA it is better to provide it directly to the organisation as constructive feedback with additional contextual information rather than formalising as an FoIA request. BIG has been doing this since April 2007 and has received no complaints with this approach.

BIG would encourage award partners to release information on request and only transfer requests to BIG as formal FoIA or EIR requests when they have genuine concerns about the information being in the public domain.

3. Further information on FoIA and EIR

Anyone, anywhere in the world, can apply to have access to any information held by organisations that are legally required to comply with the FoIA and the EIR, no matter in what form it is held. This includes everything from paper files to electronic documents (including internal and external email) and information on video or audio tape.

The individual requesting information does not have to say why they want the information, and even if provided, this reason should not be taken into account when deciding if information should be released. If no reason is provided we would not question the motive.

The applicant can specify the manner in which they wish to receive the information e.g. electronic, paper copy or to actually inspect the record. The FoIA and EIR are fully retrospective, meaning that applicants can ask for any information irrespective of its age.

The FoIA does not extend the provision of personal information about the applicants themselves; such requests are still handled under the provisions of the Data Protection Act 1998 (DPA).

3.1 What counts as an FoIA request

Requests for information must:

- be in writing, in a permanent form (including emails and faxes)
- state the name of the applicant
- state an address for correspondence (email address is acceptable)
- describe the information requested.

A request can be made to any part of an organisation, including any regional or country offices.

Once a request is received (by any person within the organisation) you only have 20 working days in which to respond. 'Working days' are all days except for weekends, Christmas Day, Good Friday, and

Bank Holidays as set out in the Banking and Financial Services Act 1971.

3.2 Exemptions to disclosure under FoIA

There are a number of exemptions to the general rights of access; a full list of the exemptions under FoIA can be seen in annex A. Under FoIA exemptions are separated into two categories, qualified and absolute. Qualified exemptions should be considered in two stages:

- ▶ Does the exemption apply to all, or part of the information requested?
- ▶ Does the public interest in applying the exemption outweigh the public interest in disclosing?

Some qualified exemptions are also subject to a prejudice test. This means that in order for the exemption to apply you must be able to demonstrate how release would be prejudicial. Exemptions subject to the prejudice test are marked with a P in annex A.

Absolute exemptions are not subject to the public interest test.

Even if an exemption applies, it does not necessarily prevent us from disclosing the information. We must also still confirm whether or not the information is held by us. BIG has an open and transparent approach to FoIA, therefore exemptions are only be used where we consider it absolutely necessary.

3.3 Exceptions under the EIR

For all exceptions under the EIR there is an explicit presumption of disclosure for release of any information within the scope of the EIR. There are some exceptions for release, listed in annex B but the threshold of non disclosure is set very high.

3.4 Publication scheme

The FoIA also requires public authorities to be proactive in the release of official information by maintaining a Publication Scheme to help pre-empt individual requests. The Publication Scheme lets people know the types of information Big Lottery Fund makes available and what format it is in. Award partners are not required to produce a Publication Scheme unless they are listed in schedule one of the FoIA.

3.5 Records management

The legislation is only as useful as the quality of the records to which it provides access. Therefore it is essential that records are reliable, can be found easily and that archiving and destruction policies are adequate.

Good record keeping is vital for the smooth day to day running of our business. The Code of Practice on the Management of Records under section 46 (<http://www.opsi.gov.uk/acts/acts2000/00036--i.htm#46>) of the Act gives guidance as to the practices it would be desirable to follow.

3.6 Refusals and appeals

Under section 17 of the FoIA, a public authority must provide reasons for refusal to provide information when requested; this includes quoting the exemption/exception applied, any relevant public interest arguments and information of how to complain.

If the individual is not content with the response they receive they can apply for an internal review by BIG's chief executive.

3.7 Enforcement

The Information Commissioner (ICO) administers and oversees FoIA, EIR and DPA. Failure to comply with the provisions of any of these Acts (including

missing deadlines for replies) may result in the ICO taking enforcement action. This action is only likely if such failure is deemed to be systematic rather than a one-off incident.

The ICO can also issue decision notices where an individual is not happy with the outcome of an internal review. If the ICO decides against the public authority they must release the information or appeal the decision to the Information Tribunal.

Receiving an enforcement, information or decision notice would be embarrassing for BIG and raises the potential for compensation payments to be awarded to individuals. Failure to comply can result in contempt of court and criminal convictions.

3.8 Contact at BIG

For further information or general queries regarding FoIA and EIR contact Robert Holland, Head of Corporate Governance, on 020 7211 3736 or <mailto:foi@biglotteryfund.org.uk>

It would be helpful for each award partner to provide a designated contact point for FoIA and EIR. This is the person who will be responsible for contacting BIG when a request (which cannot be dealt with by the award partner) is received and will also be the person BIG will contact if they receive a request about the award partner.

Annex A

Exemptions under the FoIA

Below is a list of the exemptions and a short description of the exemptions which are more likely to be relevant to documents relating to grant funding.

Section 21: Information accessible to applicant by other means (Absolute)

Information, which is “reasonably accessible to the applicant”, is exempt. For example any information available on your (or another organisations) website. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g21

Section 22: Information intended for future publication (Qualified)

Exempt if it is intended for future publication, whether or not a date has been determined. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g22

Section 23: Information supplied by, or relating to, bodies dealing with security matters (Absolute)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g23

Section 24: National Security (Qualified)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g24

Section 26: Defence (Qualified) P

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g26

Section 27: International Relations (Qualified) P

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g27

Section 28: Relations within the United Kingdom (Qualified) P

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g28

Section 29: The economy (Qualified) P

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g29

Section 30: Investigations and proceedings conducted by public authorities (Qualified)

Information is exempt if it is subject to a criminal investigation or criminal proceedings. Information is also exempt where it was obtained from confidential sources, for example an informer. If an award partner or BIG was investigating criminal activity it may be

possible that this exemption or part of section 31 is relevant.

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g30

Section 31: Law enforcement (Qualified) P

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g31

Section 32: Court records (Absolute)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g32

Section 33: Audit functions (Qualified)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g33

Section 34: Parliamentary Privilege (Absolute)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g34

Section 35: Formulation of government policy (Qualified)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g35

Section 36: Prejudice to effective conduct of public affairs (Qualified) P

Exemption only applies if, in the reasonable opinion of a specified qualified person (for BIG – the Chief Executive), disclosure would prejudice issues such as maintenance of the convention of the collective responsibility of Ministers of the Crown. Or if disclosure would inhibit free and frank provision of advice or exchange of views. As the exemption is so broad, it would need to be explained very precisely to the applicant how the conduct of public affairs would be prejudiced by disclosure.

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_3#pt2-l1g36

Section 37: Communications with Her Majesty and honours (Qualified)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g37

Section 38: Health and Safety (Qualified)

Information exempt if its disclosure would, or would be likely to, endanger the physical or mental health of any individual or endanger the safety of any individual.

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g38

Section 39: Environment Information (Qualified)

Disclosure of environmental information is governed by the EIR. This exemption is to ensure that requests for environmental information are responded to under EIR and not by the general provisions of the FoIA. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g39

Section 40: Personal Information (Part absolute and part qualified)

Information about the applicant – requests made for information regarding the individual requesting information is an absolute exemption under FoIA. This is not to refuse the request but to ensure that the right of access is exercised under the subject access provisions of section 7 of the Data Protection Act 1998 (DPA).

Information about a third party

– requests made for information about someone else, an exemption applies if disclosure would breach one of the DPA Principles. This is to ensure that personal information is not released against DPA principles. For example personal telephone numbers on correspondence could be ex-directory and should be withheld. The names of members of staff would not normally be withheld. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g40

Section 41: Information provided in confidence (Absolute)

Information obtained from any other person, including another public authority and disclosure of that information would constitute an actionable breach of confidence. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g41

Section 42: Legal professional privilege (Qualified)

Exemption applies if a claim of legal professional privilege could be maintained in legal proceedings. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g42

Section 43: Commercial interests (Qualified) P

Information is exempt if it constitutes a trade secret. Information is also exempt if disclosure would, or would be likely to, prejudice the commercial interests of any person. A 'trade secret' is understood to be something that a business would consider as giving it a commercial advantage over its competitors.

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g43

Section 44: Prohibitions on disclosure (Absolute)

http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_4#pt2-l1g44

Other section within the FoIA that could prevent disclosure.

Section 12: Exceeds cost limit

It is also possible that a request could be refused on the grounds of cost. Section 12 states that you do not have to comply with a request if it would exceed the appropriate limit. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 set out the appropriate limit which is £450 which works out as 18 hours staff time (assuming £25 per hour) for non departmental public bodies. <http://www.opsi.gov.uk/SI/si2004/20043244.htm>

Section 14: Vexatious or repeated requests

A public authority is not obliged to comply with a request for information if the request is vexatious. Also if we have previously complied with a request for information we are not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_2#pt1-pb1-l1g14

Annex B

Exceptions under the EIR

Exceptions to the duty to disclose environmental information

All of the exceptions below can be applied if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information and a public authority shall apply a presumption in favour of disclosure.

The exceptions in the EIR can be separated into three categories. Class based exceptions; procedural exceptions; and exceptions to cover the release of information which could 'adversely affect' one of the matters listed.

<http://www.opsi.gov.uk/si/si2004/20043391.htm#12>

Class based exceptions

Regulation 12(3) – personal information

To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

<http://www.opsi.gov.uk/si/si2004/20043391.htm#13>

Regulation 12(4)(d) – incomplete material

The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

Regulation 12(4)(e) – internal communications

The request involves the disclosure of internal communications. These communications can only be withheld if there is a strong public interest argument for maintaining the exception, remembering there is a presumption of disclosure.

Procedural exceptions

Regulation 12(4)(a) – does not hold information when the a request is received.

Regulation 12(4)(b) – the request is manifestly unreasonable

Regulation 12(4)(c) – the request is too general
You would be expected to provide advice and assistance if this was the case.

Adversely affect exceptions

Regulation 12(5)(a) – international relations, defence, national security or public safety.

Regulation 12(5)(b) – course of justice, conducting an inquiry of criminal or disciplinary nature

Regulation 12(5)(c) – intellectual property rights

Regulation 12(5)(d) – confidentiality of proceedings where such confidentiality is provided by law

Regulation 12(5)(e) – confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

Regulation 12(5)(f) – interests of the person who provided the information.

Only applies where that person was not under any legal obligation to supply it, did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and has not consented to its disclosure.

Regulations 12(5)(g) – the protection of the environment to which the information relates.

Other relevant regulations

Regulation 12(9) – Emissions

To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception.

For further information on Freedom of Information contact: Robert Holland on 020 7211 3736 or email: foi@biglotteryfund.org.uk