

The Environmental Information Regulations (EIR) 2004 Fees & Charges Policy

Illogan Parish Council

Date: January 2019

Summary

The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities.

The overarching purpose of the EIR is to encourage straightforward access to environmental information. However, in certain instances, public authorities can charge for supplying environmental information, but the charge must be reasonable and take into account the aims of the Regulations.

A routine charge for EIR requests should be avoided and the Policy sets out examples of the type of information that will and will not be charged for.

Information that is not deemed as environmental for the purposes of the EIR will be dealt with under the appropriate legislation (such as the Freedom of Information Act 2000, Data Protection Act 1998) and this Policy will not apply to such information.

Aims of the Policy

This Policy sets out when a charge may or may not apply and the process for applying the charge and has been based on guidance issued by the Information Commissioner's Office (ICO).

The Policy has been produced as it is essential that Council staff, Councillors and requestors are clear as to the type of information that is deemed as environmental under the EIR, what information will be subject to a charge under Regulation 8 of the EIR, what the charge will be and any special measures and exclusions to the general Policy.

The Policy applies to all employees and Councillors, as well as other workers (including casual and agency workers, secondees and contractors) employed by the Council.

The Policy has been produced to ensure that in applying any charges, these are balanced against the overarching transparency and access aims of the EIR.

Policy Details

The following considerations have been drawn up by referring to the Information Commissioner's Office (ICO) guidance "Charging for Environmental Information (Regulation 8)" Version 1.5 March 2016. Please refer to the ICO guidance document for fuller and more detailed information.

General Charging Principles

A charge can include staff costs (including overheads) in locating and supplying the information to the applicant, as well as disbursements costs. It cannot include maintaining a database, nor penalising an applicant for poor records management. A schedule of charges must be published, as well as information on when charges will be waived. A charge cannot be made for inspecting any lists, registers or information in situ.

What information can be provided with or without a charge?

The Council is mindful that although the EIR allow for a charge to be made in providing environmental information, this must be balanced against the general principles of making environmental information available where possible and to not routinely apply a charge. Therefore, the Council has used the approach that high level, factual information should be supplied without charge, whereas underlying and background information (such as email trails informing decisions or results, background documents, third party exchanges and information covered by a commercial charge) would be subject to a charge. This approach would allow the Council to adhere to the general principles of the EIR, in that information expected to be published would be provided free of charge where publication has not already occurred, whilst applying charges to information the EIR would not expect to be routinely published.

As a guide, the type of information that is likely to be supplied without charge includes:

- Information from Lists & Registers (see below for further information)
- Survey, emission or investigation results collated as part of the Council's statutory obligations

Information that is likely to result in a charge being requested includes:

- Email trails
- Background documents (in some instances)
- 3rd party exchanges

For a comprehensive overview of what constitutes environmental information, please refer to the Information Commissioner's Office guidance, What are the Environmental Information Regulations.

It should be noted, that even where the Policy provides for the release of information without charge, exceptions under EIR may be applied where relevant. This means that some information may be withheld for reasons under the relevant exception(s) and is dependent on the information being requested.

What is a reasonable charge?

The Council cannot include the cost of maintaining a database or register, but it can include locating, extracting and supplying the information, as long as poor records management does not mean that the applicant will be charged unfairly or excessively. The charge must not have a deterrent effect on the right to obtain the information.

The context of a request can influence the reasonableness test. Therefore, information supplied as part of necessary commercial transactions (such as a property search) may differ from a request from a local residents group concerned about pollution on their estate.

The intention of EIR is to increase public access to environmental information. Charges must be compatible with encouraging transparency and not be an obstacle. The general principle is that charges should not exceed the actual costs of producing the information.

Regulation 4 of the EIR require authorities to implement measures to improve access to environmental information. Therefore, if the Council has failed to make high level environmental information available such as through general publication on its website, it is unlikely that a charge can be made for staff time. The Council is also expected to make certain information available under the INSPIRE Regulations 2009

Where the Council requests a charge for environmental information, it must also offer advice and assistance to the requestor, so they can change or narrow the request to avoid the charge. Where a narrowed or different request is received to the original request rather than receipt of the fee, this will be deemed as a new request and the 20-working day time frame will start from scratch.

The Council must also be able to demonstrate how the fee was calculated, so that the requestor can understand the basis for the fee. The ICO will expect the Council to be able to justify the basis of this charge. This charge has been calculated at £17.12 per hour for the 2018/19 financial year. The charge amount will be reviewed at the start of each financial year as a minimum. Details of how this charge has been arrived at are included in our FOI/EIR Fees & Charges document.

Disbursements

The Regulations also allow for disbursements to be charged for in relation to EIR requests, such as photocopying charges for information supplied in hard copy format. The Council's standard charges will apply and as a guide, A4 copies are charged at 10p per sheet. Full details can be found in our FOI/EIR Fees & Charges document.

Commercial Charges

The general principle of the EIR, is that a charge should not exceed the cost of making the info available. However, there are exceptions to this such as when commercial considerations are taken into account and override the general principles of the EIR.

A market-based charge can be considered as reasonable where a commercial charge is normally applied and is necessary to ensure the information continues to be collected and published by the Council in a particular manner and were the charge to cease, the information would no longer be collated in this way. A commercial charge may also be applied if the Council is providing information from a specially run database and provides an indemnity with the information.

A Commercial charge could not generally be applied to statutory information that the Council is expected to keep or compile within the course of its role as a local authority, or to environmental data that is collected, for example, as part of a Council run project.

Details of many of our standard services and charges can be found on the Council's website.

Re-use of Information

Where the Council makes a charge for information, it cannot then charge for reuse of the information. In most cases reuse will be allowed under the Re-use of Public Sector Information Regulations 2015 and will generally be available to re-use under the Open Government Licence. This is to avoid "double charging" which the EIR prevents.

Public Registers & Lists of Information

The intention of the EIR is to allow the public free access to environmental information. Therefore providing lists and registers is one method of publishing some of these under the Council's Publication Scheme section, as well as on our general website are ways that we do this. This is an obligation under Regulation 4 to proactively and progressively disseminate environmental information held by the Council. This includes documents that the public are entitled to access under statutory legislation.

However, the EIR is not limited to statutory lists and registers and should include lists and registers compiled for a number of reasons. This also includes documents relating to decision making.

As highlighted earlier, the exception to this is where a list or register is not a statutory requirement and is only kept up to date on the basis of the Council carrying out a commercial, paid for activity. In this instance, where providing the information for free rather than applying a commercial charge would result in the ceasing of collecting this non-statutory information, the EIR allow for charging to occur.

Examination of information in situ

The Council cannot make a charge for the public to view information in situ at the Council offices. However, a charge can be made for preparing and obtaining the information to be viewed, if it is not straightforward to extract and therefore reasonable to apply a charge. Therefore, if the information can be viewed for free at an office location, then this option must be offered if proposing to charge the applicant for sending the information to them.

Schedule of Charges

The Regulations oblige the Council to publish a schedule of charges as part of the Council's Publication Scheme and should include when a charge can be waived. The following information must be included:

- Standard costs involved in the supply of information, such as the charge per sheet of photocopying and the charge for providing information in other formats.
- A list of priced publications.

- Any concessions offered to applicants such as pensioners and those receiving benefits.
- Circumstances where the supply of information is conditional on advance payment.
- An explanation of how charges for staff time will be calculated.

Full details of the EIR Fees and Charges can be found in the Fees & Charges section of the Council's Publication Scheme.

Advance Payment

The EIR obliges the Council to request payment within 20 working days of receiving the request and the applicant then has 60 days to return the payment. The clock pauses between the Council requesting and receiving the payment back.

Wherever possible, the Council will endeavour to issue the charge within 3 working days of the receipt of the request, in order to ensure that deadlines for responding to requests are met. To issue a charge, an EIR Fees Notice will be sent to the requestor, which outlines the fee payable, how the fee was calculated, how to make payment, how long the requestor has to make a payment and how to narrow down the request to avoid a charge (where possible).

Payment can be made by cash or cheque being sent to the Council office.

Refunds

If the cost of complying with the request turns out to be less than the Council's estimate, the balance will be returned to the requestor if it exceeds £5.

Affordability Issues

The Council recognises that paying a charge will not be financially viable for some people. The Council will therefore offer requestors reasonable advice and assistance in order to help them narrow down the scope of their request, to bring them within the charging threshold.

Manifestly Unreasonable Requests

Where it is estimated that complying with a request will exceed approximately 18 hours*, the Council will consider whether the request is in fact Manifestly Unreasonable under Regulation 12(4)(b) of the EIR and will use existing procedures for doing so. This includes applying the Public Interest Test and providing advice and assistance to the requestor in order to narrow down the scope of their request.

*The 18 hour timeframe is that used under the FOIA to determine if a request exceeds an appropriate limit.

Policy management

The Parish Clerk is responsible for implementing and managing the Policy, as well as ensuring relevant guidance and training is available.

Evaluation and review

As a minimum, the Policy will be formally reviewed every 12 months or earlier, if changes to legislation or ICO guidance occur.

Contact

Parish Clerk
Illogan Parish Council
Unit 2, Wheal Agar
Tolvaddon Energy Park
Camborne
Cornwall
TR14 0HX

Email: enquiries@illoganparishcouncil.gov.uk
Tel: 01209 711433

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