

Eden District Council

Resources Portfolio

22 February 2018

Responses to Consultation on Charging for Environmental Information Regulations 2004 (EIR) Requests

Portfolio:	Resources
Report from:	Deputy Chief Executive
Wards:	All Wards
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 To enable a decision to be made regarding the introduction of a charging regime for requests made to the Council under the Environmental Information Regulations 2004, following a three month consultation period.

2 Recommendation

- (1) That consideration be given to the consultation responses and objections received (as set out in Appendix A to this report); and that
- (2) Notwithstanding the objections received, the charging regime for environmental information requests as set out at Appendix B to this report be approved with effect from 1 April 2018, to include a charge of £25 per hour for staff time for locating, retrieving and extracting information and a charge for disbursements of 10p per A4 sheet for photocopying and printing and to also charge for the cost of postage.

3 Report Details

- 3.1 On 21 September 2017 (Res_4_9_17) Resources Portfolio agreed that:
- (1) a three month public consultation be commenced on a new charging regime under the Environmental Information Regulations 2004, to be publicised via the local press, the Council's website and social media.
 - (2) it be agreed that the consultation shall propose introducing a charging regime for environmental information requests with effect from 1 April 2018, to include a charge of £25 per hour for staff time for locating, retrieving and extracting information and a charge for disbursements of 10p per A4 sheet for photocopying and printing and to also charge for the cost of postage.
 - (3) in the event no substantive objections are received to the proposed charging regime:
 - i. delegated authority to be given to the Deputy Chief Executive to put in place the charging regime; and

- ii. the new charging regime to be clearly stated in the Council's Fees and Charges for 2018-2019 and the Council's Access to Information Policy.
 - (4) That in the event substantive objections are received and not withdrawn to the proposed charging regime, the objections be considered by the Resources Portfolio Holder with a view to making a final decision on the matter.
- 3.2 A three month public consultation on the charging proposals took place between 20 October 2017 and Friday 19 January 2018. A hard copy and online survey were made available for members of the public to respond.
- 3.3 A total of six responses were received to the consultation, two of which were in favour of the proposed charging regime and four of which were against. These responses are shown at Appendix A. Any personal data contained in the responses has been redacted, to protect the identity of the individuals concerned.
- 3.4 Of the two responses in favour of the proposed charges, only one submitted a reason, stating that 'Officer time is costly and added work load caused by information requests should be charged to the person making them.'
- 3.5 Of the four objections received, two replied that they would be less likely to submit a request under the proposed charging regime, one respondent said they would submit requests but wait to see what the charges were and one respondent said they would petition for environmental information to be accessible to all residents. The four objectors also raised the following points:
- Environmental information held by the Council should be freely available to anyone who pays council tax to Eden District Council;
 - Safeguards are required to ensure transparency and open government;
 - There should be a mechanism for petitioning the Council to release information free of charge;
 - Local newspapers and journalists should be able to request information free of charge;
 - Charges should only be levied on commercial organisations and bodies;
 - Individuals and non profit organisations should not have to incur charges when seeking information that impacts on local communities; and
 - The Council already receives tax payers money through Council Tax and therefore should be delivered at no extra cost.
- 3.6 It should be noted that the Council has a duty to provide certain environmental information free of charge, including viewing public planning files at Council offices and also registers such as the Public Register of Contaminated Land (which is also available on the website).

4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
- Decent Homes for All;

- Strong Economy, Rich Environment;
- Thriving Communities; and
- Quality Council

4.2 This report meets the Quality Council corporate priority.

5 Consultation

5.1 A three month period of consultation with the public has been undertaken.

6 Implications

6.1 Financial and Resources

6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-2019 as agreed at Council on 17 September 2015.

6.1.2 The Environmental Information Regulations 2004 ("EIR") only permits public authorities to recover their 'reasonable' costs. Therefore, a new charging regime under the EIR could only help towards recovering costs and it would not be permitted for the Council to make a profit from responding to such requests for environmental information.

6.1.3 The introduction of a charging regime for environmental information should increase income to the Council. Charging for environmental information requests at the rate of £25 per hour for staff time is expected to generate an estimated income for the Council in the region of £4,000 per annum, which is based on 175 requests per annum, involving an average of one hour each. However, this assumes the numbers of requesters who previously received environmental information free of charge would be prepared to pay the charge, which may not be the case in practice. The full implications of these changes is not known, as historical requests have not been analysed, due to the resource implications of undertaking such an exercise.

6.1.4 If approved, the EIR charging regime would be clearly stated in the Council's Fees and Charges for 2018-2019. The revenue budget for 2018-2019 does not include income for this service. It will be reviewed when the revised 2018-2019 revenue budget is prepared in Autumn 2018.

6.2 Legal

6.2.1 The Environmental Information Regulations 2004 give rights of public access to information held by public authorities. Regulation 8 allows a public authority to charge for making environmental information available. However, regulation 8(3) provides that any charge must not exceed an amount which the public authority is satisfied is reasonable. Regulation 8(4)-(7) of the EIR allows public authorities to require advance payment of a charge for making environmental information available.

6.2.2 Before a public authority is able to levy a charge under the EIR, regulation 8(8) requires all public authorities to publish and make available to applicants a schedule of its charges and information on the circumstances in which a charge may be made or waived.

6.2.3 In a ruling of 24 November 2015 relating to a complaint made to the ICO against Wolverhampton City Council, the Commissioner determined that a

charge of £25 per hour for staff time for locating, retrieving and extracting information in relation to a request made under the EIR was 'reasonable.'

6.2.4 In the case of *David Markinson v Information Commissioner* (EA/2005/0014 28 March 2006), the Tribunal ordered the public authority in question to adopt a guide price of 10p per sheet as the cost of photocopying.

6.2.5 A number of 'exceptions' apply under EIR, under which a refusal notice may be issued and which may be subject to a Public Interest Test.

6.2.6 The Council also receives requests for information under the Data Protection Act 1996, known as Subject Access Requests which incur a fixed charge of £10. However, this charge is to be removed when the General Data Protection Regulation comes into effect on 25 May 2018.

6.3 Human Resources

6.3.1 The introduction of a charging regime for EIR requests could potentially result in a reduction on the demand on human resources, as some requesters may not be willing to pay a charge and consequently their requests may not be processed. However, the legislation is clear that a charge cannot be used as a way to discourage people from making requests. There is no evidence available to indicate the likely extent of any reduction in requests.

6.4 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	All requests for information are treated equally, regardless of who the enquirer is. Assistance is offered to all those making a request for information.
Health, Social Environmental and Economic Impact	Increased transparency in local decision making has widespread benefits in society. However, in order to maintain those positive impacts, it is necessary to carefully and continuously balance the rights to access information with the need to protect personal and sensitive data.
Crime and Disorder	The Council has a duty to protect the personal and sensitive data it holds and has in place appropriate policies, procedures and systems to maintain information security.
Children and Safeguarding	The Council has a duty to protect the personal and sensitive data it holds, including any relating to children.

6.5 Risk Management

Risk	Consequence	Controls Required
Failure to provide information to the public required under	Public, financial or reputational harm (to the Council).	Annually reviewing and updating relevant policies.

legislation.		
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7 Other Options Considered

- 7.1 The charging regimes of a number of other local authorities were considered in the report to Resources Portfolio on 21 September 2017.

8 Reasons for the Decision/Recommendation

- 8.1 To arrive at a decision regarding the Council's recovery of costs associated with responding to requests for environmental information, as of 1 April 2018.

Tracking Information

Governance Check	Date Considered
Chief Finance Officer (or Deputy)	31 January 2018
Monitoring Officer (or Deputy)	30 January 2018
Relevant Assistant Director	

Background Papers:

Appendices: Appendix A – Consultation responses

Contact Officer: Deborah Garnett, Information Governance Manager

Charging for Environmental Information Regulations 2004 (EIR) Requests

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, October 20, 2017 9:11:50 PM
Last Modified: Friday, October 20, 2017 9:34:17 PM
Time Spent: 00:22:26
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **No**

Q2 Please state the reasons for your answer.

Where Eden District Council holds information relating to the natural environment, this should be freely available to anyone who pays council tax to EDC. It should not be the job of the council to specifically synthesize, assimilate or otherwise present information to suit any individual or group of individuals.

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **None**

Q4 What type of environmental information are you typically looking for? **None**

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **I have not made a request during the past two years**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **Other (please specify):**
I would petition for all information relating to the environment to be accessible to EDC residents.

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act?

Provide referenced environmental databases on the EDC website and provide residents with the ability to login and search these databases.

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say. **Respondent skipped this question**

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation). **Respondent skipped this question**

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, December 16, 2017 7:47:33 AM
Last Modified: Saturday, December 16, 2017 7:55:09 AM
Time Spent: 00:07:36
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **No**

Q2 Please state the reasons for your answer.

I'm unclear as to the safeguards to make sure that the council's operation is transparent and unfortunately there is a considerable history of UK bodies not operating in a transparent manner.

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **Between 1 - 5**

Q4 What type of environmental information are you typically looking for? **Waste / recycling**

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **As a local resident**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **I am less likely to submit a request under the proposed charging regime**

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act?

I would like to see specific actions to tackle the issue of open government, I don't see that in the current proposal. An example might be that where there is a petition for certain information with more than X local residents supporting this then the information is provided foc. Also a process where the existing reporting can be added to based again on local residents requesting this. A further step would be the ability of local newspapers and journalists to request information foc

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say.

CA10 1SD

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation).



#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, December 17, 2017 3:58:19 PM
Last Modified: Sunday, December 17, 2017 4:00:20 PM
Time Spent: 00:02:00
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **Yes**

Q2 Please state the reasons for your answer.

I deal with environmental information

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **None**

Q4 What type of environmental information are you typically looking for? **Air quality / pollution**

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **Respondent skipped this question**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **None, I will continue to make requests and am happy to pay the charges**

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act? **Respondent skipped this question**

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say.

Ca10 1hy

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation). **Respondent skipped this question**

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 18, 2017 9:12:54 PM
Last Modified: Monday, December 18, 2017 9:16:06 PM
Time Spent: 00:03:12
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **Yes**

Q2 Please state the reasons for your answer.

Officer time is costly and added work load caused by information requests should be charged to the person making them.

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **None**

Q4 What type of environmental information are you typically looking for? **Planning matters**

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **I have not made a request during the past two years**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **I will submit requests but will wait to see what the charges are before committing**

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act? **Respondent skipped this question**

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say.

Respondent skipped this question

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation).

Respondent skipped this question

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, January 03, 2018 4:53:32 PM
Last Modified: Wednesday, January 03, 2018 5:01:17 PM
Time Spent: 00:07:44
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **No**

Q2 Please state the reasons for your answer.

Charges should only be levied on commercial organisations and bodies. Individual and non profit organisations should not have to incur charges, particularly when seeking information that impacts on local communities.

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **None**

Q4 What type of environmental information are you typically looking for? **Air quality / pollution**,
Other (please specify):
Several of the above

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **In connection with a local community project or initiative**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **I am less likely to submit a request under the proposed charging regime**

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act?

As above in 2

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say. **Respondent skipped this question**

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation). **Respondent skipped this question**

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, January 15, 2018 1:20:34 PM
Last Modified: Monday, January 15, 2018 1:25:24 PM
Time Spent: 00:04:50
IP Address: [REDACTED]

Page 1: Background to proposals

Q1 Do you agree that the Council should introduce the charges proposed as of 1 April 2018 for responding to requests for environmental information, in order to help off-set the costs incurred in handling such requests? **No**

Q2 Please state the reasons for your answer.

Staff and the Council already receive taxpayers money through the Council Tax. It is their job to deliver not to charge extra.

Q3 How many times in the past two years have you made a request to Eden District Council for environmental information? **Between 1 - 5**

Q4 What type of environmental information are you typically looking for? **Planning matters**

Q5 If you have made a request to Eden District Council for environmental information during the past two years, in what capacity did you make it? **As a local resident**

Q6 What affect do you think the proposed charges would have on any future requests you may wish to make to the Council for environmental information? **I will submit requests but will wait to see what the charges are before committing**

Q7 Do you have any further comments or suggestions you wish to make on how the Council could change or improve the way it deals with requests for information under the Environmental Information Regulations, the Freedom of Information Act or the Data Protection Act?

The Council don't even reply to your FOI request. I have requested the same information 3 times with no reply apart from acknowledging one request and that was over a year ago. It appears everything is a secret at EDC and only those people with power and money are allowed to know - especially developers and their agents!

Q8 What is the name of your business or organisation (if relevant)? Please leave blank if you prefer not to say. **Respondent skipped this question**

Charging for Environmental Information Regulations 2004 (EIR) Requests

Q9 What is your postcode? It would help us to know where requests for environmental information are coming from. Please leave blank if you prefer not to say.

Respondent skipped this question

Q10 Please provide an email address if you would like to be kept informed of the outcome of this consultation (it will not be used for any purpose other than this consultation).

Respondent skipped this question
