

Section 28 of the Health and Safety at Work etc Act 1974 – what it does

Essentially, Section 28 restricts the disclosure of two types of information:

- information provided in compliance with a statutory requirement (eg, RIDDOR accident or ill-health reports, Safety Cases); and
- information obtained through exercise of powers to investigate (normally, under HSWA section 20)

Unless the person who provided it has given their consent, such information can only be disclosed in the circumstances provided for in section 28 - ie, for legal proceedings, or for the purposes of functions concerned with health and safety (HSC's, HSE's, inspectors', or others' as specified), or if otherwise permitted by law (eg, Data Protection Act 1998, Anti-terrorism, Crime and Security Act 2001).

For a disclosure to be lawful if done for the purposes of our functions, it must have a positive health and safety purpose. As the law presently stands, disclosure only for other, wider, 'public interest' reasons is not permitted.

**Release for the purposes of functions conferred on HSC/E
(Excerpt from *GAP 1* - HSE internal guidance to staff on Open Government disclosure of information to the public)**

1.B11 The purposes of HSC/E's functions, set out in Section 1(1) of the HSW Act, are concerned with:

- securing the health, safety and welfare of persons at work and
- protecting third parties against risks to health or safety arising from or in connection with work activities.

1.B12 Information covered by Section 28 may be released under Section 28(3)(b) if its release serves these broad purposes. For instance, disclosure would be permitted where:

- its object is to prevent harm to the public,
- it would serve a positive health and safety purpose, or
- there is concern amongst the public and disclosure can allay that concern.

NOTE 2

1.B13 The purpose of a disclosure determines whether it will be lawful, rather than the individual or body to whom the disclosure is made. Where HSE judges that the public, or sectors of the public, are in need of information for the purposes described above we are entitled to disclose it. The range of circumstances in which disclosure of information would serve a positive health and safety purpose is broad, and we should consider each case on its merits. However, the health and safety purpose must be broader than, for instance, meeting the natural concerns of relatives of victims who have died in accidents. The provisions of Section 28, as presently drafted, do not provide for such understandable concerns, in themselves, to constitute a proper reason to make a disclosure to victims and relatives of victims of accidents. Wherever possible we should look to provide information in these circumstances in a redacted form - ie, the information should be made available to the relatives of victims in a way which does not disclose commercially sensitive or other confidential material. In all cases of doubt the Solicitor's Office should be consulted, via normal Directorate/Divisional channels.

Release of information by inspectors for the purposes of their functions

1.B14 Section 28(7) places restrictions on the disclosure of information obtained through the exercise of powers conferred by Sections 20 (powers of inspectors) or 14(4) (powers of persons holding an inquiry). Section 28(7)(a) provides that such information may be disclosed so long as disclosure would be for the purposes of the functions of the person by whom the information has been obtained. Where the information is held by an inspector "his functions" can be considered to be the same as HSE's functions. However, in practice, it is likely that information obtained by an inspector is held by HSE. Legal advice holds that HSE, whilst not having exercised directly Section 20 powers in order to obtain the information, must be under the same duty not to disclose information other than for the purposes of its functions.