

Some examples of information we would like to release but Section 28 presently restricts us from doing so

When requested by a bereaved relative about a fatal injury at work or arising from a work activity - information which, in the case of a non-fatal injury, we would have been disclosed to the injured person by virtue of it being personal data under the Data Protection Act 1998

Living individuals have a right of access to personal information held on them, except in certain circumstances - for instance, not while disclosure would be likely to prejudice:

- the prevention or detection of crime
- the apprehension and prosecution of offenders; or
- health, safety or environmental regulatory activity.

HSE thinks it would normally be in the public interest for the same sort of personal information about a deceased person to be discloseable to that person's bereaved family. If such disclosure would be likely to cause the sorts of prejudice mentioned above, there are Exemptions in the FOI Act that could be applied until the possibility of such prejudice had passed.

Information provided to HSE by an organisation which subsequently ceases to exist or cannot be traced, thus preventing HSE from seeking consent to disclose the information

There have been instances where HSE holds information subject to Section 28 which we believe should be in the public domain. We might be confident that disclosure would not prejudice commercial interests, or be actionable for breach of confidence, or prejudice our enforcement or regulatory activity. But, because the information is subject to Section 28, and making it public would not actually be for the purposes of our functions, we are unable to do so at present without the consent of the provider.

In response to a request for such information we would try to obtain the consent of the provider. But, where the provider no longer exists, or cannot be traced, we would wish to be able to take account of the public interest in disclosure – ie, make the information publicly available unless the public interest otherwise requires us not to.

Retention of plans of abandoned mines and associated working papers.

Regulation 31 of The Management and Administration of Safety and Health at Mines Regulations 1993 requires the owners of abandoned mines to send certain plans and working papers to the Executive. Regulation 32 places a duty on the Executive to either retain them or make some other arrangements

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for them to be retained. Similar provisions have been around in one form or another for many years.

In practice plans relating to abandoned coal mines are kept on HSE's behalf by the Coal Authority, while plans relating to non-coal mines are kept in County Record Offices (County Archives).

The object of retaining plans of old mine workings is so that anyone contemplating working a new mine or new area of an existing mine can, by reference to the plans and papers, establish the nature and extent of any mine workings in that area so that they can ascertain the hazards they pose and plan to minimise risk accordingly. So in that respect, there is a genuine health and safety purpose. However, mining and local historians also regularly examine the plans during the course of their research and we do not object, although the health and safety purpose is arguable.

There is no doubt that this information is 'relevant information'. And, in the absence of proceedings or a 'purpose of functions', it should not be disclosed without the consent of the person from whom it was obtained. In practice we have never sought consent to disclose such information as everyone within the mining industry is aware of the importance of making accurate information available to future generations. The risks arising from incomplete information was amply demonstrated in 2002 with the entrapment of nine mine workers at Quecreek Mine, Pennsylvania, which flooded when the mine worked into uncharted waterlogged workings at an abandoned mine.

Some examples of information currently not disclosable under Section 28 which we would likely still withhold after Section 28 is brought in line with the FOI Act

Information which would reveal the detailed decision-making process and exercise of discretion by Inspectors in particular cases

Information relating to work involving genetically modified organisms (GMOs) or biological agents

Both “The Genetically Modified Organisms (Contained Use) Regulations 2000” (CU2000) and “The Control of Substances Hazardous to Health Regulations 2002” (COSHH) require duty holders to provide various types of information to HSE (either as part of a Competent Authority for CU2000 or to HSE directly for COSHH). In the case of CU2000, HSW s28 is specifically disapplied to the majority of the information obtained (Regulation 22 and 23) in order to establish a Public Register of information held within HSE (and elsewhere). Therefore harmonisation with FOI 2001 will have little effect on this data.

The limited information left from CU2000 and that gathered under COSHH would be subject to HSW s28. Essentially this information consists of notifier’s details and the organisms they work on. It is difficult to envisage a situation where FOI 2001 would alter what could be disclosed. In some circumstances information may be withheld for reasons of National Security (e.g. names and addresses of establishments that hold stocks of Anthrax would be withheld) and possibly on the grounds of Commercial Interest.

Information relating to complaints or ‘whistle-blowing’ by organisations, provided to Inspectors conducting investigations

The anonymity of individuals who raise with HSE concerns about health and safety shortcomings, either by their employer or someone else, is protected by the Data Protection Act 1998 (DPA) as well as HSWA S28. The DPA gives effect to an EU Directive, and therefore takes precedence over the allowances to disclose in HSWA S28. Consequently, even where it might otherwise have a positive health and safety purpose, HSC/E cannot, without their consent, release information which could enable a person making a complaint to be identified – except as provided for in the DPA. Nor, as a matter of policy, would HSE seek such consent. It is imperative that people

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have complete confidence that their anonymity will be protected when they speak out about health and safety shortcomings.

HSE considers that it is also important that organisations should similarly have confidence that their anonymity will be protected when they speak out about health and safety shortcomings. We believe that protecting such confidence is therefore in the public interest.