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HEALTH AND SAFETY COMMISSION

REVISED POLICY STATEMENT ON OPENNESS

A Paper by HILARY EVANS

Advisor(s): Susan Mawer

Cleared by Jonathan Rees on 23 November 2004

Issue

1. HSC policy on being open with information. Amendment due to the Freedom of Information Act 2000 coming into force on 1 January 2005.

Timing

2. Routine

Recommendation

3. That the Commission:
 - i. Approve the attached (Annex A) revised policy statement on openness to form the core of a new HSC leaflet on openness practice within HSC/E.
 - ii. Agree that the statement can be published in January without Appendix A if this has not been agreed by then.

Background

4. The Commission discussed the previous version of the Openness Statement on 4 June 2002 as part of its discussions on the openness policy and the advice HSC gives to Ministers (Paper HSC/01/213). The amendments discussed in that paper were not carried forward at that time as the section on ministerial advice had not been agreed.

5. This paper presents a further revised openness policy statement in the light of the coming into force of the Freedom of Information Act 2000 in January 2005, and the subsequent amendment of HSWA S28. It does not at this stage include the section dealing with advice to Ministers, which is being resubmitted, following Ministerial changes in the Department of Work and Pensions.
6. Handling advice to Ministers under FOI is dealt with in Department for Constitutional Affairs (DCA) guidance: Ministers are particularly anxious that the policy-making process is properly protected. Exemption 35, formulation of government policy etc. covers Ministerial Communications. It is subject to the public interest test. A balance needs to be struck between disclosing sufficient information to allow informed debate and protecting the space within which ministers are advised and formulate policy. The DCA guidance gives examples of public interest considerations both for and against disclosure. It will be important to consult with Ministers before finalising a decision on an FOI request. If the request relates to sensitive or significant information, or its release would create a precedent for Government, it should be noted that we *must* consult the joint DCA/Cabinet Office Co-ordination Unit .

Argument

7. HSC/E are already committed to open working. As the Commission is aware the Freedom of Information Act brings in a new dimension. The key difference is the move from a culture of generally withholding information if an exemption allows it, to a presumption of release unless the law prevents it or harm or prejudice would be caused. In this case the use of an exemption would need to be considered, applying a public interest test where an exemption requires it.
8. It is important that HSC's policy statement is in the public arena when FOI comes into force. If the section on ministerial advice has not been agreed by then it is proposed that we either publish the statement on the web site without reference to dealing with Ministerial advice or we include a description of current practice: that such advice is considered on an individual basis and where appropriate the Commission asks the Minister to agree to it being made open.
9. Following the publication of the statement, the existing HSE free leaflet, Policy Statement on Open Government (INDG179 (rev) leaflet will be amended in the light of both the new openness statement and the changes to the disclosure regime, as a result of the Freedom of Information Act 2000.

Consultation

10. Secretariat, Solicitors and HSSU

Presentation

11. A publicly available statement on HSC's openness policy is an important element of showing that HSC/E is an open and transparent organisation.

Costs and Benefits

12. Not relevant

Financial/Resource Implications for HSE

13. No significant implications in relation to the publication of the statement.

Environmental Implications

14. None

Other Implications

15. None

Action

16. To agree the revised policy statement.

HEALTH AND SAFETY COMMISSION

REVISED POLICY STATEMENT ON OPEN GOVERNMENT

1 The Health and Safety Commission (HSC) is committed to being open about what we do. This is a statement of our policy on openness.

2 HSC has a duty under the Health and Safety at Work etc Act 1974 (HSW Act) to ensure that employers, employees and the public are kept informed about health and safety at work matters. In practice, the Health and Safety Executive (HSE) carries out this duty on HSC's behalf, and HSE shares this policy on openness.

Our Aims

3 Our aims are to:

- share what we know;
- find out what information held by us people need, and try to provide it;
- inform, consult and engage with others on important proposals;
- consider information and views received about health and safety; and
- be open about how and why we make decisions.

4 We believe these aims will help us

- develop closer partnerships with everyone concerned with health and safety at work;
- be accountable;
- be trusted as a confident and independent enforcement and regulatory body; and
- succeed in delivering better health and safety.

5 In accordance with the Freedom of Information Act 2000, we will make all information we hold available, unless prevented by provisions under the Act. Situations where it is unlikely that we will be able to disclose information include when:

- the law prevents it; or
- we consider that harm or prejudice of a type identified by one or more of the exemptions found in Part II of the 2000 Act (such as prejudice to enforcement or prosecution, harm to people's health and safety, breach of confidence, prejudice caused by the disclosure of information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained) would be caused by its release".

These aims and principles apply to all of HSC/E's activities and the points below explain some of the ways in which this will be achieved.

Providing Information

Publication Scheme

6 As required by the Freedom of Information Act 2000, HSC/E operates a Publication Scheme that explains:

- what information we make available, and how to obtain it;
- what information we do hold is available from our offices or website;
- what information we provide free; and
- what we charge for, and how much we charge.

Once information is listed and available under the Scheme it is exempt from the FOI Act requirements to supply information on request. In these circumstances inquirers will be advised how or where to get the information they want.

Sharing Knowledge

Advice to Ministers

7 [Criteria to be inserted once agreement reached with Ministers.]

Reports on Incidents

8 HSE investigates many incidents, accidents and dangerous occurrences at work, and publishes reports:

- (a) when HSC has directed HSE to investigate and make a 'special' report under the HSW Act;
- (b) where it is clearly in the public interest that a report should be published, for example:
 - (i) where an accident gives rise to general public or local alarm leading to a need for explanation;
 - (ii) where we need to satisfy the public that the matter has been thoroughly investigated and all avenues for further action identified; and
 - (iii) where lessons for improving health and safety have been learnt and should be widely circulated.

Research

9 We carry out scientific research into health and safety issues and publish the results. The criteria for carrying out research are published on the HSE website.

Informing and Consulting on Important Proposals

10 When developing proposals for Regulations and Approved Codes of Practice, we ask the public for its views. We have a commitment to:

- consult early;
- write documents in simple language;
- give people time to respond; and
- report back on results.

Receiving Views and Information

11 We want to receive views from as wide a range of people as possible. Their views will be taken into account when decisions are made.

Making Decisions

12 We make information available about our decisions through:

Open Meetings and Papers, Minutes, etc of Meetings

The agendas, papers and minutes of our meetings are available on the Internet and from HSE's Information Centre. We hold some of our meetings in public to give a better understanding of our work.

Advisory Committees

HSC's Advisory Committees conduct their business openly and responsibly, and consult the public on policy issues. Agendas, papers and minutes are available on the Internet and some meetings are held in public.

Response to Consultations

We publish the analysis of responses to consultations and the decisions we make. This includes individual responses, unless respondents explicitly ask for their name not to be revealed.

13 In developing and improving this positive culture of openness, we will continue to consult and work in co-operation with the public.