

To:	Jane Kennedy	From:	Keith Pritchard, HSE
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		Date:	4 June 2004
		cc:	

**ALIGNING THE HEALTH AND SAFETY AT WORK ETC ACT 1974  
(HSA) WITH THE FREEDOM OF INFORMATION ACT 2000  
(FOIA)**

**Summary**

This submission seeks Ministers' agreement that powers in the FOIA are used to remove unnecessary barriers to openness in the HSWA. This will fulfill Action Point 39 in the Revitalising Health and Safety strategy jointly agreed by Ministers and the Health and Safety Commission June 2000.

**Issue**

1 That the Department for Constitutional Affairs (DCA) is instructed to amend section 28 of the HSWA using powers in the FOIA so as to make it compatible with Freedom of Information principles.

**Recommendation**

2 You confirm previous Ministerial agreement that DCA should amend HSWA section 28 on the basis of the draft Instructions attached at Annex 1.

**Timing**

3 Routine. DCA has asked for Instructions by the end of June. With your agreement, HSE Solicitors Office will finalise these Instructions on DWP's behalf and convey to DCA.

**Presentational Implications**

4 No adverse implications are anticipated. This amendment has broad support – as indicated in a consultation exercise carried out by HSC/E – and can be presented as a positive move that both the Government and HSC/E have long favoured.

**Consideration**

5 HSWA section 28 applies just to information that has been provided to HSE or Inspectors under a legal requirement or as a result of the exercise of statutory powers. Currently, unless the provider consents, such information may only be disclosed in limited circumstances – even if the public interest would otherwise favour such disclosure.

6 Bringing section 28 into line with Freedom of Information principles was an Action Point in the *Revitalising Health and Safety* strategy statement published in June 2000. It will enable HSC/E to take account of the public interest in making

information available, and balance this against any public interest in applying the exemptions available under the FOIA to protect information where there is a genuine need to.

7 The draft Instructions at Annex 1 were prepared by HSC/E Solicitors on behalf of DWP. Although not a formal requirement HSC/E, in the interests of openness and transparency, carried out a public consultation exercise to allow organisations and individuals the opportunity to consider and comment on the reasons for amending section 28 and how that can be achieved. A summary of responses is at Annex 2. DCA has responsibility for drafting an Order under section 75 of the FOIA seeking to give effect to the aims and objectives set out in the Instructions. It is intended that the amendment will come into effect on 1 January 2005, at the same time as the main provisions of the FOIA, including the general rights of access to information and the exemptions thereto.

### **Financial/Legal and Other Key Implications**

8 None arising from this amendment of HSWA section 28.

### **Clearance**

HSC Chair, HSE, within DWP – via HSSU.