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HEALTH AND SAFETY EXECUTIVE

The HSE Board

Freedom of Information: initial experiences in HSE

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Issue

1. Initial experience of providing greater public access to information under the Freedom of Information Act and the Environment Information Regulations (EIR) and the actions we should take to:
 - clarify whether Fol enables further openness for HSE or not
 - improve how we manage requests
 - provide further guidance and training

Recommendation

2. The Board are asked to note this report and agree the proposed actions at paragraph 21.

Background

3. This report summarises 6 weeks' experience of implementing the Fol Act from 4 January to 18 February. It covers requests made under Fol, EIR and the Data Protection Act (DPA).

Numbers of requests and noticeable trends

4. HSE received 704 requests in January, and 471 requests to 18 February, approximately 200 a week.
5. Currently, about 85% of these are requests for disclosure for civil proceedings, or subject requests made under the DPA. HSE met similar levels of requests before January. Most of these requests are processed within FOD divisional offices.

6. About 15% of enquiries cover other activities, and represent most of the 'real' increase in demand attributable to the Fol Act. While it is too early to see clear trends in this type of request, there is enough factual and anecdotal information to consider what HSE might do now.
7. Our experience seems similar to the general Fol experience in Eire. There was a steady increase in requests after a low level at first.
8. A small number of requests have been referred to the DCA clearing house to seek advice on interpretation about exemptions or to register 'round robin' requests.

Impact on Fol officers

9. Fol officers coordinate the management of enquiries in directorates. Most directorates have had few requests, and experience of handling them remains limited. The officers' main concerns are:
 - becoming familiar with new procedures, including using Freetrack¹
 - finding all relevant information quickly
 - communications and raising awareness
 - ensuring enough staff have been trained
10. Until the officers receive advice how Fol might apply to requests for disclosure for civil proceedings, they are looking for confirmation that they are complying with Fol. Advice on how Fol may apply to handling these requests is expected from our legal advisers in late March.
11. Recording these requests on Freetrack is perceived as burdensome. Improvements in report management and other features of the system are being made. The Fol Unit is rechecking with DCA the minimum reporting requirement for monitoring these requests.
12. The other requests – mainly about our enforcement activities – are being managed well by the officers. They are retrieving the relevant information as quickly as possible, usefully using Freetrack to monitor compliance and progress, seeking advice where necessary, and supporting decision makers.

Impact on decision makers

13. Decision makers decide what information should be disclosed, and most are Band1/2 staff. The time they take to make decisions is relatively small compared with the time they spend reviewing the information or seeking advice. Answering enquiries is taking some time. For example, one request in OSD took 28 hours to complete, and two requests in the Policy Group took 20 hours in total.
14. A few decisions makers have disagreed with the advice on disclosure from our legal advisers. The decision makers would welcome a clearer statement about HSE's desire to be more open within the Fol framework.

Impact on legal advisers

15. The demand on the time of our Legal Advisers' Office has increased sharply, as Fol officers and decision makers have sought advice on Fol exemptions and definitions. One case has taken 16 days of one legal adviser's time, with 4 days' input from other advisers. Some work has been reallocated among the legal advisers to help deal with this demand.

¹ Freetrack is the computer tracking system in which requests are logged and is used to monitor that the response time is met.

16. Working assumptions about disclosure of investigation reports, witness statements and actionable breaches of confidence will be completed for the end of March, and this guidance will assist further.

Outstanding work from the DCA and Cabinet Office, which will impact on HSE

17. The DCA is completing work on:

- ensuring that all parts of government are applying the same rules to keep within the 20 day time limit
- providing guidance on when to provide information or documents²
- confirming how the FoI Act applies to the rules of civil disclosure
- agreeing a memorandum of agreement with the Information Commissioner for handling complaints and appeals, including the release of information against a department's advice

18. The Cabinet Office is proposing further work:

- ensuring publication schemes³ meet a 'gold standard'
- releasing the background evidence when bills are published
- Identifying any further statutory bars to disclosure, and removing them
- proactive releases of advice
- simultaneous releases of information in response to enquiries
- providing guidance on handling enquiries during a general election.

19. The FoI Unit will coordinate HSE's responses to these initiatives. Two to note are

- the Chairman has proposed that HSC's advice to ministers should be proactively released, which is under discussion in Cabinet Committee on 7 March
- proactively publishing some information on the web site will reduce effort. For example, Press Office have recommended some regularly requested NuSAC documents be published on the website.

Lessons learned in HSE

20. These include

- Releasing information proactively reduces our burdens
- indicating which parts of documents are closed saves time making decisions
- Using aides-memoires encourages consistency
- pass requests to decision makers, legal advisers or FOI Unit quickly
- Requests can turn out to be simpler when clarified directly with the enquirer
- Staff need time to search for and retrieve information to ensure decision makers have time to complete their work
- Talk to colleagues to prevent requests getting lost
- The decision-making role needs clearer definition.

Action

21. We propose that RPD (FoI Unit), Legal Advisers and OPSD work to resolve current issues and seek to complete them before the end of March. These include:

² The FoI Act covers the provision of information

³ the publication scheme is on our website and identifies what kinds of information HSE has and whether it is routinely published. HSE is acknowledged as having a good scheme.

- ensuring we have got the internal messages about openness right, based on the guidance
- completing the initial guidance and advice about how the law should be interpreted for HSE's circumstances
- improving Freetrack reporting and functionality
- identifying any unresolved resourcing issues
- report back to the HSE Board in six months.