

Health and Safety Executive Board		Paper No: HSE/08/56	
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Freedom of Information Act (FOI) - Challenges for HSE			

Purpose of paper

1. This paper responds to a request from the Chair to inform the HSE Board of how HSE handles Freedom of Information Act (FOI) requests, the resources used, and the scope for further improvements in the handling of requests.

Background

2. It is important to recognise that, prior to FOI, HSE dealt with a high volume of requests for information. A large majority of these requests were from solicitors acting for people injured at work for information on their accidents. These requests have been rebadged from civil disclosure to FOI and they are the main reason why HSE is high in the league table of FOI information providers (see paragraph 5 and annex 1 for details). The change from civil disclosure to FOI resulted in some increase in traffic, estimated at around 5%. This was due to the fact the requirement to prove that civic proceedings for compensation had been started under the old regime, were lifted under FOI.

What the FOI Act requires HSE to do.

3. The Freedom of Information Act 2000 requires public authorities such as HSE to provide a right of access to recorded information held by such authorities. The Act also includes a number of exemptions, including information that may not be disclosed due to national security reasons; personal information; or information that is publicly available by other means etc. The FOI Act also establishes arrangements for enforcement and appeal.
4. In the event of non-compliance publicly visible enforcement action (including the issuing of Decision Notices, Enforcement Notices, and Information Notices) may be taken by the Information Commissioner's Office which carries with it significant reputational risks for an organisation. Ultimately non compliance may be referred to the High Court where it will be dealt with as a contempt of court.

Numbers of requests received.

5. Between 2005 and June 2008 HSE received 21,914 FOI enquiries. During this period we have had 136 requests for internal review (following a decision to refuse disclosure), and 22 appeals to the Information Commissioner (IC), three of which were found against HSE. As the following comparable figures show we have one of the largest levels of FOI related business across government departments, combined with one of the highest success rates judged by appeals outcomes:

- DWP: 4413 FOI enquiries received; 147 internal reviews; 71 appeals to the IC; appeals found against 10.
 - MoD: 11,648 FOI enquiries received; 236 internal reviews; 36 appeals to the IC; appeals found against 7.
 - DEFRA: 1,770 FOI enquiries received; 103 internal reviews; 28 appeals to the IC; appeals found against 14.
 - Food Standards Agency: 646 FOI enquiries received; 33 internal reviews; no appeals to the IC.
6. Annex 1 provides more information on the number of FOI cases received in HSE over a three year period. This includes details of the aggregate number of FOI requests received across government departments; an indication of the number of internal reviews that have been carried out in HSE following complaints against non disclosure of information; and, details of what stakeholders generate FOI requests.
7. Within HSE the majority of requests received are handled by FOD (90%), followed by HID (5%) and ND (1%). The range of issues covered by these requests include: routine requests for information on reported incidents from solicitors; requests to HID on land use planning related matters; requests to ND for information on nuclear installations; and, requests for information on public spending issues. The majority of requests to HSE originate from private solicitors and account for around 80% of all requests received by HSE. These types of requests are generally routine ones and have been dealt with by HSE prior to FOI implementation. Although a significant majority of cases can be classified as routine, HSE does receive requests for information from various stakeholders that are complex and can take anything from several hours to a number of weeks to clear.

Improvements in handling FOI requests.

8. Over the last two years a number of measures have been introduced to help improve the management of FOI requests in HSE, they include:
- FOD working instructions: introduced in November 2006 to support operational staff involved in handling requests for information contained in investigation reports. These instructions were produced in consultation with operational staff.
 - Freetrack: a tracking database to record and track progress with FOI requests.
 - Publication Scheme: Prior to 2005, when the access rights provisions of the FOI Act came into force, we took the initiative and published a full description of all the information that HSE made available to the public. This was done to aid transparency but also to manage demands for information arising from FOI. HSE's approach in this area was commended across government departments and we piloted the publication scheme with the Information Commissioner.
 - Training for HSE staff: continuing support in the form of formal training and/or provision of advice and guidance to HSE staff involved in clearing FOI requests. This is provided by the FOI policy unit in HSE's Information Management Unit, and also by lawyers in the Legal Adviser's Office (LAO).

Resources, Roles and Responsibilities.

9. HSE's FOI Policy Unit includes; 0.5 x Band 3; four x Band 4; plus 0.25 x Band 2.
10. FOI Officers (nominated officers at Bands 5/6 level) are the divisional network contact points for FOI, EIR (Environmental Information Regulations) and DPA (Data Protection Act) and provide general advice and guidance to staff. FOI Officers undertake an initial assessment of the request and depending upon the complexity will issue the request to a Decision Maker for a response.
11. Decision Makers (nominated officers at Band 2/3 level) are more senior members of staff required to make decisions on when DPA, FOI exemptions or EIR exceptions should be applied and where the balance of public interest lies.
12. Appeals Officers are usually Senior Civil Service (SCS) level (and who were not involved in the original decision). These staff decide whether the original decision against which a complaint is made should be upheld, partly upheld or overturned.
13. There are currently approximately 60 nominated FOI Officers at Bands 5/6 in FOD and 32 Decision Makers at Bands 3 and 2. In ND there are seven FOI nominated officers at Band 5 and 11 nominated Decision Makers at Band 2/1. In HID there are currently 36 nominated FOI officers at Band 6/5 and 17 nominated Decision Makers at Band 3/2.
14. There is currently no work recording data to carry out a detailed analysis of the resource commitments for HSE staff involved in handling FOI requests, although there will be a facility to record effort in this area following the roll out of the Universal Work Recording (UWR) system. In a worst case scenario, and based on the number of FOI Officers and Decision Makers in the operational directorates as set out in paragraph 13, it is estimated that the cost to HSE of this effort is approximately £3.8 million per annum (average salary costs). This is based on a working assumption of FOI Officers working full time on cases (which is not usually the case), and Decision Makers spending 10 hours per week on FOI work.
15. What this estimated costing does not show is the time spent by other staff who also contribute to FOI cases that do not have defined FOI roles, and this can often be quite considerable. There can be a significant loading placed on certain groups of HSE staff in the event of more complicated FOI cases. The recent FOI case with the Centre for Corporate Accountability required input over a short period of time from lawyers; operational staff (FOD and OPSD); HSE Secretariat; Chief Scientific Adviser's Group and the FOI policy unit.
16. Outside the operational directorates other staff in HSE that contribute to FOI cases include the Legal Advisers Office (LAO). It is estimated that LAO spend at least 156 days a year on providing advice on specific requests for

information; with appeals to the Information Commissioner; and possible appeals to the Information Tribunal. LAO is represented on the Government Legal Service Information Law Group chaired by the Ministry of Justice. A further example is Operational Policy and Support Division which estimate that their staff have spent in the region of approximately 680 hours on FOI related business in a ten month period up to July 2008.

17. There is the potential for further demands on HSE as new responsibilities are taken on (e.g. Pesticides Safety Directorate etc.). The Board may wish to note that following the introduction of UWR an update can be provided on the full extent of FOI related effort across HSE.

Argument

18. A recent case of a Decision Notice issued by the Information Commissioner's Office against HSE was reported to you in the Chief Executive's report of 27 August 2008 (reference HSE/08/46 – see Annex 2 for relevant extract of the report). We are reviewing the implications of this case. We are keen to ensure that there is appropriate senior management oversight of difficult cases that raise issues of generic policy significance for HSE. In future, we will refer such requests to the Head of Chief Scientific Advisers Group in the first instance for further consultation with relevant SMT and SCS colleagues, including LAO. This will enable the right balance to be struck between the requirements of FOI and any implications for HSE's policy and reputation.

19. The more information we proactively make available the more likely we are to manage down FOI requests. We are currently reviewing HSE's publication scheme (see paragraph 8) to see what more can we put into the public domain. For example, we might make available more information on those who have been killed at work and information on the costs of the organisation, such as the costs of consultants or our estates. These are both issues that attract FOI requests. However, we do not believe that putting information on accidents to individuals proactively onto the web is viable, and so this will remain the predominant demand under FOI.

Action

20. You are invited to note: how HSE handles FOI requests; how we are changing our approach to handling difficult cases in terms of decision making; and our review of the publication scheme. We will come back to the Board later next year to report on the effect of these changes, and on the resource picture as revealed by UWR.

Paper clearance

21. Sandra Caldwell (DCE).

Table 1: total FOI requests received in HSE 2005-2008.

	2005	2006	2007	2008 (to end June)
Total number of requests received.	6975	5714	5899	3326
% of requests processed within agreed timescale (20 days).	92%	93%	90%	90%

Table 2: total FOI requests received across 40 government departments and agencies 2005-2008.

	2005	2006	2007	2008 (to April)
Total number of requests received	38,108	33,688	32,978	8429
% processed within agreed timescale	87%	91%	91%	89%
HSE requests as a proportion of cross-government total.	18%	17%	18%	18%

Table 3: number of internal reviews carried out in HSE¹.

	2005	2006	2007	2008 (to end June)
Total number	29	38	35	34

Table 4: number of FOI requests to HSE from various external stakeholders.

	2007	2008 (to end June)
Media	58	31
Solicitors	4742	2649
General Public	624	408

¹ Internal reviews: carried out by HSE Appeals Officer following a decision not to disclose information.

Businesses	395	208
MP's	4	3
Campaign groups	48	21

Annex 2 – Extract from CE report to the Board dated 27 August 2008.

Freedom of Information Decision Notice: Centre for Corporate Accountability – Release of the Names of Deceased Accident Victims

15. On 21 July, the Information Commissioner's Office (ICO) wrote to HSE with its decision on a Freedom of Information (FOI) Act section 50 notice. David Bergman, of the Centre for Corporate Accountability, had asked HSE to tell him the names of those who had died as a result of incidents in the workplace reported in accordance with RIDDOR. HSE had refused, citing sections 21, 41, & 44(1) (a) of the FOI Act. Mr Bergman complained to the ICO which, after consideration, found that HSE should have provided the information requested. Last week HSE wrote to the ICO accepting the decision.

Note:

- Section 21 refers to the exemption covering information accessible by other means.
- Section 41 – the exemption covering information provided in confidence.
- Section 44 – prohibitions on disclosure.