

HSE guidance on the Freedom of Information Act 2000 and disclosure of information to the public

The purpose of this guidance is to provide a common, transparent procedure for all HSE staff on how to handle requests for disclosure of information, from the start to completion, in accordance with the Freedom of Information and Data Protection Act 1998 and the Environmental Information Regulations 2004.

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Identifying an FOI request

Most requests will be received directly into HSE, however, some requests will be received via HSE's Infoline and some requests will come directly from members of HSE staff.

Any request for recorded information is a request to which Freedom of Information Act procedures potentially apply. HSE has decided to deal with all information requests, whether received by letter, fax, email or verbally, under a common access procedure.

An FOI request will ask for information that:

- isn't part of our daily business under the Health and Safety at Work Act (eg a licence application or approvals)
- can't be accessed elsewhere (eg HSE website or publication)

When an applicant makes a request under FOI, the request:

- should be written down. NB: As many of HSE's information requests fall within scope of the EIRs, we accept verbal/telephone requests and a template is available for transcribing the information. (FOI enquiry form <https://www.hse.gov.uk/forms/foi/foi1.pdf>)
- must include the name and address of the applicant. A postal, e-mail or fax address are all acceptable. A Freedom of Information application template is available on the Internet for public use.
- Adequately describe the information required. NB: the applicant does not have to refer to the Act or justify the request.

Requests may later be dealt with under any access to information regime, for example, the Data Protection Act for personal information, but in the first instance, all are assessed under FOI principles.

Advice and assistance

Section 16 of the Freedom of Information Act 2000 places a duty on public authorities "to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

Examples of what is reasonable to provide in the initial stages of a request may include:

- advising a potential applicant of his or her rights under the Act;
- assisting an applicant to clarify a request
- advising an applicant if information is available elsewhere, and explaining how to access this (for example via HSE's publication scheme).

Receiving and validating a request

When a request for information is received anywhere in HSE the following action should be taken immediately by the member of staff who receives it:

- if the request is received as hard copy, date stamp it immediately.

- if it is received by telephone or face-to-face, transfer the request to the FOI enquiry form and agree the content verbally with the applicant

NB If the request is received by email or hard copy it does not need to be transferred to the FOI enquiry form

The validity of the request should then be considered by addressing the following questions:

- Is the request legible?
- Is it a request for recorded information?
- does it give the applicant's contact details?
- is it outside HSE's normal business activities?
- is the information unavailable elsewhere? (e.g. in an HSE publication or published on the web site)?

If the answer to all of the above is YES, it is a valid FOI request and must be forwarded to your divisional FOI Officer within 1 day of receipt.

If the answer is NO to any of the above, either transfer it to the appropriate HSE section as 'normal business' or handle as appropriate.

If unsure about whether the request is valid, refer to your FOI Officer.

Records management

Good records management is a key feature of FOI. Without it, finding and recovering requested information will be made more difficult than it needs to be. The following points are particularly important:

- HSE, like all public bodies, must keep full and accurate records of its activities as laid down in its records management policy. However information should not be kept any longer than is necessary to fulfill business needs and legal requirements and should be kept to timescales agreed in HSE Business Classification and Retention Schedule. This schedule is published on the HSE website.
- any information held on personal filing systems/drives by a member of HSE staff (even for their own use or records) falls under the category of 'unstructured information' and is, for the purposes of FOI Act, information held by HSE.
- the retention and deletion of e-mails can be a particular problem under FOI and all staff should follow HSE's Electronic Communications Policy.

Roles and responsibilities

HSE has established a network of FOI Practitioners to handle requests for information which may fall under FOIA or EIR. The following explains their roles and responsibilities.

FOI Policy Unit

The FOI Policy Unit has the responsibility to:

- manage Freedom of Information (FOI) in HSE (legislation includes access to information regimes covered by FOIA, DPA & EIR)
- liaise with Ministry of Justice on FOI
- provide expert advice and comment on Data Protection and FOI legislation.
- develop and maintain HSE's internal guidance and procedures on access to information legislation.
- act as central contact point for access to information policy issues, liaising with Legal advisers office (LAO) on a regular basis
- provide advice and comment on Environmental Information (EIR) and FOI legislation
- provide access to training for FOI Officers and Decision Makers.
- develop and administer HSE's Access to Information appeals procedure
- represent HSE's interests at cross-Whitehall Access to Information Practitioner's Group
- manage HSE's FOI system tracking/case management system and FOI related communications
- produce quarterly statistical returns for Ministry of Justice
- manage and develop the HSE Publication scheme and co-ordinates the publication of Information Releases on the website
- co-ordinate workshops and conferences

FOI Officers

The FOI Officer is responsible for:

- making an initial assessment to consider whether requests are valid
- managing requests on FOI tracking system
- assessing whether cost means that HSE may not be able to comply
- providing advice and assistance to applicants
- arranging for an Identified Officer to conduct a thorough search to establish whether HSE holds relevant information
- ensuring that information is retrieved in time to meet FOI deadlines where relevant
- ensuring that information is prepared for disclosure to applicant; in the format required; with exempt information redacted; and within 20 days of receipt of the request unless an extended date has been agreed
- referring the request to a nominated Decision Maker where exemptions may apply particularly those where the public interest must be considered
- transferring part of the request to another FOI Officer where the request covers cross-divisional information.
- monitoring the progress of cross divisional requests as the divisional owner of the greater part of information requested
- advising Identified Officers when fees have been received
- monitoring progress of all outstanding requests ensuring that at **day 15** Identified Officers/Decision Makers are aware of the impending deadline for a response where

substantial disclosures are planned which could attract media interest, informing Press Office and FOI Unit who will arrange simultaneous disclosure on HSE's website

- maintaining case files for FOI requests
- forwarding any Internal Review requests to the FOI Unit on day of receipt
- providing general advice on access to information (FOI, Data Protection and the Environmental Information Regulations) to divisional staff

Decision Makers

Decision Makers are responsible for:

- reading all the information requested
- advising the FOI Officer that more information/clarification is required in order to respond to the request
- considering whether the requested information falls under the EIRs
- considering whether any FOI exemption or EIR exception should apply to the requested information
- assessing where the balance of public interest lies when considering qualified exemptions and EIR exceptions
- if necessary asking the FOI Officer to notify the requestor that more time is required to assess the balance of public interest (or if an EIR request is complex or voluminous) and provide a revised date for response
- providing details of any exemption/exception and public interest reasoning, to the applicant and to the FOI Officer for the case file
- producing a file note of all issues considered when making a decision for the audit trail and for use in the case of an internal review
- where substantial disclosures are indicated which could attract media interest, to inform Press Office and also FOI Unit who will arrange simultaneous publication on the website
- keeping the FOI Officer aware of all correspondence with applicant for adding to the case file
- forwarding any appeals and accompanying papers to the FOI Unit on day of receipt

Appeals Officers

Appeals Officers are responsible for:

- consulting all documents involved in making the original decision, including the justification for using exemptions/exceptions, applying a public interest test or calculating fees
- discussing the complaint with staff involved in making the original decision to clarify the reasons for the decision and exploring whether an alternative outcome should be considered
- requesting advice from Legal Adviser's Office via the FOI Unit and informing them of any proposed decision on the complaint
- liaising with FOI Unit and Legal Adviser's Unit on the response and replying to the applicant once agreement has been reached
- copying the final response letter to the FOI Unit and Legal Adviser's Office

- advising FOI Unit if there is any delay in coming to a decision
- producing a file note of their considerations in reaching a decision (particularly arguments considered under the public interest test) in case of further investigations by the Information Commission making the applicant aware of their further rights of appeal to the Information Commissioner's Office, if upholding the original decision to partially disclose/not disclose information
- informing Press Office and FOI Unit (who will arrange simultaneous publication on the website) of any substantial information disclosures which could attract media interest

Disclosing information

Once a decision has been taken to release information, the form of the disclosure should be considered.

Sometimes applicants will request information in a particular form but it is important to remember that the right of access is to information not documents.

Consideration must be given as to whether it is *reasonable* to provide the information in the format requested.

The Act gives the applicant the right to ask for information by any one or more of the following means:

- by providing a photocopy of the information requested
- by providing a reasonable opportunity for inspecting a record containing the information
- by providing a summary of the information

Requests for personal inspection of records

If the applicant wants to inspect an original record the FOI officer should consider:

whether it is reasonable to provide this type of access to the information (e.g. amount, sensitivity and whereabouts of information);

- whether the material is likely to be partly or entirely covered by exemptions in which case it must be referred to a Decision Maker;
- whether any additional disbursement costs arise from the use of a member of staff to supervise the inspection;
- whether an alternative means of disclosure should be suggested.

Dealing with complaints

The FOI Unit handles complaints to HSE from applicants who are unhappy with the response to their requests for information.

Any requests for an Internal Review that are received elsewhere in the HSE must be forwarded to the FOI Unit on day of receipt.

- [HSE's Appeals Procedure](http://www.hse.gov.uk/foi/appeals.htm) (link to <http://www.hse.gov.uk/foi/appeals.htm>)

