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|  | <b>RSD Internal Guidance</b>   | <b>RIG-2013-01</b>                                      |                                     |
| <b><i>Requests to RSD for disclosure of information held by ORR</i></b>           |  |   |                                     |
| <b>Date of issue/<br/>last review</b>   | August 2020  | <b>Date of next review</b>                              | August 2022                         |
| <b>RIG postholder/owner</b>   |  | Garry Stimpson, Regulatory Improvement Team             |                                     |
| <b>RIG cleared by</b>   |  | Jen Ablitt, Deputy Director Safety, Strategy and Policy |                                     |
| <b>RIG type</b>   |  | Policy_____ <input checked="" type="checkbox"/>         | <input checked="" type="checkbox"/> |
|   |  | Information_____  | <input checked="" type="checkbox"/> |
|   |  | Procedure_____  | <input type="checkbox"/>            |
| <b>Target audience</b>  | RSD_____ <input checked="" type="checkbox"/>   | Policy_____   | <input checked="" type="checkbox"/> |
|   | RPP_____ <input type="checkbox"/>  | Inspectors_____   | <input checked="" type="checkbox"/> |
|   |  | Admin_____  | <input checked="" type="checkbox"/> |
| <b><u>Keywords</u></b>  | Disclosure: Freedom of information Act 2000; Data Protection Act 2018; Environmental Information Regulations 2004; Civil Procedure Rules   |   |                                     |
| <b><u>Summary</u></b>   | <p>This RIG introduces the different types of requests for disclosure of information that may be received by RSD operational and policy teams in England and Wales. Instructions are given on how to proceed with a request for disclosure.</p> <p>It does not cover Scotland, which has separate, but similar, statutory requirements. The Scottish arrangements are covered in the Scots Law Investigation Guide (<a href="#">link</a>); alternatively ask Garry Stimpson, Investigation and Enforcement Manager.</p> <p>It also does not apply to disclosure in <u>criminal proceedings</u>, whether or not ORR is a party.</p> |   |                                     |
| <b><u>Original consultation</u></b>   | Ruth Luxford, Legal Team; Paul Wilkinson Customer Correspondence Team  |   |                                     |
| <b><u>Subsequent consultation</u></b><br>(reviews only)                           | 2014: Helen Ayers, RMT; 2016 Legal Services Team, 2018 Legal Services Team 2020 Ben Davies, Legal Team, Paul Wilkinson Customer Correspondence Team, Sue MacSwan, Data Protection Officer  |   |                                     |

**Detail**

1. This guidance gives ORR staff advice on the different types of requests for disclosure of information (other than those associated with criminal proceedings) that they may receive and explains how these should be handled.

2. Useful guidance is available both on the HSE website ([link](#)) and their Intranet.

3. A number of regimes can apply to requests for access to information:

4. **The Freedom of Information (FOI) Act 2000.** Teams may receive requests under the Freedom of Information Act 2000 (FOIA) in England and Wales for information contained in investigation reports and for other information held by ORR in relation to incidents.

a) Such requests may be received from anyone, but generally they will come from those representing persons killed or injured as a result of an incident; their relatives or partners; or from employers or their legal representatives. Requests may also come from other persons, such as suspects or defendants to criminal proceedings being brought by ORR or the Crown Prosecution Service (CPS), action or victim support groups, the media, insurers, and loss adjusters. The applicant should apply in writing describing the information required. However, they do not have to explain why they want it.

b) Relevant information is not only that held in corporate systems e.g. BOX, information held on personal drives, paper records, CCTV/video and notebook entries. It includes personal filing systems held by a member of staff.

5. **The Environmental Information Regulations (EIR) 2004.** EIR implement a European directive, and operate in a similar way to FOI but deal specifically with information about the environment, for example:

- the state of the elements of the environment (e.g. air, soil, land);
- anything likely to affect the environment (e.g. substances, radiation, emissions);
- how health and safety is, or may be, affected by the environment.

6. An application under EIR may be a verbal request: it does not have to be put in writing.

7. **Data Protection Act 2018 (DPA).** Normally these will be a subject access request where an individual is asking for a copy of some or all of the personal data we hold about them. Occasionally, it may come from a third party acting as the data subjects' authorised representative.

8. Requests relevant to these three statutory instruments should be forwarded without delay to the correspondence section in CCT who will lead on preparing a reply. Other colleagues may be asked to assist.

**9. The Civil Procedure Rules (CPR).** These apply to requests of information wanted for civil proceedings where ORR is not a party to the case<sup>1</sup>. Operational teams, in particular, may receive a request of this type. Such a request would typically involve a claim for compensation by an employee, or others following an accident, death or ill-health arising from work. The requester must specifically quote the CPR in their application. Normally a litigant or potential litigant, and/or defendant would use DPA, FOI or EIR routes, so requests of this type will be infrequent.

10. The CPR makes provisions for the court to order the ORR to release information to a party in a civil case. As this is a time consuming process, ORR will mirror the HSE procedure for releasing certain information to parties through “voluntary disclosure”. Typically this is likely to include:

- relevant factual material in an investigation;
- relevant advice sent to duty holders before or after an inspection<sup>2</sup>;
- relevant witness statements where the witness (including an ORR employee) has explicitly consented to disclosure.

11. In order for voluntary disclosure to apply, legal proceedings must have been started and a copy of the claim form, as approved by the courts, should accompany the request. This enables us to check what information we hold that may be relevant to the complaint.

12. In the event of receiving a request under CPR, advice from ORR Legal should be sought.

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<sup>1</sup> Civil Procedure Rule 31.17.

<sup>2</sup> ORR is not obliged to disclose legal advice between ORR staff and ORR Legal which is legally privileged – if in doubt, ask Legal first.