

Disclosure of Information

1. Purpose of this document

1.1. To ensure that:

1.1.1. Information obtained by inspectors and/or handled by the Council in the exercise of powers under the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) is obtained and handled lawfully,

1.1.2. Is only disclosed under specific circumstances and when there is a lawful reason to do so.

1.1.3. A common procedure is applied in cases where requests for information are received in respect of information obtained under paragraph 1.1.1. above.

2. Scope of this document

2.1. This procedure applies to all information received, obtained or handled by inspectors and other Council officers in respect of incidents, investigations and interventions under the 1974 Act.

2.2. This procedure includes information held in whatever form, including files, notebooks, paper and computer records, including emails.

3. Commercially-confidential information

4. Section 28(7) of the 1974 Act states:

A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by section 14(4)(a) or 20 (including, in particular, any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except—

(a) for the purposes of his functions; or

(b) for the purposes of any legal proceedings or any investigation or inquiry held by virtue of section 14(2) or (2A) or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of section 14(2) or (2A); or

(c) with the relevant consent.

In this subsection “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under section 20, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

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- 4.1. Section 28(7) applies to authorised inspectors and to persons authorised to accompany inspectors. This procedure hereby extends that restriction on disclosure of such information to all officers of Argyll and Bute Council.
- 5. The Environmental Information (Scotland) Regulations 2004**
- 5.1. Certain information will be “environmental information” within the meaning of regulation 2(1) of *The Environmental Information (Scotland) Regulations 2004*.
- 5.2. Regulation 5 states:
- (1) *Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.*
- (2) *The duty under paragraph (1)–*
...
(b) is subject to regulations 6 to 12.
- 5.3. Regulation 10 sets out exceptions to the duty to make environmental information available.
- 5.4. Regulation 19 makes it an offence to alter, deface, block, erase, destroy or conceal any record held by Argyll and Bute Council, with the intention of preventing the disclosure by that authority of all, or any part, of the information to an applicant under the Regulations.
- 5.5. Any request for information obtained under the 1974 Act by virtue of it being environmental information shall be referred to Regulatory Services Manager who shall, taking legal advice when necessary, determine the request.
- 6. The Freedom of Information (Scotland) Act 2002**
- 6.1. The Freedom of Information (Scotland) Act 2002 makes general provision for the disclosure of information by Scottish public authorities. However, Section 39 states:
- (1) *Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.*
- (2) *Information is exempt information if a Scottish public authority—.*

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- (a) *is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or*
- (b) *would be so obliged but for any exemption contained in the regulations.*

7. Disclosure in prosecution proceedings

7.1. Rules on disclosure in prosecution proceedings are dealt with in HSE's *Enforcement Guide (Scotland)*.

8. Disclosure in investigation of RIDDOR reports

8.1. The procedure *Investigation of Incidents and Complaints* identifies in what circumstances and to whom information received in the incident report may be disclosed in the course of investigation.

9. Requests for disclosure of RIDDOR reports

9.1. The person making a report using the RIDDOR website will have received, and be able to obtain further copies of, the original report. It is reasonable to provide further copies of the submitted report, without the allocation information, to be provided to the reporter. A request for a copy of the report shall be made in writing and the inspector dealing with the request shall satisfy themselves as to the identity of the requester.

9.2. The injured person, or a solicitor acting on their behalf, may request a copy of the RIDDOR report and any associated inspection reports sent by the inspector. In such cases, the request shall be a written mandate from the injured person (or a solicitor in cases where the injured person is unable to provide a written mandate) and the inspector shall satisfy themselves as to the identity of the requester before responding.

9.3. Upon receipt of a satisfactory written mandate, the inspector shall redact all personal information other than that of the requester and provide the redacted copy/ies only.

10. References

- 10.1. The Health and Safety at Work etc. Act 1974
- 10.2. The Freedom of Information (Scotland) Act 2002
- 10.3. The Environmental Information (Scotland) Regulations 2004

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