

Guidance for Local Authorities and Metropolitan Authorities on National Security considerations when dealing with requests under the Freedom of Information Act and Environmental Information Regulations for information held under Major Hazard and Environmental Pollution Prevention Regulations

This guidance is to assist in identifying what information may have to be withheld on the grounds of National Security, when responding to requests made under the Freedom of Information Act (FOI) and Freedom of Information (Scotland) Act (FOI Scotland) or Environmental Information Regulations (EIR) and the Environmental Information (Scotland) Regulations (EIR Scotland). It was developed following advice from the Center for the Protection of National Infrastructure (CPNI) and the Chemical and Pipelines Emergency Planning Liaison Group (CAP EPLG), the national policy forum chaired by the Health and Safety Executive that includes representatives of the Local Government Association and emergency planners. Should a public authority receive a request for this information, they should consult the CPNI, or the Department for Constitutional Affairs (Ministry of Justice from 9 May) for advice. The guidance is of particular relevance to information held as a result of Regulatory requirements (see annex 1 for an indicative list).

Consideration of withholding information on the grounds of National Security is not intended to interfere with Companies complying with their legal obligations under relevant regulatory regimes to inform their employees, and where required members of the public, of actions to be taken in the event of an emergency situation.

It is government policy to inform the public of the robust measures that are in place to avoid or minimise the risk of incidents at Major Hazard sites. There is, however a significant need to maintain national security and public safety by minimising the risk of a successful attack on these sites. This means that each request for information has to be considered on its merits and the appropriateness of applying exemptions will depend on the specific request and the nature of the information.

Whilst much of the information supplied to Authorities can be released as it would have no adverse affect on national security, there is a risk of an adverse effect to national security or public safety from releasing certain pieces of information supplied under various regulatory regimes, specifically that which would assist the carrying out of an attack or the undermining of the emergency response. Information in the following categories should be considered for redaction under the National Security exception in EIR (Reg 12(5)(a)) / EIR Scotland (Reg 10(5)(b)) and the FoIA National Security exemptions (sections 24) FoIA Scotland (section 31) on the basis that to release the information would have an adverse affect on national security or not safeguard national security respectively.

In general, overviews of emergency plans, details not covered below and information required to be given to the public under specific regulations e.g. the Control of Major Accident Hazard (COMAH) Regulations should be releasable to the public.

The types of information, which it may be appropriate to withhold include:

- **Detailed descriptions of the site, such as** the precise locations of storage tanks and locations associated with the emergency plan, for example the on site Major Emergency Control Centre. This information would assist those planning a terrorist attack by providing information which would only otherwise be available to an 'insider' and would assist them in targeting their attack. This is distinct from the consented quantities under the Planning (Hazardous Substances) Regulations;
- **Actual Volumes of material stored**, rather than the maximum permitted quantities under a Hazardous Substance consent. This would enable those considering an attack to know the potential extent of the damage which could be caused to human life, property and the environment, and also to wider economic interests;
- **Detailed information about pipelines (e.g. construction, flow rates etc) and associated storage systems** because this would provide 'insider' information which would assist in the planning of an attack;
- **Details of safety measures on site** (including alarm and communication systems). This would enable those planning an attack to take steps to circumvent safety measures in place in order to maximise damage;
- **Staffing levels** - would assist in planning of attack to identify when sites are most vulnerable and therefore optimum times for attack e.g. shift patterns;
- **Procedures to be followed in the event of an emergency** - though general information, much of which is already in the public domain, can be released. Consideration should be given to whether specific information could, in some cases undermine the emergency response, for example information on the specific incident command structure (including roles and responsibilities in the event of an emergency). This could be used to infiltrate the emergency command structure in order to gain additional information about the site, and also to undermine the emergency response to an incident. Specific Locations, critical to the response, such as Incident Control Points, Rendezvous Points, Marshalling Areas, Road Blocks etc should also be considered for exclusion;
- **The consequences of scenarios considered in designing Emergency Plans.** This would assist those considering an attack to identify the extent of the damage which could be done and consider how to maximise it;
- **Safety equipment and emergency response equipment** - this information could assist those planning an attack and be used to undermine the emergency response, and
- **Specific security arrangements** such as numbers of guards and security measures - could assist someone trying to circumvent them.

Public interest considerations

The public interest balance must be considered before deciding on whether to withhold information under the exceptions in the EIRs or the National Security exemption in FOIA. It is recognised that there is a general public interest in transparency and open Government. It is also recognised that there is a significant public interest in knowing that appropriate steps have been taken to ensure safety at for example fuel storage depots, particularly in the light of the Buncefield incident. Local residents also have a particularly strong public interest in this information.

Under some legislation, e.g. Regulation 14 of the COMAH Regulations, certain information has to be supplied to people living in the vicinity of a major hazard site. This information should not be considered sensitive under National Security considerations, and can be supplied to people requesting information under EIR and Fol.

Balanced against the factors in favour of release is the very strong public interest in the maintenance of national security and public safety. Due to the potential damage, which an incident could cause to the immediate area and to the economic interests of the UK, there is a strong public interest in avoiding release of information where it could assist in the planning of an attack or the undermining of an effective emergency response.

The public interest in maintaining national security is strong and it is advised that the balance lies in favour of withholding material where it could have an adverse effect on national security and not endangering public safety.

Examples of information management

Some Authorities have facilitated their operational control of what information can be provided without having to consider national security. They have developed off-site emergency plans with sensitive information contained in separate annexes.

Another approach is to prepare an “abridged “ version of the off-site plan, which contains no sensitive information but is sufficient for supporting organisations to respond. This approach to emergency planning would need local agreement but could be helpful in information management.

Alternatively, Authorities can carefully redact plans in response to each request, following the advice given above.

Where Authorities are provided with “Safety Reports” by the site operators, these should be returned when relevant information has been extracted.

Annex 1 Illustrative (not exhaustive) List of Regulatory Regimes

Control of Major Accident Hazard Regulations (COMAH),
Pollution Prevention and Control Regulations,
Pipeline Safety Regulations,
Planning (Hazardous Substances) Regulations etc.

NB the advice given above may also apply to some “off-site” emergency Plans outside the scope of the above regulatory schemes but prepared as a result of Local Risk Assessments undertaken to comply with the Civil Contingencies Act.