

Access to Public Information Response

October 14th 2014

REQUEST UNDER THE CODE OF PRACTICE FOR ACCESS TO PUBLIC INFORMATION

Request sent on October 14th 2014:

With regard to the Code of Practice and, in particular, the presumption of disclosure and the culture of openness which form part of the guiding principles underpinning it, we should be grateful if, where possible, you would provide the following information for the period of 1970 to the present day:

1. Details of all firefighting foams (either Aqueous Film Forming Foam (AFFF) or any other type) purchased by the Guernsey Island Fire Brigade (the Fire Brigade). Such information should include sales documents relating to these firefighting foams including, for example, invoices; order acknowledgement forms; any correspondence or confirmations as regards quantity, type, deliveries or returns; and certificates of conformity;
2. Documents in the possession of the Fire Brigade regarding AFFF in respect of safety and product use information. Such information should include, for example, Material Safety Data Sheets (MSDSs) and Product Environmental Data Sheets (PEDSs);
3. Details of emergency incidents at which firefighting foam was deployed by the Fire Brigade. Such information should include details of the nature of the emergency, the relevant date(s), the location of the emergency, the type of firefighting foam deployed, and the quantity of the firefighting foam deployed;
4. Details of any training routines, exercises, or briefing sessions at which firefighting foam was deployed by the Fire Brigade. Such information should include details of the location at which the training took place, the relevant date(s), the type of firefighting foam deployed, and the quantity of the firefighting foam deployed;
5. Information regarding the disposal, or potential disposal, of any firefighting foam by the Fire Brigade. Such information should include, for example, the type of firefighting foam disposed, the location from which firefighting foam was disposed, the relevant date(s) of disposal, the means by which firefighting foam was disposed, the party responsible for the disposal, the quantity of firefighting foam disposed; or any information relating to the potential disposal of firefighting foam.

If you contend that you are not in possession of, or lack access to, any of the requested information, please identify, in writing, the information that cannot be produced. Moreover, as discussed below, we consider that no exception to the presumption of disclosure or otherwise refuse to comply with any part of this request, please provide a written explanation of the applicable exemption(s) and/or basis for non-compliance.

Legal proceedings are presently on-going in the High Court of Justice in England and Wales concerning the existence and degree (if any) of 3M United Kingdom PLC's and 3M Company's liability for alleged environmental consequences arising from the States of

Guernsey's use of AFFF products. With reference to Part 2 of the Code of Practice, and more specifically paragraph 2.5 thereof, we do not consider that the disclosure of the material sought above could prejudice legal proceedings or the proceedings of any tribunal, public enquiry or other formal investigation (whether actual or likely) or that the information sought is, has been or is likely to be addressed in the context of such proceedings. Indeed, in the above-referenced litigation, the States of Guernsey, through its solicitors, has maintained that documents in the possession of the Fire Brigade are not relevant to the proceedings. Therefore, we consider that no exception to the presumption arises as a result of the information sought in this letter.

If it was estimated that the cost of complying with this request exceeds the applicable limit, please provide us with a notice of any fees that must be paid in order to process the request.

We note that the Code of Practice provides that responses may be expected within 20 working days from the date of the request and we look forward to hearing from you in due course.

If you have any queries or require clarification relating to any of the above matters, please do not hesitate to contact us.

States of Guernsey response on October 17th 2014:

Thank you for your information request under the Code of Practice on Access to Public Information ("The Code") received on 14 October 2014.

Unfortunately, we are unable to carry out your request due to the voluminous nature of the request for data over 44 years (paragraphs 1.7-1.8 of the Code and exception 2.9), this would require a significant amount of staff resources to search for this information, the majority of which is paper based. You suggested in your letter the possibility of paying fees as a recompense for acquiring this information, however there are currently no provisions within the Code to suggest charging for such services. This is because such payment may not compensate for the reallocation of resources to carry out this task. It should be noted that exception 2.9 suggests that this exception may be overcome by the narrowing of the request to a reasonable period.

We do not accept your argument that no exception applies, that is a decision for the States of Guernsey to make in light of the specific information requested to be made at the time it is requested. Accordingly, given the extant legal proceedings outlined in your letter and nature of information required, if the information requested was able to be extracted and reviewed against the exceptions then exception 2.5 of the Code in particular will be considered carefully, in order to maintain the balance that remains at the centre of the policy agreed by the States in July 2013.

If you would like more information on the code it is available here www.gov.gg/information

Request re-submitted on November 7th 2014:

Please will you provide the following information for the period between 1994 and 2004:

1. Details of all firefighting foams (either Aqueous Film Forming Foam (AFFF) or any other type) purchased by the Guernsey Island Fire Brigade (the Fire Brigade). Such information should include sales documents relating to these firefighting foams including, for example, invoices; order acknowledgement forms; any correspondence or confirmations as regards quantity, type, deliveries or returns; and certificates of conformity;
2. Documents in the possession of the Fire Brigade regarding AFFF in respect of safety and product use information. Such information should include, for example, Material Safety Data Sheets (MSDSs) and Product Environmental Data Sheets (PEDSs);
3. Information regarding the disposal, or potential disposal, of any firefighting foam by the Fire Brigade. Such information should include, for example, the type of firefighting foam disposed, the location from which firefighting foam was disposed, the relevant date(s) of disposal, the means by which firefighting foam was disposed, the party responsible for the disposal, the quantity of firefighting foam disposed; or any information relating to the potential disposal of firefighting foam.

We anticipate that the Policy Council will have to regard the presumption of disclosure and the culture of openness upon which the Code of Practice is based. If you contend that you cannot provide the requested information, please identify, in writing, the information that cannot be produced and the reasons for the same. Moreover, please reference our letter of 9 October 2014, regarding our position on the non-applicability of exceptions to disclosure.

States of Guernsey response on February 4th 2015:

Unfortunately, we remain in a position where we are unable to supply the information requested. The request remains voluminous (paragraphs 1.7-1.8 of the Code and exception 2.9) and we wish to reiterate the views expressed in the response to the original request below in particular to the likely application of exception 2.5 relating to legal proceedings. In particular we do not accept your argument that no exception applies. The application of exceptions is a decision for the States of Guernsey to make in light of the information that it holds and the circumstances at the time that the request is made.

We are also note that the original request explains that the information is being requested in relation to extant legal proceedings for which I note that relevant disclosure arrangements will apply for the purposes of that litigation.

If you would like more information on the code it is available here www.gov.gg/information. If you would like to make a complaint regarding the application of the code then you may be made in writing to the Chief Executive of the States of Guernsey as outlined in 1.11 of the Code of Practice for Access to Public Information (available from the above link).