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Caseworker/Policy Officer  
Centre for Corporate Accountability  
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197-199 City Road  
London  
EC1V 1JN

25 July 2007

Dear Ms Rigby

**Freedom of Information Request Reference No: 2007/050109 – Information relating to the Evaluation of the Enforcement Policy Statement**

Thank you for your FoI request for information about various aspects of the HSE review of the Enforcement Policy Statement. I must apologise for not responding sooner but the request involved considerable internal consultation as many HSE staff had some involvement in the Evaluation.

Annexed is a table that:-

- sets out responses to your questions and an annex with explanations as to why some information is being withheld;
- a redacted version of the summary report on the use of formal cautions; and
- Annex 5 to the report, which consists of a table of LA notifications of cautions issued in 2003-2004.

As you can see, there are severe practical problem that mean we cannot meet your request at Question 4. Your request could of course be refined but the nature of the question is so broad we find it hard to suggest how this could be done.

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Certain information has been redacted from the internal HSE report on the use of formal cautions by health and safety enforcing authorities provided. The reasons for this are explained at Annex 1 but relate to:-

- FoIA section 30 - significantly harm HSE's ability to carry out its responsibilities relating to investigations and proceedings;
- FoIA section 31 - law enforcement; and
- FoIA section 35 - policy formulation

These are qualified exemptions that are subject to the public interest test. This means HSE has to balance the public interest factors favouring disclosure against those favouring non-disclosure. A full explanation of my decision is given in the annex attached to this letter as well as the factors considered when deciding where the public interest lay.

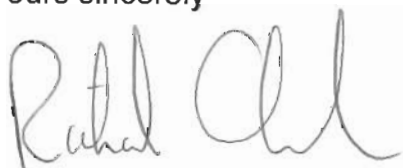
If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the decisions made by HSE in relation to your request you may ask for an internal review by contacting me.

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 01625 545700  
Fax: 01625 524510  
Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Website: <http://www.informationcommissioner.gov.uk>

Yours sincerely



Richard Church  
Health & Safety Executive  
Secretariat  
9th Floor, North Wing  
Tel: 020-7717-6618

FAX: 020-7717-6616

E-Mail: [Richard.church@hse.gsi.gov.uk](mailto:Richard.church@hse.gsi.gov.uk)

**CCA request for information under the FOI Act, relating to the recently completed review of the HSC Enforcement Policy Statement (EPS)**

Q1	David Bergman at CCA wrote to Jonathan Russell at HSE asking that various issues be considered during the review on 14 March 2005. Please can I see any copies of documents or correspondence arising from this letter?
A1	Other than Jonathan Russell's reply to David Bergman, dated 15 April 2005, there are no documents or correspondence arising from this letter.
Note	No other relevant documents or correspondence found.
Q2	Please can you send me copies of all information provided to the EPS review team relating to rates of investigation and prosecution levels following deaths and injuries?
A2	No information relating to rates of investigation and prosecution levels following deaths and injuries was required for the purposes of the research carried out by Greenstreet Berman, which concentrated on stakeholder perceptions of, and views on, enforcement, and none was provided.
Note	No such information was supplied to GSB by Enforcement Policy Unit.
Q3	Please can you send me copies of any documents or correspondence relating to how any of the research done by Greenstreet Berman on this matter impacted on the decision not to revise the EPS? In particular please can you send me any discussion of the merits of the research?
A3	There are no documents or correspondence, other than HSC/06/78, publicly available on the HSE website. This paper notes that the EPS evaluation evidence base, including the Greenstreet Berman research, indicates that the EPS and its values are fit for purpose and that no changes are required at present.
Note	No relevant documents or correspondence found.
Q4	Please send reports and any internal correspondence relating to – work carried out by the Enforcement StEP to address how HSE/LAs can maximise benefits of formal enforcement and manage enforcement effort to help deliver HSE's strategic programmes
A4	The question is very broad and would involve the review of a substantial number of emails. Just collating and reviewing these would exceed the cost limit for an FOI request. Even assuming there is some duplication between the emails held, the cost might be in the region of £3,000.
Note	

Q5	Please send reports and any internal correspondence relating to – an HSE evaluation of the use of formal cautions by health and safety enforcing authorities
A5	<p>An electronic version of the disclosable parts of the report is attached. This comprises:</p> <ul style="list-style-type: none"> <li>• The summary report (redacted as explained in Annex 1)</li> <li>• Annex 5 – LA Notification of cautions issued in 2003-2004</li> </ul> <p>The following items are not attached, as they are already publicly available (and the report contains hyperlinks to them):</p> <ul style="list-style-type: none"> <li>• HSC Enforcement Policy Statement</li> <li>• Code for Crown Prosecutors</li> <li>• Internal HSE Guidance OC130/6 and OC130/7</li> <li>• Home Office Circular 30/2005</li> </ul> <p>The following items are not attached, for the reasons set out in Annex 1</p> <ul style="list-style-type: none"> <li>• Annex 6 – Replies to structured questions</li> <li>• Annex 7 – Table of formal cautions issued by LAs 2005-2006</li> </ul>
Note	See Annex 1 for further explanation

## **Information redacted from internal HSE report on the use of formal cautions by health and safety enforcing authorities**

- 1. Main report, page 4 – table with details of responses to letters sent to Heads of Environmental Services/Principal Environmental Health Officers, and page 5 – reference to replies to message posted on the EHC-net and LA Newsletter article;  
Annex 6 – Replies to Structured Questions;  
Annex 7 – StEP Enforcement Table of Formal Cautions issued by LAS 2005-2006 (analysis).**

### **Arguments for disclosure in the public interest**

There is a general presumption in favour of disclosure of factual or statistical information used in the policy formulation process, once policy has been finalised, so as to enhance public contribution to the policymaking process.

### **Arguments against disclosure in public interest**

Information relating to enforcement outcomes in small local authority areas could be followed up and be of assistance to those who wish to position themselves so as to reduce the likelihood of prosecution as an enforcement outcome for their health and safety breaches.

This information was contributed by some, but not all, local authority enforcers for the purposes of policy formulation. If disclosed, this could result in reputational harm or criticism for the enforcers concerned, and discourage future willingness to contribute such information to HSE.

I have considered these arguments, and have reached the conclusion that the public interest would not be served by disclosure, since this would be likely to significantly harm HSE's ability to carry out its responsibilities relating to investigations and proceedings (FOIA section 30), law enforcement (FOIA section 31) and policy formulation (FOIA section 35).

- 2. Main report, page 6 – view expressed by Head of FOD Legal and Enforcement Branch**

### **Arguments for disclosure in the public interest**

There is a general presumption in favour of disclosure of factual or statistical information used in the policy formulation process, once policy has been finalised, so as to enhance public contribution to the policymaking process.

### **Arguments against disclosure in public interest**

This information is an opinion **contributed** by an individual member of HSE staff. If disclosed, this could **discourage** future willingness to contribute such information and thus **prejudice the** formulation of policy.

I have considered these arguments, and have reached the conclusion that the public interest would **not be served** by disclosure, **since this would** be likely to significantly harm HSE's ability to carry out **its responsibilities relating** to policy formulation (FOIA **section 35**).