

Formal Information Sharing Under the Civil Contingencies Act 2004

Revision to *Emergency Preparedness*,
Chapter 3 (Information Sharing)

Chapter 3 (Formal Information Sharing) of *Emergency Preparedness Revised Version*

Summary

- Information sharing is a crucial element of civil protection work, underpinning all forms of co-operation. Category 1 and 2 responders should share information formally and as part of a culture of co-operation ([Chapter 2](#)).
- Under the Civil Contingencies Act 2004 (CCA) and the Contingency Planning Regulations¹, Category 1 and 2 responders have a duty to share information with other Category 1 and 2 responders. This is required for those responders to fulfil their duties under the CCA. Information sharing is also encouraged as being good practice.
- The initial presumption is that all information should be shared, but the release of some information, and of information to some audiences, may need to be controlled. Category 1 and 2 responders need to understand what should be controlled ([paragraphs 3.8–3.12](#)).
- Category 1 responders need to know how to categorise types of information; how the different types of information can be used; how to obtain consent; and the limits on disclosure ([paragraphs 3.25–3.40](#)).

¹ Civil Contingencies Act 2004 (Contingency Planning) Regulations referred to in this Guidance as the Contingency Planning Regulations.

- Category 1 and 2 responders need to know about the impact of other legislation, such as the Freedom of Information and Data Protection Acts (DPA), on their information sharing ([paragraphs 3.60–3.72](#)).
- Category 1 and 2 responders need to understand the importance of training and exercising information sharing elements of emergency plans to ensure they are effective ([paragraphs 3.57-3.59](#)).
- Further guidance on information sharing and data protection is available ([paragraphs 3.73-3.74](#)).

WHAT THE ACT AND THE REGULATIONS REQUIRE

The duties quoted below outline formal legal requirements. However, most information sharing will be undertaken voluntarily within the context of broader co-operation between responders.

A Category 1 or 2 responder “shall comply with regulations” made by a Minister of the Crown about “the extent of a duty” and “the manner in which... it is to be performed” (s2(3) and s3(3)(a))

Regulations under the Act “may permit or require a person or body listed in Part 1 or 3 of Schedule 1 to provide information, either on request or in other specified circumstances, to a person or body listed in Part 1 of the Schedule in connection with the performance of a duty under subsection (1)”. This is subject to Part 8 of the Regulations.

Purpose and Scope

- 3.1. Information is shared between Category 1 and 2 responders as they work together to perform their duties under the Act. Information sharing is a crucial element of civil protection work, underpinning all forms of co-operation. It may involve simple liaison between bodies keeping each other up to date on their current arrangements and future plans. Such activities may be carried out through LRFs and multi LRF groups, and more informally.

- 3.2. Information sharing may also involve direct contacts, formal or informal, between Category 1 and 2 responders seeking knowledge of hazards, risk assessments or planning arrangements (including warning procedures) and other matters, where the information is in the possession of one, and the other believes it needs the information to fulfil its civil protection duties.
- 3.3. The process of sharing information is crucial to other duties under the Act as represented in [Annex A](#) of [Chapter 2](#) (Co-operation) ². These are:
- o sound risk assessment relies on obtaining accurate information about the nature of the hazard, the probability of a hazardous event occurring, and the potential effects and impact on the community if it does. Each of these elements may involve some specialist knowledge and calculation and the information required may be privileged or sensitive and not generally in the public domain.
 - o business continuity management largely involves knowledge of the vulnerabilities of one's own organisation – but it also examines linkages to and dependencies on suppliers and contractors, where information may be harder to obtain.
 - o emergency planning relies essentially on knowledge of how each of the partners in response has planned to perform – what their aims and contribution will be, how they will organise and co-ordinate their efforts with those of other bodies, and how contacts will be managed before and during the event. All these details are constantly changing as plans are revised, organisations are restructured or their roles redefined, and individuals and teams are replaced.

² This refers to a table in the 2012 revision of [Chapter 2](#) (Co-operation) of *Emergency Preparedness*.

- 3.4. Information sharing is necessary so that Category 1 and 2 responders are able to make the right judgements. If Category 1 and 2 responders have access to all the information they need, they can make the right decisions about how to plan and what to plan for. If they do not have access to all the information, their planning will be weakened. They will be less well placed to make judgements around cost-benefit analysis – what to plan for and what not to plan for.
- 3.5. But the picture is complicated because each individual Category 1 or 2 responder needs to get its planning right and this has to be balanced against the needs of others. For example, sharing a piece of information which helps the planning of one Category 1 or 2 responder, might, in some circumstances, harm the interests of another Category 1 or 2 responder. Also, the perspective of an individual organisation on a single piece of information can be affected by its own position, so an organisation can interpret information in a way that seems correct but is actually wrong. For example, a Category 1 or 2 responder might interpret something to be a risk, but another Category 1 or 2 responder with greater expertise might be less concerned. And in some circumstances, Category 1 or 2 responders will not be able to appreciate the bigger picture into which the information fits. For example, a seemingly innocuous piece of information might have implications for national security.
- 3.6. These two competing factors point towards a framework in which the initial presumption is that information should be shared, but that some information should be controlled if its release would be counterproductive or damaging in some other way.

Devolved Administrations

3.7. The way in which the information sharing duty under the CCA and the Contingency Planning Regulations apply to Category 1 and 2 responders in Scotland, Wales and Northern Ireland is much the same as in England. The key points in relation to the information sharing duty are:

- o in Scotland, Part 1 of the CCA and the Regulations (which includes the disclosure of information provision under which the Regulations were made) apply to Scotland, with the powers it sets out residing with Scottish Ministers;³
- o in Wales, arrangements under Part 1 of the CCA and the Regulations apply; and
- o in Northern Ireland, arrangements under Part 1 of the CCA and the Regulations apply only to a limited number of organisations: PSNI, MCA and telecoms providers.

Where relevant, LRFs should be aware of the different structures in place and consider cross boundary information sharing requirements.

When information should not be formally requested

3.8. In most instances, information will pass freely between Category 1 and 2 responders, as part of a more general process of dialogue and co-operation. This is the means by which the overwhelming majority of information sharing should happen and has happened. [Annex A](#) of [Chapter 2](#) sets out the areas in which responders will expect to share information.

³ Part 8 of the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 (SI2005/ 494).

- 3.9. The Regulations require Category 1 and 2 responders to consider alternative routes before pursuing a formal information request.⁴ But there are still some instances in which the supply of information will be more controlled. Under the Regulations, any Category 1 or 2 responder can request information from another Category 1 or 2 responder, so long as it is for the purpose of fulfilling responsibilities under the Act, or the performance of another function which relates to an emergency.⁵ This should be seen very much as a fallback option and every effort should be made to maintain relationships between Category 1 and 2 responders that allow information to be shared without recourse to formal requests. But should formal requests be necessary, there are a number of procedures that need to be followed in order to make the system work. This ensures that Category 1 and 2 responders make proper efforts to use existing and informal routes to gather information. The aim of this provision is to avoid over-bureaucratisation of the information-sharing process, and reinforce the message that the information-sharing mechanisms under the Act should be regarded as a fallback rather than as the first option.
- 3.10. Where it is necessary to resort to the formal request process, one or more Category 1 or 2 responders will request the information and one or more will receive the request. They are known respectively as “the requesting Category 1 or 2 responder”⁶ and “the receiving Category 1 or 2 responder.” Where the information is required by a number of Category 1 responders, the request may be co-ordinated through the LRF or LRF members may agree on a lead responder co-ordinating such a request. In addition, any multi-Local Resilience Forum groups may facilitate the co-ordination of such requests from across more than one LRF area.

⁴ regulation 47(3)(b)

⁵ regulation 47

⁶ regulation 47

In Wales, this role is undertaken by the Wales Resilience Forum (WRF). This co-ordinated approach to information sharing should reduce the burden on those agencies from whom information is requested. Before making a request, first, the Category 1 or 2 responder must be satisfied that it does not already hold the information, either by virtue of a previous request or because of informal information exchange. Category 1 and 2 responders should, as a consequence, marshal the information they hold in such a way as to ensure they can make a judgement on this point.

- 3.11. Secondly, the Category 1 or 2 responder must satisfy itself that the information is not reasonably accessible to the public – that is to say, is not published by the Category 1 or 2 responder as part of its wider information policy. Examples of this would include material made available in annual reports or accounts, or material on websites (both those of individual Category 1 or 2 responders and general websites with generic information).

- 3.12. Thirdly, the Category 1 or 2 responder must satisfy itself that the information cannot be obtained by other means. This includes all forms of informal dialogue and information sharing, and obliges Category 1 and 2 responders to work together in the first instance to agree information flows that meet the need of those organisations involved. To assist the process LRFs are strongly advised to develop information sharing protocols. These should recognise any pre-existing organisational relationships and will include many of the informal information sharing agreements that exist at the local level. Category 1 and 2 responders also have or may have pre-existing requirements on them under other legislation (including, for example, their licence conditions from a regulator,

or by direction of a minister) to assess risk and to prepare planning arrangements for emergencies. This may mean that relationships and information-sharing routes are already established. Where possible, these should be built on and complemented, rather than duplicated.

Formal procedures for requesting information

- 3.13. In any instance of information sharing, one or more Category 1 or 2 responders will request the information and one or more will receive the request. They are known respectively as “the requesting responder” and “the receiving responder”.⁷
- 3.14. An information request should be made in writing. It must specify either the information required or a description of the information requested. The request should be sufficiently precise that the nature of the information sought is clear. The request must include reasons as to why the responder needs the information.⁸
- 3.15. The request may specify a time limit, and the place at which the information should be provided. The request may also specify the form in which the information is to be supplied (eg in paper form, on disk). In each case, the time allowed and the place and form specified, must be reasonable. For example, a requesting responder seeking details from an established plan might allow a week for the receiving responder to reply. But if the information being sought is, for example, not presently collated in an easy-to-share way, or can only be released with the permission of a third party, a month might be more applicable. Wherever possible, the mechanics of the request should be discussed in advance between responders.
- 3.16. A template for requesting information can be found at [Annex 3](#).

⁷ regulation 47

⁸ regulation 48

Procedure for dealing with a request

- 3.17. A valid request for information in possession of the Category 1 and 2 responder receiving the request, must be complied with unless one of the exceptions applies (see [paragraph 3.23](#)). This is the case even where the information has been originally supplied in confidence – though the responder which receives the information is also likely to become subject to that duty of confidence. Where the responder is subject to restrictions on the disclosure of information in another enactment or a contract, the other enactment or contract will have to be considered in light of the Regulations. Which provision applies will depend on the particular terms of the other enactment or contract.
- 3.18. In considering whether the request is valid, a responder should consider if the procedural requirements have been satisfied and whether the reasons given by the requesting responder indicate the information does appear to be reasonably required in connection with the requesting responder's functions.
- 3.19. The information must be provided within the time limit specified in the request. If no time limit is specified, the information must be provided in a reasonable period. The information must be supplied in the form and at the place specified by the request.
- 3.20. The request relates to information, not documents. A responder which receives a request is not required to disclose all the documents which contain the information which has been requested. However, this will often be the easiest way to deal with an information request. In other cases, a new document which contains the information being requested may be prepared.

- 3.21. A template for responding to a request for information can be found at [Annex 3](#).
- 3.22. Templates for making and replying to information requests can be found at [Annex 3](#).

Storing information

- 3.23. Category 1 and 2 responders should also be aware of the differences required in handling personal data, when compared to handling sensitive security-related or commercial information (see [paragraph 3.26](#)).
- 3.24. It is essential that Category 1 and 2 responders who request information formally or informally have appropriate methods of secure storage when the requested information is received. Each agency should have a locally defined protocol for handling, accessing, and storing information, especially that which relates to sensitive information.

Exception to the duty to provide information: sensitive information

- 3.25. Not all information can be shared, and Category 1 and 2 responders can claim exceptions in certain circumstances (and thus not supply information as requested). Exceptions under this Act and the Regulations relate to sensitive information only.

Where the exceptions apply, a Category 1 or 2 responder must not disclose the information:

- o **exception where disclosure would prejudice sensitive information:**
a Category 1 or 2 responder must refuse to comply with an information request if the information is sensitive and if it has reasonable grounds to believe that complying with the request would compromise that information. If a Category 1 or 2 responder refuses to disclose information on this basis, it must give reasons for so doing, unless the information is sensitive by virtue of its impact on national security.⁹ It should be noted, however, that this exception is only rarely likely to be available, as generally there will be no robust reason to expect that information would be passed on.

3.26. There are four different kinds of sensitive information as defined by the Regulations:¹⁰

- o **information prejudicial to national security** – information, where disclosure to the public would adversely affect national security.
- o **information prejudicial to public safety** – information, where disclosure to the public would adversely affect public safety.
- o **commercially sensitive information** – information which relates to the business or other affairs of a person or organisation, where disclosure to the public would prejudice the legitimate business interests of the person or organisation to whom the information relates.
- o **personal data** – information which is personal data within the meaning of the DPA, where disclosure to the public would breach any of the data protection principles or section 10 of the DPA.

⁹ regulation 45(1)

¹⁰ regulation 45(1)

3.27. It will be for individual Category 1 or 2 responders to reach a decision about whether the information they hold is sensitive. But there are a number of general points that should affect the decision:

- o all Category 1 and 2 responders should work on the presumption that information requested should be disclosed. Non-disclosure should only occur in exceptional cases, such as where there are clear national security or commercial implications.
- o where the Category 1 or 2 responder knows that the information has originated from the intelligence services and that disclosure to the public would threaten national security, then the information must not be disclosed unless consent is obtained from the originating services. Where the Category 1 or 2 responder suspects that the information has originated from the intelligence services, or that it may be sensitive for reasons of national security, it should consult with the originator of the information.
- o in considering national security implications, note that the test is whether disclosure to the public would threaten national security, not whether disclosure to the requesting Category 1 or 2 responder would threaten national security. A similar test applies in the other categories of sensitive information.
- o in the case of information that is sensitive by virtue of its national security implications, a Minister of the Crown may issue a certificate certifying that disclosure of that information to the public would be contrary to the interests of national security. This certificate is conclusive. The Minister can issue a certificate in relation to a class of information or a specific piece of information. Note, however, that absence of a

certificate does not mean that the information cannot be sensitive on national security grounds.¹¹

- o where a request relates to information, part of which is sensitive and part of which is not, the exception only applies to the sensitive information. (In other words, the application of an exception does not necessarily enable a Category 1 or 2 responder to refuse an information request in its entirety).

Using non-sensitive information within the planning process

- 3.28. The Act and Regulations do not impose any limits on the use of information obtained under the Act which is not sensitive. However, use of non-sensitive information may be limited by duties of confidence, by other enactment or by contract.
- 3.29. There are unlikely to be any restrictions on the use to which a Category 1 or 2 responder can put any non-sensitive information which it creates in the course of carrying on its duties under the Act; for example an emergency plan – though an emergency plan may contain information that has been supplied by another Category 1 or 2 responder, and the use to which this information may be put may be subject to limits. It is also important to be mindful that information is sensitive within different environments, and whilst some information may be suitable for sharing among Category 1 or 2 responders, it might not be suitable for the wider public.

¹¹ regulation 46

Disclosure of non-sensitive information

- 3.30. Neither the Act nor the Regulations place any restriction on the disclosure of non-sensitive information that is obtained under the Act. Nor do the Act or Regulations create any restriction on disclosure of non-sensitive information that is created by a Category 1 or 2 responder in the course of carrying out its functions under the Act. However, non-sensitive information which is received from other Category 1 or 2 responders or third parties may be subject to a duty of confidence or contractual restrictions on disclosure. Category 1 or 2 responders may also be subject to other statutory restrictions on disclosure.
- 3.31. Just because there is no restriction on disclosure, this does not necessarily mean that the Category 1 or 2 responder will be obliged to disclose the information. But some Category 1 or 2 responders may be under a legal obligation to disclose certain information – in particular, under the Act (see, for example, the duty to arrange to publish in part the plans and risk assessments),¹² the *Freedom of Information Act 2000* (FOIA) and the *Environmental Information Regulations 2004* (EIR).¹³

Using sensitive information within the planning process

- 3.32. If a Category 1 responder asks for sensitive information for the purpose of performing a particular function under its regulatory regime, that information may only be used for that purpose.¹⁴ The effect of this will be to limit the circulation of information within Category 1 responder organisations. For example, information about the robustness of mobile phone coverage in the event of an emergency, legitimately obtained by one part of an organisation for use in emergency plans, should not be shared with another part of the organisation responsible for the organisation's contractual relationship with its mobile phone provider.

¹² s. 2(1)(f)

¹³ S.I.2004/3391

¹⁴ regulation 52(1)

- 3.33. If a Category 1 or 2 responder wishes to use sensitive information it has received by virtue of an information request under the Act for a different purpose, it must obtain the consent of the relevant person or organisation.¹⁵ The relevant person or organisation for different types of sensitive information is set out in [Figure 3.1](#).
- 3.34. The use of sensitive information may be further restricted by duties of confidence, by other enactment or by contract.
- 3.35. Restrictions on the disclosure of sensitive information which is created by a Category 1 or 2 responder in the course of carrying out its duties under the Act are dealt with below. This is likely to limit the way in which sensitive information created by a Category 1 or 2 responder is used.

Disclosure of sensitive information

- 3.36. The Regulations prohibit any Category 1 and 2 responder from publishing or otherwise disclosing any sensitive information which it has received by virtue of the Act.¹⁶ The Regulations also prohibit disclosure of any sensitive information which the Category 1 or 2 responder has created in the course of discharging its duties under the Act.¹⁷ For example, a risk assessment might identify that a local authority's planning to evacuate a city centre was deficient, and would exacerbate the effects of a terrorist attack. Putting the information into the public domain could expose a weakness that might encourage an attack. If this information was obtained by virtue of an information request made under the Act, or created in the course of a Category 1 or 2 responder discharging its duties under the Act, the sensitive information must not be disclosed, even if it would otherwise fall within the Category 1 responder's duty to publish a risk assessment/plan or its duty to warn, inform and advise the public.

¹⁵ regulation 52(2)

¹⁶ regulation 51(1)

¹⁷ regulation 51(5)

3.37. There are two exceptions in the Regulations to the prohibition on disclosure. Where the exceptions apply, the Category 1 or 2 responder may disclose. But unless the Category 1 or 2 responder is subject to an obligation under the Act to disclose the information (eg as part of the obligation to publish risk assessments), it is not obliged to do so:

- o **consent for the publication or disclosure is obtained.** Consent should be obtained from the person identified in [Figure 3.1](#). Note that the consent may be given subject to conditions.¹⁸
- o **the information is commercially sensitive or personal data, but the public interest in disclosure outweighs the interests of the person or organisation concerned.** This exception does not apply if the information is sensitive by virtue of its national security or public safety implications. When relying on this exception, the Category 1 or 2 responder must inform the person or organisation to whom the information relates of its intention to disclose the information and provide reasons why it is satisfied that the public interest in disclosure outweighs their interests.¹⁹

3.38. The prohibition on disclosure applies when the Category 1 or 2 responder is discharging its duties under the Act or any other function that it has in relation to an emergency. The prohibition does not apply where a Category 1 or 2 responder is dealing with an information request under the Regulations or contributing to the Community Risk Register (CRR).

¹⁸ regulation 51(2)

¹⁹ regulation 51(6)

- 3.39. The prohibition will not apply where the Category 1 or 2 responder receives an information request under the FOIA or the EIR. In such circumstances, Category 1 or 2 responders must consider the relevant enactment to determine whether or not the information should be released (bearing in mind that the presumption under FOIA is that all information will be disclosed). The right to information under each of those enactments is subject to exemptions on disclosure. In many cases, these will apply to sensitive information; but Category 1 or 2 responders should consider each case on its merits.
- 3.40. The Regulations²⁰ deal with the sharing of risk assessments to form the CRR. Where the risk assessment contains sensitive information, the Category 1 or 2 responder need not provide that information to the CRR where it considers that to do so would impair the confidentiality of that information or compromise the information. Note that there is no obligation under the Regulations to publish the CRR in its entirety. It is possible for a Category 1 or 2 responder to contribute a risk assessment to the CRR on condition that its risk assessment is not published.

²⁰ regulation 15(3)

Figure 3.1: Relevant Persons or Organisations for Different Types of Security Information

Type of sensitive information	Person or organisation whose consent is needed
Relates to national security and supplied indirectly or directly by one of the intelligence services.	The intelligence service which supplied the information or a Minister of the Crown.
Relates to national security but not supplied indirectly or directly by one of the intelligence services.	(a) if the information is contained in a document which has been created by a public authority, that authority; (b) in other cases, the organisation which supplied the information or (if different) a Minister of the Crown.
Relates to public safety and supplied indirectly or directly by one of the intelligence services.	The intelligence service which supplied the information or a Minister of the Crown.
Relates to public safety but not supplied indirectly or directly by one of the intelligence services.	a) if the information is contained in a document which has been created by a public authority, that authority; (b) in other cases, the organisation which supplied the information or (if different) a Minister of the Crown.
Relates to the business or other affairs of a person or organisation where disclosure would harm the legitimate business interests of that person or organisation.	The person or organisation to whom the information relates.
Relates to personal data and disclosure to a member of the public would contravene any of the data protection principles or s 10 DPA.	The person to whom the personal data relates.

HOW THE REQUIREMENTS OF THE ACT AND THE REGULATIONS MAY BE CARRIED OUT

3.41. This section outlines how the Government believes the duties described may best be carried out. It describes good practice. Category 1 responders must have regard to this guidance.²¹

Types of Information

3.42. It may be helpful for Category 1 and 2 responders to think about their use of information in the round, and consider how streams of information interact.

²¹ s. 3(3)(b)

- 3.43. There are various types of information. Information may be suitable for some audiences, but not others. And the circulation of information can be limited to certain classes of organisation or individual.
- 3.44. It is important not to think of information as being either public or private. The picture is much more nuanced, with a spectrum which runs from limited-access information (even within organisations) through to information intended to be absorbed and understood by the public.
- 3.45. However, there are certainly controls on the free flow of information. Access is limited in a range of ways including physical access, restrictive markings, circulation lists, the 'need-to-know' principle and targeting particular audiences.

Protective marking

There are 6 key points for protectively marking material. These are:

- o Not Protectively Marked;
- o Protect;
- o Restricted;
- o Confidential;
- o Secret; and
- o Top Secret.

The large range of information that can be covered by PROTECT means that a descriptor should be used e.g. "PROTECT - FOR LOCAL RESILIENCE FORUM USE ONLY". Material which contains sensitive personal data should be marked "PROTECT – PERSONAL DATA". The non-statutory guidance document, Security Vetting and Protective Markings: A guide for Emergency Responders, describes

the classification for each heading. It is however unlikely that responders will have a frequent need to work with highly classified material, but nevertheless, should understand the classification for each heading.

Security vetting

There are three types of personnel security controls (vetting levels) that affect access to protectively marked information. These are:

- o **Baseline Standard (BS)** – previously known as Basic Check (BC) and also known as Baseline Personnel Security Standard (BPSS). This standard may enable those who are cleared to have access up to CONFIDENTIAL and occasional controlled access to SECRET material.
- o **Security Check (SC)** - This standard may enable those who have been cleared to have long term, frequent and uncontrolled access to SECRET information or assets; and occasional controlled access to TOP SECRET.
- o **Developed Vetting (DV)** – This standard may enable those who are cleared to have long term, frequent and uncontrolled access to TOP SECRET information or assets.

Incidents of a sensitive nature

In the rare case of an extremely sensitive incident, such as a nuclear or terrorist attack, it is important that Category 1 and 2 responders assess the appropriateness of clearances for staff and volunteers. This judgment *must* be based on how frequently staff are likely to come into contact with any sensitive information arising from the incident. Category 1 and 2 responders should be willing to challenge organisations which demand unwarranted levels of clearance.

Category 2 responders

- 3.46. As with co-operation obligations, it is important for Category 1 responders to be realistic about what information is requested from Category 2 responders. Information sharing has the potential to be very burdensome if it is not handled responsibly.
- 3.47. Category 2 responders often put information about their activities into the public domain. Information about the overall regulatory regime for Category 2 responders such as the utility and transport sectors is also widely available. In the first instance, Category 1 responders should seek information about the civil protection arrangements of Category 2 responders from these open sources. To facilitate this, the Government will work with Category 2 responders to put as much information as practical about their industry's civil protection arrangements into the public domain.
- 3.48. Whilst Category 2 responders do not have the same planning duties as Category 1 responders, Category 2 responders do have a duty to provide information when requested by another responder²² if the responder requires it:
- o to perform its duties under the CCA; or
 - o in connection with the performance of another of its functions which relates to an emergency.

²² regulation 44A, 47 (1), 49 (1), 50

If a request is made, the Category 2 responder must, unless the information is sensitive, comply with the request. In addition to the exceptions discussed elsewhere in this chapter, the regulations prevent a Category 2 responder providing information if they consider that:

- o the information requested is personal data and disclosure would contravene a data protection principle; or
- o disclosure would be likely to adversely affect the confidentiality of the information.

In relation to information on vulnerable people, disclosure should not contravene a data protection principle. Provided that the requesting agency gives an assurance that the confidentiality of the information will not be breached, the Category 2 responder would be expected to provide the information as a general duty under the regulations.

3.49. Beyond these generic arrangements, Category 1 responders can generally expect to be making information requests in a limited number of areas:

- o information about local configuration of national arrangements;
- o information about specific local facilities; and
- o contact details of key staff.

3.50. Of course, this list is not exclusive. If a Category 1 responder wants information in order to discharge its duties under the Act, it should approach the Category 2 responder in question and begin a dialogue about access. If that is not possible, or is unsuccessful, and the Category 1 responder believes the request to be

reasonable and appropriate, it should make the request in accordance with the procedures set out above.

3.51. Where possible, Category 1 responders should seek to channel requests through as small a number of routes as possible to avoid duplication of effort. There are several ways in which Category 1 responders can request access to information to make the process more efficient:

- o where the information is required by a number of Category 1 responders, the request may be co-ordinated through the Local Resilience Forum (LRF), with the information shared between LRF members if appropriate. This is particularly relevant if the questions relate to local arrangements.
- o across more than one LRF area, the request could be co-ordinated through any multi-agency or multi-LRF groups.
- o where a type of information request comes up repeatedly, a Category 1 responder should consider raising this with its national representative body, or the sponsoring government department, or through the national representative body for the Category 2 sector in question. This will allow the sector to consider whether adjustment might be made to the scope of publicly available information to remove the need for future requests.

3.52. In terms of sensitive information, most Category 2 responders are particularly likely to rely on exceptions that relate to commercial confidentiality. This reflects the fact that many of the Category 2 responders are private sector bodies, who may be in competition with other Category 2 responders within the same area. It is important that these needs are respected. For example, two mobile

phone operators in the same LRF area might not want to expose details of their network coverage to each other, or to the public.

- 3.53. This would obviously be less true of those Category 2 responders from the public sector.
- 3.54. Category 1 responders should also bear in mind that information may be available to their organisation by virtue of existing commercial relationships with a Category 2 responder, or that information might be shared under the Act which would affect a commercial relationship. For example, an electricity supplier might have a contract to supply a local authority, but civil protection work might reveal problems with the resilience of that supply.
- 3.55. It is important that Category 1 responders respect the circumstances under which such information is obtained, and abide carefully by any restrictions on its use. Should Category 1 responders not handle information properly, the sanctions set out in the Act ²³ might be available to the Category 2 responder in question. In addition, if information is disclosed in breach of any duty of confidence, action may be taken against the responder in breach.
- 3.56. In return for responsible use of these powers to request information, Category 2 responders should ensure that they can deal with reasonable requests made by Category 1 responders.

Exercising (validation, training and testing)

- 3.57. The regulations clarify the requirements in regard to the arrangements for exercises not only to ensure that emergency plans are effective, but also that

²³s. 10

training for Category 1 personnel and other persons whom the responder considers necessary should also be provided. In addition, whilst not all elements of the plan can be tested, crucial elements of the plan can. One of these elements is information management.

3.58. It is vital that all Category 1 and 2 responders have an awareness of their roles and are reasonably comfortable with them *before* an incident occurs. Category 1 and 2 responders should receive awareness training in understanding and interpreting the legislation relating to information sharing i.e. under the CCA, DPA, FOIA and EIR. In addition, lessons and experience from previous incidents should also be included in any training and exercising of plans. Reference should be made to the use of national reports and recommendations from major incidents.

3.59. Category 1 and 2 responders should regularly review their training and exercising programme to validate, exercise and test the information sharing and also interoperability of communications elements of an emergency plan. In undertaking such a review, it is essential that responders understand their role and can fulfil its purpose *before* an incident occurs.

Other legislative requirements

3.60. Although there are many pieces of legislation which affect the use of information within individual sectors, there are three which have a wider-ranging impact and of which, as a consequence, Category 1 and 2 responders should be aware. It is for each Category 1 or 2 responder to make the final judgements about the detailed implications of each of these pieces of legislation and how they interface with the Act.

Freedom of Information Act 2000

- 3.61. FOIA provides a mechanism by which members of the public can access information held by public sector bodies.
- 3.62. The FOIA aims to increase the transparency of public bodies and the way in which such bodies carry out their work, and to increase accountability. For Category 1 and 2 responders which are public authorities as defined by the FOIA – broadly speaking that is a UK-wide public authority or a public sector body in England, Wales and Northern Ireland (similar legislation exists in Scotland) – the FOIA imposes certain duties to communicate information which is requested by any person (subject to procedural requirements and exemptions). These duties are not affected by the Act.
- 3.63. Although as a matter of law the FOIA could be used by one public authority to extract information from another, the FOIA is not primarily intended to be used for that purpose. Public authorities have an implicit duty of co-operation in the discharge of public functions which should facilitate information flow. As such, public authorities which are Category 1 or 2 responders should not regard the FOIA as the principal basis for making requests from each other about civil protection matters. Category 2 responders which are not public authorities should also not rely on the provisions of the FOIA as the principal basis to acquire information for civil protection purposes.
- 3.64. Instead, Category 1 and 2 responders should follow the two-stage process set out in earlier paragraphs. In the first instance, they should consider whether it is possible to get the information they seek through other means.

- 3.65. It is only if the information is not publicly or informally available that Category 1 or 2 responders should seek to use the formal mechanisms set out above. But this remains a last resort.
- 3.66. In most respects, the information sharing provisions in the Act and Regulations are broader than those in the FOIA. The FOIA recognises that the information will enter the public domain. The Act recognises that the information stays within the civil protection community. As a result, the Act allows certain types of sensitive information to be shared which would be unlikely to be disclosed under FOIA.
- 3.67. It is important however that WRF, LRFs and any multi LRF group agree protocols for dealing with individual FOIA requests. This will ensure that multi-LRF, WRF or LRF responders who receive the same individual FOIA request from the public or media can produce a co-ordinated response to the request. The process may mean identifying a lead responder to deal with specific FOIA requests on behalf of the multi LRF/WRF or LRF responders bearing in mind what can and cannot be disclosed under the CCA.
- 3.68. Detailed guidance on the FOIA can be found on the Ministry of Justice website at www.justice.gov.uk

Environmental Information Regulations 2004

- 3.69. The EIR provide for the freedom of access to information on the environment, subject to certain conditions.
- 3.70. Further information is available through the website of the Department for the Environment, Food and Rural Affairs, at www.defra.gov.uk

Data Protection Act 1998

- 3.71. The DPA provides certain rights to individuals to request information from public bodies about personal data held by them which relates to that individual. It also provides limits on the use or processing of such data by public authorities. The Data Protection Act must be considered in relation to the duties imposed under the Act and Regulations.
- 3.72. Guidance on the Data Protection Act can be found in *Data Protection and Information Sharing - Guidance for Emergency Planners and Responders*, which is available through the Cabinet Office website at www.cabinetoffice.gov.uk/ukresilience and on the Information Commissioner's website at: www.ico.gov.uk

Other Related Guidance

- 3.73. Guidance on multi agency interoperability is available from www.npia.police.uk
- 3.74. *Data Protection and Information Sharing - Guidance for Emergency Planners and Responders* is available through the Cabinet Office website at www.cabinetoffice.gov.uk/ukresilience and *Security Vetting and Protective Markings: A guide for Emergency Responders* is available on a restricted basis from DCLG RED or from the Welsh Government or via the National Resilience Extranet at www.resilience-extranet.gov.uk or www.resilience-extranet.gse.gov.uk.

Annex 3**INFORMATION REQUEST PROFORMAS****Information Request Under the Civil Contingencies Act 2004**

Requesting organisation(s)	
Information holding organisation(s)	
Information requested	
Reason why the information is required in connection with the Act or other civil protection duties (and how the information is likely to be used)	
Date of request	
Date by which information is required	
Form in which information is required	
Place to which information should be sent	
Contact details	

Response to Information Request Under the Civil Contingencies Act 2004

Requesting organisation(s)	
Information holding organisation(s)	
Date of request	
Information requested	
Request accepted?	Yes/No
If no, please set out the exceptions on which you are relying	
If yes, please set out any sensitivities or further background information which might be necessary to ensure the information is properly understood and properly protected	
Date information was supplied	
Contact details	