

The Right to Information

Queensland Mining Industry Health and Safety
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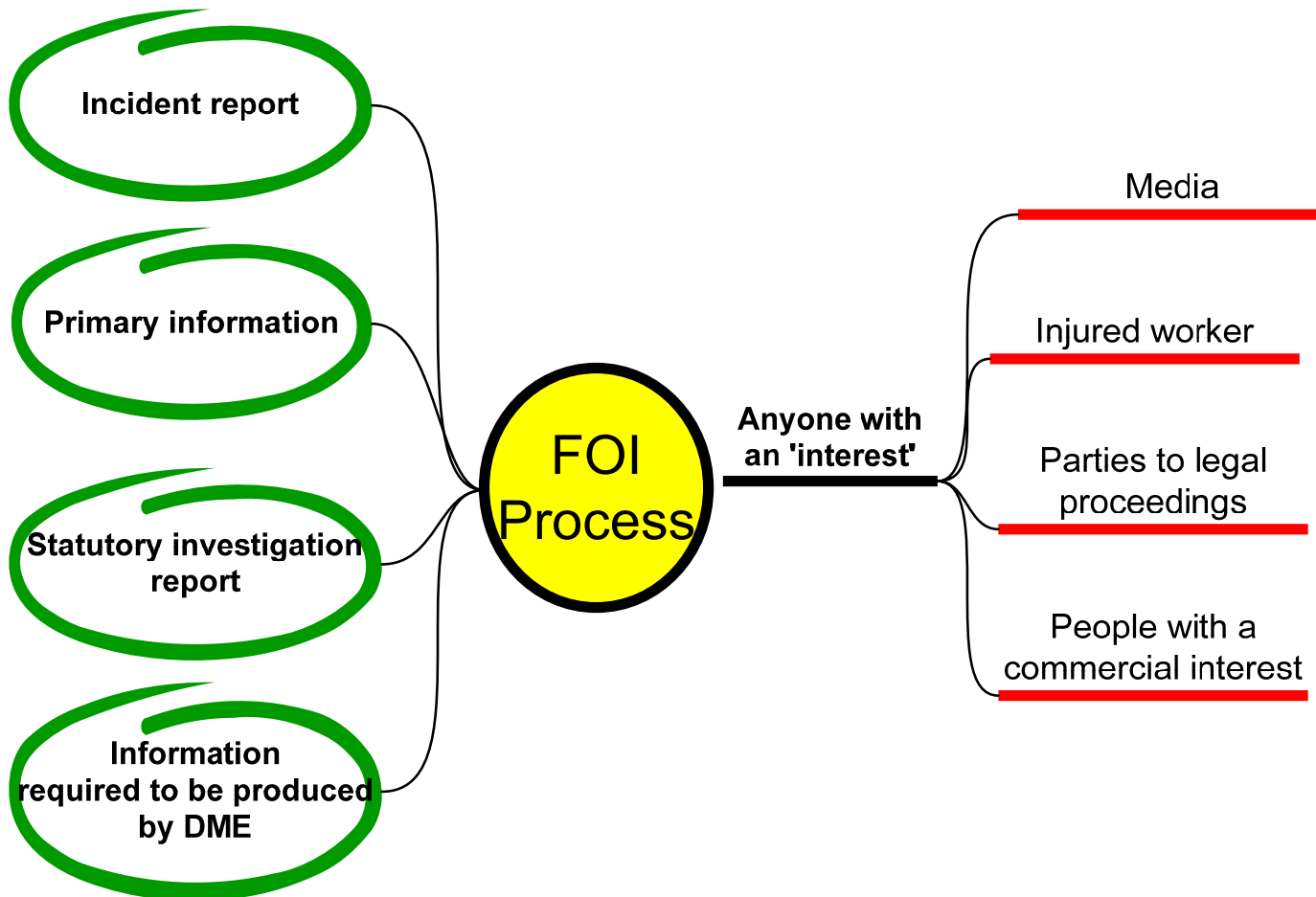
What information is given to DME when there is an incident?

- Notification incident report (s198 CMSHA and s195 MQSHA)
- Primary Information (s198A CMSHA and s195A MQSHA)
- Investigation report for serious or high potential incidents (s201 CMSHA and s198 MQSHA)
- Information required to be produced to DME (s154 CMSHA and s151 MQSHA)

Requirement to give information

- DME can require an obligation holder to produce documents (s154 CMSHA, s151 MQSHA)
- documents must be produced unless the person has a reasonable excuse
- it is not a reasonable excuse to rely on privilege against self-incrimination (s155 CMSHA, s153 MQSHA)

Where might that information end up?



The FOI process

Write to govt agency and identify information or documents to be accessed



Agency reviews request, generally makes decision within 45 days whether to release information



If disclosure of document likely to be of “substantial concern” to another person, FOI officer must take reasonably practicable steps to consult with that person and seek their views about disclosure.
Ultimate decision lies with FOI officer



Applicant advised of decision in writing



If access to documents refused, can apply to Information Commissioner for external review of decision

Review of decisions

- Can appeal for internal review if don't agree with decision
- Review must be done by a different person to the original decision maker
- 28 days to notify of new decision

Legal professional privilege exemption

- Access to documents can be refused if it is covered by legal professional privilege
- Communications made between a lawyer and client for the dominant purpose of:
 - seeking legal advice; or
 - in anticipation of legal proceedings.
- There is no public interest test – it does not matter if an applicant can identify public interest considerations which favour release of the information

Law enforcement and Public Safety exemption

- Access to documents can be refused if it would prejudice:
 - the investigation of a contravention or possible contravention of the law in a particular case
 - a person's fair trial
 - the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
- Does the exemption apply only to individuals or can corporations also claim the exemption?

Exemptions (ctd)

Matter is also exempt if:

- it consists of information given in the course of an investigation of a contravention or possible contravention of the law
- the information was given under compulsion under an Act that abrogated the privilege against self-incrimination (ie, CMSHA and MQSHA)

How can information be protected?

- Establish Legal Professional Privilege (LPP)
- Rely on an exemption

FOI Reform

The way forward

FOI Reform

- FOI Independent Review Panel
- Public interest exceptions – amendments
- New 3 step process

Exemptions – will they survive?

- The Review Panel has recommended that the section 42 exemptions remain in the FOI Act

The new 3 step process

1. FOI request is received
2. Decision maker assesses the request against small number of exceptions (none of which will have public interest character)
3. Decision maker decides whether any public interest factors are applicable. If so, they will balance all of the factors against each other with the aid of a 'guide'. The guide will particularise different types of harm, seriousness of each and the relative reduction in the seriousness of each type of harm with time

Protecting your information

Practical Tips

Practical tips

- Don't hand over information to the Regulator unless it has been required under the Act
- Establish LPP as soon as possible after an incident
- Always keep FOI in the back of your mind when handing over information to a government agency or department

Practical tips

- Conduct your investigation under the protection of legal professional privilege
- Instruct your lawyers to take statements for the purposes of the investigation
- Consider whether common interest privilege should be established with other parties to an incident: eg, between a contractor and operator

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