Evidence and Confidentiality Issues

When deciding on evidence to submit for online Skills Development Portfolio criteria, candidates must have due regard for confidentiality issues. Although IOSH treat submitted material as confidential, this does not remove the obligation of candidates to observe such issues.

Confidentiality issues can include potential breaches of data protection principles, such as in the UK Data Protection Act, breaches of client or contractual confidentiality, and contraventions of due legal process. The need to comply with such issues is set out in part 3 of the IOSH Code of Conduct (there may also be an issue of conflict of interest, as per code point 1.4, depending on the circumstances). Candidates should bear in mind that they must be following the Code of Conduct in order to attain Chartered status.

For the first of the above, the Data Protection Act imposes duties on those who hold personal information on others to keep this secure and to only use it for the purposes for which it was supplied, or became available, to them. This applies unless permission has been obtained otherwise from the persons concerned. There is another option which is broadly acceptable. This is when documents relating to other individuals can have personal identification details removed, such that the person concerned cannot be identified. This would most often consist of removing address details and similar information on the person. However, it should be borne in mind that if the person’s name is left on such documents, and the person could be identified through this and other information available, this too should be removed. Clearly, if the amount of editing required to achieve this results in a document that no longer functions as effective evidence, the candidate will need to reconsider such evidence. Of course, the permission of the person concerned can be sought, and in such cases evidence of such permission should be submitted along with the evidence.

Breaches of confidentiality can arise where, for instance, information is of a commercially sensitive nature. This could be for a client or the candidate’s own organisation. There may well be a contractual requirement imposed on the candidate to avoid disclosure of such information to others. This must be observed, or the express permission of the organisation to disclose such information obtained. Again, in such cases evidence of such permission should be submitted along with the evidence. It may well be possible to edit such information to remove details of a confidential nature. The candidate should check with their client/organisation that this is acceptable, and confirm to IOSH that this has been accepted. As above, if the amount of editing required removes the usefulness of the evidence for the purposes of the criterion, the candidate should consider if it is wise to submit such evidence.

The third issue relates to contraventions of due legal process. This can arise where evidence submitted relates to information that is part of a potential prosecution, or an actual prosecution in progress. In such cases, the information is considered to be sub-judice. This means that it should not be disclosed to others whilst the process of investigation by the police or enforcement body is still in progress, or the prosecution is actually in progress. Such restrictions apply to disclosure to others in the candidate’s organisation who do not have a legitimate right to know, or to external persons/bodies such as IOSH. Breaching such requirements could leave the candidate open to a charge of contempt of court.

With respects to the above, it is useful to consider the issue of legal privilege. Documents relating, for instance, to a workplace accident are disclosable in court. This means that they can be requested by the other party to a legal action, and must be supplied. The HSE can indeed require such information to be disclosed to them under sections 20 and 27 of the Health and Safety at Work Etc Act 1974. The exception to this is where legal privilege is claimed. This is a limited exception,
relates only to discussion or correspondence between an individual and their legal representative (usually a solicitor). This can be kept confidential and therefore not disclosable in court. It should be borne in mind that legal privilege is so restricted; disclosing such information to others in the organisation, or to external people/bodies, effectively removes such privilege, and makes the information disclosable. This can of course have significant legal ramifications for the organisation. To avoid falling foul of such considerations, candidates should not submit information that may form part of a legal action (criminal or civil), or is involved in such a legal action, until the legal action has been completed and judgment issued. This can of course require an element of trying to predict the likelihood of legal action, and the candidate will need to exercise foreseeability in this regard. If in doubt the candidate should take legal advice before submitting such evidence to IOSH.

It is unlikely that the above issues will arise very often in the normal course of submitting activities and evidence for a Skills Development Portfolio. However, due care needs to be exercised to avoid infringing legislative, contractual or legal process issues. Failure to do so could have legal implications for both the candidate and IOSH.