

Annex 3 – Openness

Introduction

1. The Committee on Toxicity (COT) and its sister committees the Committee on Mutagenicity (COM) and Committee on Carcinogenicity (COC) are non-statutory independent scientific advisory committees which advise the Chair of the Food Standards Agency and the Chief Medical Officers (for England, Scotland, Wales and Northern Ireland) and, through them, the Government on a wide range of matters concerning chemicals in food, consumer products and the environment.
2. The Government is committed to make the operation of scientific advisory committees such as the COT/COM/COC hereafter referred to as “the Committee” more open and to increase accountability. The Committee is aware that the disclosure of information that is of a confidential nature and is communicated in circumstances importing an obligation of confidence is subject to the common law of confidentiality. There are some circumstances making disclosure of confidential information lawful for example, where the individual to whom the information relates has consented; where disclosure is in the public interest; and where there is a legal duty to do so. However, guidance is set out in the Freedom of Information Act 2000 which gives any person legal rights of access to information which is held by a public authority.
3. The Committee has agreed to hold open meetings as standard practice. Interest groups, consumer organisations etc can attend (subject to the appropriate procedures for handling commercially sensitive information and research not in the public domain, paragraphs 9-15 refer).
4. The Committee appoints lay/public interest member(s) to help to increase public scrutiny of Committee business.
5. The Committee has agreed to the publication of agendas, draft and finalised minutes, discussion papers and statements on the internet.
6. Statements will summarise all the relevant data, such as information regarding potential hazards/risks for human health in respect of the use of products and chemicals, and any recommendations for further research.
7. The Committee will be asked for an opinion based on the data available at the time of consideration. It is recognised that, for many chemicals, the toxicological information is incomplete and that recommendations for further research to address these gaps may form part of the Committee's advice.
8. The release of documents (papers, minutes and statements) where the Committee has agreed an opinion on the available unpublished data but

where further additional information is required in order to finalise the Committee's conclusions, needs to be considered on a case-by case basis.

The relevant considerations include the likelihood that such additional data would alter the Committee's conclusion, any representations made by a company about, for example, commercial harm that early disclosure could cause and also the public interest in disclosure.

Procedures for handling commercially sensitive information and research data not in the public domain

Background

9. The Committee operates on a presumption of openness. However, it is recognised that the nature of the work will at times provide the Committee access to information that is not in the public domain. Decisions on confidentiality will be exercised consistently with consideration to the Freedom of Information Act 2000 and Environmental Information Regulations 2004.
10. Where there is a need to discuss matters that cannot be put in the public domain the Committee may hold a discussion in "Reserved Business". These items will be generally discussed either at the beginning or the end of an open meeting. It is expected that such cases will be infrequent and only in clearly justified circumstances. For the most part this comprises information which is commercially sensitive such as product formulations/specifications, methods of manufacture, and reports of toxicological investigations and company evaluations and safety assessment. It would also include pre-publication or unpublished research data.
11. "Reserved Business" items will be clearly indicated as such. The Committee will advise its reasons for withholding any information, and, if possible, an indication of when and where the information withheld may be published. Information subject to such restriction, including reserved sections of the minutes will be placed in the public domain as soon as practicable should the restrictions cease to apply at a later date.
12. Normal procedure is to publish a summary of the Committee's advice on their respective websites, in the Annual Report and where necessary to ask companies to release full copies of submitted reports for retention by the British Library at the completion of a review. Given the clear Ministerial commitment to the publication of detailed information regarding the activities of advisory committees, and in particular following the assessment of products which are already available to the general public, the Committee will publish statements via the Internet soon after they have been finalised.
13. Except in cases where there is legislation under which information has been submitted and which deals with disclosure and non-disclosure, the general principle of the common law duty of confidentiality will apply. This means that any information which is commercially sensitive, pre-publication or unpublished research data and has been obtained in circumstances importing a duty of confidence may not be disclosed unless consent has

been given or there is an overriding public interest in disclosure (such as the prevention of harm to others).

14. The following procedure will be adopted which allows commercially sensitive information to be identified, assessed and appropriate statements to be drafted and published on the basis of a prior mutual understanding with the companies. There is scope for companies to make representations also after submission of the information and prior to publication regarding the commercial sensitivity of data supplied and to comment on the text of statements which are to be published. However, companies would not have a right of veto in respect of such statements.

Procedures prior to committee consideration

Initial discussions

15. Upon referral to Committee the Secretariat will liaise with the relevant company supplying the product in the UK to:
 - Clearly state the policy of Committee openness (summarised above).
 - Identify and request the information needed by the Committee (e.g., test reports, publications etc).

Commercially sensitive information

- The company will be asked to clearly identify any commercially sensitive information and the reason for confidentiality.

Pre-publication and unpublished research data

- The Committee and Secretariat will respect the confidentiality of authors of (unpublished or pre-publication) research data.

Handling confidential data

- The procedures by which the Committee will handle commercially sensitive information, pre-publication or unpublished research data and the public availability of papers, minutes, conclusions and statements where reference is made to such data will be discussed with the company or author prior to submission of papers to the Committee and is outlined in paragraphs 9-15 above. Companies will be informed that confidential annexes to Committee papers (e.g. where detailed information supplied in confidence such as individual patient information and full study reports of toxicological studies) will not be disclosed but that other information will be disclosed unless agreed otherwise with an individual company.
- The following is a suggested list of information which **may** be disclosed in Committee documents (papers, minutes and statements). The list is not exhaustive and is presented as a guide:

- a) name of product (or substance/chemical under consideration),

- b) information on physico-chemical properties,
- c) methods of rendering harmless,
- d) a summary of the results and evaluation of the results of tests to establish harmlessness to humans,
- e) methods of analysis,
- f) first aid and medical treatment to be given in the case of injury to persons,
- g) surveillance data (e.g. monitoring for levels in food, air, or water).

Procedures during and after Committee consideration

- The timing of release of Committee documents (papers, minutes and statements) where the item of business involved the consideration of confidential data would be subject to the general provisions outlined in paragraphs 9-15 above. Documents would not be released until the Committee statement is available.
- The most important outcome of the Committee consideration is likely to be the agreed statement. Companies will be given an opportunity to comment on the statement prior to publication and to make representations (for example, as to commercial sensitivities in the statement). The Chair would be asked to consider any comments provided, but companies would not be able to veto the publication of a statement or any part of it. Companies will continue to be asked to release full copies of submitted reports for retention by the British Library at the completion of a review.

Dissenting views

16. The Committee should not seek consensus at the risk of failing to recognise different views on a subject. Any significant diversity of opinion among the members of the Committee that cannot be resolved should be accurately reflected in the minutes or report. Committee decisions should always include an explanation of where differences of opinion have arisen during discussions, specifically where there are unresolved issues and why conclusions have been reached. If however member(s) feel they cannot support the Committee conclusions they may declare a 'minority report' identifying which member(s) are making the minority report and setting out their position.

COC/COM/COT papers

17. Committee papers are available on the respective website. Papers will not include commercially sensitive documents, pre-publication, unpublished or material in the public domain. Where possible a cover page with weblinks (current at the time) will be provided.