

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 November 2009

Public Authority: The Health and Safety Executive
Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Summary

The complainant made a series of requests for information relating to the Health and Safety Executive's (HSE) investigation of a fatal accident at the Charterhouse School in 1998. The public authority initially stated that no information was held and advised the complainant where information which might meet the description in his request may be located. In response to subsequent requests, the HSE disclosed some information but withheld the remainder of the information held under the exemptions provided by sections 40(2) and 41 of the Freedom of Information Act 2000 (the Act). In particular, the HSE maintains that its findings in the investigation are not held. The Commissioner's decision is that the public authority no longer holds the requested information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant made a series of requests intended to obtain copies of documents and the HSE's findings in relation to its enquiry into a fatal accident in early 1998. These requests, and a brief summary of the HSE's responses, are listed at annex 2 to the Decision Notice. His earliest requests produced the response that information was not held by the HSE, partly due to the way in which his requests were framed. Subsequent requests produced the explanation that the

information had been destroyed by the HSE in accordance with its document retention and disposal policy. At a later point, searches revealed information which had been overlooked in the document disposal process, this was assessed and some parts of it were disclosed to the complainant but parts were withheld under the exemptions provided by sections 40 and 41 of the Act. These were re-assessed at internal review and further disclosures made but some information remains withheld.

3. The complainant, partly due to the HSE's piecemeal disclosures, believes further information is held on the matter which should be disclosed, specifically, a copy of its findings in the investigation. The HSE has indicated to the complainant that it believes its findings (which it no longer holds) were submitted to the Coroner at the time of the inquest but the complainant has been unsuccessful in locating a copy.
4. The accident, which is the subject of the complainant's request for information, occurred during an exercise undertaken at a school by members of its Combined Cadet Force, supervised by Royal Navy personnel. The Ministry of Defence (MoD) therefore conducted its own Board of Enquiry, independently of the HSE's investigation, and a lot of information was provided to the Coroner for the inquest by the MoD Board of Enquiry. The HSE's recollection is that it may not have submitted much material for the inquest in consequence, but it is unable to provide any evidence of what was or was not provided at the time.

The Request

5. The complainant's earlier requests to the HSE did not make specific requests for information held in relation to the Charterhouse School accident and the HSE referred the complainant to the MoD for information relating to the life raft involved in the accident stating that it no longer held the information.
6. The complainant made a request to the HSE on 23 May 2008, HSE reference 2008050487:
 - 1) *"For all copies and documents on the HSE policy on the retention schedule to destroy information you held on file;*
 - 2) *For all copies of documents to why all the records and files of the Charterhouse School fatality on the 26 January 1998 have been destroyed;*
 - 3) *For all copies and documents on the dates when these documents were destroyed. And the dates when the decision was made to destroy them;*
 - 4) *For all copies of documents to who made this decision to destroy all the files of the Charterhouse School fatality; and*
 - 5) *For all copies and documents of any remaining documents which may still be held by other departments of the HSE on the Charterhouse School fatality."*

The public authority responded in an undated letter, understood to be in June 2008, in which it provided a copy of its document retention schedule and briefly explained the process by which paper records and electronic records are

reviewed prior to destruction. The HSE was unable to provide information on the dates the requested documents were destroyed, or who made the decision, as this information was not held by it.

7. The complainant spoke to the HSE on 7 July 2008 and is understood to have clarified item 5 of his request. This was acknowledged by the HSE on 8 July 2008, bearing the HSE reference 2008070126, stating the request as:

“Copies of all information held by HSE relating to the Charter House School fatality, plus a copy of HSE’s findings.”

8. The Commissioner’s investigation concerns item 5 of the request, as clarified by the complainant on 7 July 2008 and as re-stated at paragraph 7, above.
9. Correspondence from the HSE indicates that partial responses to this request were made on 1 August and 12 August 2008. The public authority confirmed that it held 85 documents meeting the description in the complainant’s request. It fully disclosed some of the information it held but some information was only partly disclosed and some documents were completely withheld, under exemptions provided by sections 40(2), 41 and 44 of the Act.
10. The public authority spoke to the complainant on several occasions and responded to his requests, including a request for internal review, and the Commissioner notes that the HSE’s responses comply with the requirements of section 1 and section 10 of the Act, but it is apparent from the complainant’s correspondence that he nevertheless gained the impression that the HSE was being evasive in its responses to him.
11. A similarly-worded request was sent to the Chief Executive of the HSE in correspondence on 19 August 2008, reproduced at Annex 2 to this Decision Notice. This was refused on 11 September 2008 as a repeated request under section 14(2) of the Act.
12. The complainant wrote a letter to the Chief Executive on 18 September 2008 which was treated as a request for internal review. The HSE decided to conduct an internal review of its handling of two of the complainant’s requests, the request of 7 July 2008, and the requests contained in the complainant’s subsequent correspondence with the Chief Executive of 19 August 2008.
13. The HSE wrote to the complainant on 13 January 2009 with the outcome of its internal review. It disclosed some more information which it had previously redacted from some documents, it also released some information previously withheld, redacting parts where full disclosure could not be made, and upheld its previous decision to withhold the remainder of the information under sections 40(2) and 41 of the Act.
14. The internal review also upheld the decision to refuse the complainant’s request of 19 August 2008 as repeated, under section 14(2) of the Act, although it acknowledged that the HSE’s piecemeal release of information could have helped

the complainant from the conclusion that it had not released all the disclosable material to him.

The Investigation

Scope of the case

15. On 23 January 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points.
 - Bearing in mind that the HSE originally stated that information was 'not held', the complainant asked the Commissioner to investigate whether information which should be disclosed was being kept from him, specifically he asked for the Commissioner's assistance in obtaining a copy of the HSE's findings in its investigation into the Charterhouse School fatality.
 - The complainant alleged that the HSE had "*labelled me vexatious*" to avoid its obligations to provide information.
 - The complainant also referred the Commissioner to a local press report at the time of the accident, which he believed suggested that a second HSE investigation was still ongoing at the time of the inquest and that the outcome of that investigation was being concealed from him.
16. The Commissioner has confirmed with the complainant that his investigation would examine the withheld information to determine whether it contained a copy of the HSE's findings and, if so, whether these could be disclosed to him. The Commissioner also investigated whether a second HSE investigation was carried out which might produce further disclosable information.
17. The Commissioner also clarified to the complainant that the HSE's refusal to respond to his request of 19 August as a repeated request under section 14(2) of the Act did not mean he was vexatious: a vexatious request can be refused under section 14(1) of the Act and the refusal is directed at the request, not the person making the request. A refusal under section 14(2) is intended to release a public authority from its obligations to respond to a request in circumstances where the request is identical or substantially similar to a request previously made by that person, which the public authority has already complied with. Having explained this to the complainant, this aspect of his complaint was not considered further by the Commissioner.
18. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

19. The Commissioner wrote to the complainant on 21 April 2009 to establish the scope of the case.
20. On 22 April 2009, the Commissioner wrote to the public authority indicating that his investigation would examine whether information not disclosed to the complainant had been correctly withheld and why, given the subsequent disclosure of information, the public authority's initial response to the complainant had been that information was 'not held'. The Commissioner also wished to clarify the nature of any second investigation carried out by the HSE, as suggested by the complainant and the possible whereabouts of any remaining copy of the HSE's findings.
21. The Commissioner also spoke to the public authority on 22 April and it was explained to him that the HSE only conducted one investigation. There was also at least one Royal Navy board of enquiry conducted at the time and the press report cited by the complainant was mistaken if it attributed a second enquiry to the HSE. The public authority speculated that any reference to a second enquiry might relate to the Royal Navy board, or possibly to a second Royal Navy board if one was undertaken.
22. The complainant subsequently telephoned the Commissioner, clarifying aspects of his complaint. The Commissioner sent a follow-up letter to the HSE on 29 April in which he requested explanations as to how the 85 documents had been located. He also spoke to the HSE to clarify aspects of the letter and enquire why the documents located did not also contain a copy of the HSE's findings in the investigation. In relation to the provision of a copy of the HSE's findings to the Coroner, the Commissioner asked for confirmation that a copy was provided to the Coroner for the purposes of his inquest.
23. The Commissioner wrote to the complainant on 8 May explaining that Coroner's courts are not subject to the Freedom of Information Act 2000 and therefore neither he, nor the HSE, could assist him in obtaining a copy of the findings from the Coroner but that a copy might be obtainable from the Coroner directly on application. The complainant replied that he had requested a copy from the Coroner, but had been informed that he did not have a copy of the HSE's findings.
24. The Commissioner wrote again to the public authority on 13 May, asking it to provide a list of the documents sent to the Coroner for the purposes of the inquest as this might help the complainant in locating a copy of its findings. He also requested a copy of the public authority's document retention and disposal policies.
25. On 27 May the public authority wrote to the Commissioner explaining that the primary working folders for its investigation had been destroyed in line with its document retention and disposal schedule, this would have occurred in January 2007, files were first reviewed with a view to disposal nine years after the file was originally opened. It further clarified that the 85 documents had been located in a subsidiary folder, most likely a 'work in progress' folder of copies of key

documents, created to assist one of the investigating officers at the time, and that this folder had not been reviewed and therefore had not been destroyed. This folder did not contain a copy of the findings of the investigation.

26. On 28 May, the public authority sent a further letter to the Commissioner indicating that no record had been kept of what was sent to the Coroner, therefore it could not help the complainant to locate its findings by naming the relevant document.
27. During the Commissioner's investigation the HSE disclosed one further document from the bundle of 85 documents mentioned as this had been withheld in error.

Findings of fact

28. The HSE document retention and disposal schedule indicates that paper documents are retained until the first review, which occurs 9 years after the file is opened, and electronic documents are retained for 7 years after the closure of the folder [or file]. The case file would normally be closed after the inquest was concluded. The investigation in question was conducted in 1998; therefore paper documents would have been reviewed and disposed of in 2007. The inquest took place in September 1998; therefore any electronic documents would have been scheduled for deletion in or around October 2005.
29. The Coroner's Rules 1984 provide, at Rule 56, that the Coroner retain documents supplied for an inquest or post mortem examination for a minimum of 15 years (unless directed otherwise by a court), and that

"the coroner may deliver any such document to any person who in the opinion of the coroner is a proper person to have possession of it"
30. The Coroner has not sought to argue that the complainant is not a proper person to have possession of documents and has not refused the complainant's request for a copy of the HSE's findings under the Coroner's Rules but has informed the complainant that he was not supplied with a copy of the HSE's findings.

Analysis

Procedural Matters

31. The Commissioner has seen the public authority's document retention and disposal schedule and is satisfied that, by the time of the complainant's requests, the documents relating to the accident investigated by the HSE would already have been properly disposed of by the HSE. The public authority is unable to provide any documentary evidence of destruction or disposal, however, and admits that this indicates a failure in procedure. The HSE has informed the Commissioner that its procedures have been improved since that time.

32. In its internal review letter of 19 May the public authority advised the complainant that it had located some information and would try to establish whether any of that information fell within the scope of his previous requests. It subsequently advised the complainant, on 3 July 2008, that the information held did not fall within the scope of his requests. The complainant then clarified the request which is the subject of this investigation on 7 July 2008.
33. The public authority's refusal notices of 1 August and 18 August 2008 (in both of which some information was also disclosed to the complainant) failed to correctly state the full exemption in question by not identifying the appropriate subsections of section 40, 41 and 44 which it had applied and, by their failure to identify these subsections, the explanatory notes provided did not state why the exemptions applied to the withheld information. This is a breach of section 17(a),(b) and (c) of the Act.
34. The Commissioner observes that if the information described above and at paragraph 25 were indeed contained in a secondary 'work in progress' folder, then it could not be expected to contain a copy of any findings because those would necessarily have formed the conclusion of the investigation, and therefore there would have been no need to maintain or update any 'work in progress' folders in use.
35. The Commissioner also notes that there is uncertainty over whether a copy of the findings was actually sent to the Coroner. The HSE has assumed that it would have sent a copy but cannot provide any evidence to support that belief. The complainant has indicated to the Commissioner that he has been advised by the Coroner that a copy of the HSE findings are not held by him. A lot of material was provided to the Coroner by the MoD board of enquiry which was conducted separately to the HSE investigation; consequently the HSE may not have submitted as much material to the inquest as would otherwise have been the case.
36. The Commissioner notes that Rule 56 of the Coroner's Rules 1984 requires the retention of documents provided for an inquest for a minimum of 15 years, a more stringent requirement than the HSE policy and he has been advised that the Coroner would routinely retain documents for substantially longer. Consequently, given the Coroner's advice to the complainant that he does not hold a copy of the HSE's findings in the case it is not possible to establish whether a copy of the HSE's findings was received by the Coroner.
37. Given the length of time which has passed, and the public authority's internal document retention and disposal schedules, the Commissioner agrees that there is no requirement for the HSE to have retained a copy of its findings and that it is likely that these were properly disposed of at the time. The folder containing information, some of which has been disclosed to the complainant, represents an unofficial copy of documents, did not contain a copy of the HSE's findings and the Commissioner is satisfied that, on the balance of probabilities, there is no reason to believe that it would have done so.

38. Therefore, the Commissioner finds that the public authority's 'not held' responses were correct and that, with particular reference to the HSE's findings in the investigation, this information is not held by the public authority.

The Decision

39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- Information of the findings in the investigation is not held by the public authority.
40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority's refusal notices of 1 August and 12 August 2008, together with the outcome of the internal review of 13 January 2009 breached section 17(a),(b) and(c) of the Act by failing to correctly state, specify and explain the exemptions used.

Steps Required

41. The Commissioner requires no steps to be taken.

Other matters

42. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
43. The Commissioner notes that it was not until the complainant clarified his request on 7 July 2008 that any of the information discovered during the HSE's searches was considered by the public authority to fall within the description of his request and furthermore, that some of his earlier questions to the HSE may not have been considered by it to constitute valid requests for information as defined by the Act.
44. The Commissioner understands that, by the time the complainant made the request under consideration, his relationship with the HSE office in East Grinstead had deteriorated and the office had adopted a very literal interpretation of his requests as a result. Subsequently, the request was dealt with by the HSE in Bootle. While he is reluctant to find the HSE at East Grinstead in breach of section 16 as it might not have been reasonable for it to offer more advice and assistance in the circumstances, the Commissioner observes that, had the public authority provided more advice and assistance at an earlier stage, it might have

been able to prevent the complainant gaining the impression that it was being evasive, but that this does not in itself constitute a breach of section 16 of the Act.

45. The Commissioner notes that the internal review of the 7 July clarification of the request under investigation was requested on 18 September 2008, but the outcome was not communicated to the complainant until 13 January 2009. While there is no statutory timescale for the conduct of an internal review, the Commissioner's guidance states that this should be completed within 20 working days, or in exceptional circumstances, within 40 working days.
46. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Code explains that any written reply from the applicant which expresses dissatisfaction with an authority's response should be handled as a complaint (internal review). As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it appears to have taken the authority over 70 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

47. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of November 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1. Legal Annex

S.1 General right of access

Section 1(1) provides that -

'Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.'

Section 1(2) provides that -

'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'

Section 1(3) provides that –

'Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'

Section 1(4) provides that –

'The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'

Section 1(5) provides that –

'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'

Section 1(6) provides that –

'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny'.'

S.10 Time for Compliance

Section 10(1) provides that –

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

Section 10(2) provides that –

'Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.'

Section 10(3) provides that –

'If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.'

Section 10(4) provides that –

'The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.'

Section 10(5) provides that –

'Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and*
- (b) confer a discretion on the Commissioner.'*

Section 10(6) provides that –

'In this section –

"the date of receipt" means –

- (a) the day on which the public authority receives the request for information, or*
- (b) if later, the day on which it receives the information referred to in section 1(3);*

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'

S.17 Refusal of Request

Section 17(1) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.'*

Section 17(2) states –

'Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-*
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

Section 17(3) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

Section 17(4) provides that -

'A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.'

Section 17(5) provides that –

'A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.'

Section 17(6) provides that –

'Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.'

Section 17(7) provides that –

'A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.'

CORONERS RULES 1984, SI 1984 No 552

Rule 56

56 Retention and delivery of documents

Any document (other than an exhibit at an inquest) in the possession of a coroner in connection with an inquest or post-mortem examination shall, unless a court otherwise directs, be retained by the coroner for at least fifteen years: Provided that the coroner may deliver any such document to any person who in the opinion of the coroner is a proper person to have possession of it.

Annex 2. List of the complainant's requests and summary of the HSE responses:

The complainant's series of requests are listed in chronological order, including the HSE's reference number:

HSE reference 2008030477, dated 28/03/08:

- 1). *"Was the HSE formally aware of equipment deficiencies with this training life-raft used at the school on the 26 January 1998;*
- 2). *If the HSE had been aware of equipment deficiencies how many deficiencies were there and what type of problems were there with this training life-raft; and*
- 3). *Who supplied the information on this life-raft equipment deficiencies."*

The HSE made a response to this request on 31 March 2008 in which it stated that the information was not held and advising the complainant to contact the Ministry of Defence (MoD), Fleet Headquarters in Portsmouth.

HSE reference 2008040078, dated 03/04/2008:

This request was made by telephone and confirmed in writing in a letter of 8 April 2008, also requesting an internal review of the first request (item 1, below):

- 1). *"For all copies of documents which I have requested in my letter of the 28 March 2008;*
- 2). *For all copies of documents on your replies and answers to one to four in your letter of 3 April 2008; and*
- 3). *For all copies and documents to why the HSE had not kept all the copies of the documentation they had received from the MoD on all the survival equipment used on the day of this incident. And the HSE findings to the coroner's court on this equipment's deficiencies."*

The HSE acknowledged this in a letter of 1 May 2008, referring the matter to the HSE FOI unit in Bootle for response. The internal review was carried out and the outcome communicated to the complainant in a letter dated 19 May 2008. This confirmed the previous HSE response to the earlier request, that no information was held by the HSE in respect of the requests as it had been destroyed, or returned to the original source, under the terms of the HSE retention schedule.

HSE reference 2008050487, dated 23/05/2008:

- 1). *"For all copies and documents on the HSE policy on the retention schedule to destroy information you held on file;*
- 2). *For all copies of documents to why all the records and files of the Charterhouse School fatality on the 26 January 1998 have been destroyed;*
- 3). *For all copies and documents on the dates when these documents were destroyed. And the dates when the decision was made to destroy them;*

- 4). *For all copies of documents to who made this decision to destroy all the files of the Charterhouse School fatality; and*
- 5). *For all copies and documents of any remaining documents which may still be held by other departments of the HSE on the Charterhouse School fatality.”*

The public authority responded in an undated letter, understood to be in June 2008, in which it provided a copy of its document retention schedule and briefly explained the process by which paper records and electronic records are reviewed prior to destruction. The HSE was unable to provide information on the dates the requested documents were destroyed, or who made the decision, as this information was not held by it.

HSE reference 2008070126 (clarification of previous request, by telephone), dated 07/07/08:

This request was acknowledged by the HSE on 8 July 2008, stating the request as:

“Copies of all information held by HSE relating to the Charter House School fatality, plus a copy of HSE’s findings.”

Correspondence from the HSE indicates that partial responses to this request were made on 1 August and 12 August 2008. This is the request to which this Decision Notice applies.

In a letter of 19 August 2008, to the Chief Executive of the HSE, the complainant requested the following:

“...all copies and documents on [the HSE’s] findings, of your thorough investigation, of our file of evidence dated the 27 July 2008”

“all copies and documents on the HSE findings at the time of the tragedy, on all the sea survival equipment (which the HSE has failed to provide me under the Freedom of Information Act) which was provided to the HM Coroner’s Court (Surrey) and (name redacted) family”

“For the copy of reply from [HM Inspector of Health and Safety] to [RN Legal Advisor] Letter of 12 February 1998 which contained the Service Certificate of the training life raft which clearly shows procedures were in place and had not been serviced for 5 years and was out of service date.”

[with reference to a press cutting stating that the HSE investigation is still under way] *“I would like to have all copies and documents on this investigation which was still ongoing after HM Coroner’s inquiry”*

The Chief Executive replied on 11 September 2008, refusing the complainant’s request as repeated, under section 14(2) of the Act.

HSE reference 2008100259, final internal review, dated 13/01/2009:

A further letter from the complainant to the HSE Chief Executive, dated 18 September 2008, was treated as a request for internal review of requests, ref. 2008070126 and the HSE refusal of 11 September 2008, HSE ref. 2008447011, in relation to his previous letter to the Chief Executive. This review released more information in respect of request ref. 2008070126 but upheld the previous decision to withhold certain parts of the information under exemptions provided by sections 40(2) and 41 of the Act. The HSE's reasons for this decision are also explained in the letter. This letter gives the HSE's view that, as the complainant had repeatedly requested the same information, the Chief Executive was correct in refusing the request under section 14(2) of the Act in his letter of 11 September 2008, however the HSE recognised that its piecemeal release of information during this series of requests did weaken its argument.