

Freedom of Information Act 2000

Decision notice

Date: 17 January 2013

Public Authority: Health and Safety Executive
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding complaints about the victimisation of safety representatives. The Commissioner's decision is that on the balance of probabilities the Health and Safety Executive (HSE) does not hold the requested information for requests 1 and 2. The Commissioner has also found that information relevant to requests 3 and 4 is held. HSE should have either provided this information or applied the exemption under section 21 of the Freedom of Information Act 2000 (the Act) as the basis for its refusal. However no further action is required.

Request and response

2. On 4 April 2012, the complainant wrote to HSE and requested information in the following terms:
 1. *How many times have Safety Reps complained to the HSE in the past 10yrs about being victimized. [sic]*
 2. *How many times in the past 10 yrs has the HSE intervened in a situation where a Safety Rep was sacked/victimized. [sic]*
 3. *What is the HSE 'Policy' when it comes to this kind of dispute?*
 4. *Do the HSE inspectors get specific training or guidelines relating to when Safety Reps and Companies are in dispute. [sic]*

3. HSE responded on 30 April 2012. It stated that it did not hold any information relevant to requests 1 and 2. It further stated that it could not answer requests 3 and 4 as these were matters beyond HSE's remit.
4. Following an internal review HSE wrote to the complainant on 31 May 2012. It upheld the original decision.

Scope of the case

5. The complainant contacted the Commissioner on 31 July 2012 to complain about the way his request for information had been handled.
6. The Commissioner considers the scope of the request to be whether HSE holds the requested information.

Reasons for decision

7. Section 1 of the Act states that:

General right of access to information held by public authorities.

(1) 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.

8. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, in accordance with a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

Request 1

How many times have Safety Reps complained to the HSE in the past 10yrs about being victimized.

9. HSE explained to the Commissioner its processes when they receive a complaint. All complaints are assessed according to HSE criteria and assigned a category of red, amber or green. Complaints that are classified as red or amber are stored onto their Corporate Operational Information System ('COIN') database and held for 7 years. Complaints that are classified as green are not stored on the COIN database.

Instead they are held for 3 months and then destroyed. HSE also explained that their criteria for assessing whether a complaint is red, amber or green did not include whether the complainant was sacked or victimised.

10. As these issues are not used as criteria for determining the severity of a complaint, HSE stated that any complaint made containing references to a complainant being victimised or sacked would be handled exactly the same as if those references were not present. If the complainant asked that the details be recorded then they would be locatable using the search function of the COIN database.
11. During the course of the Commissioner's investigation the HSE conducted a keyword search on the COIN database, the local network drives and the electronic document and record management system, for "victim" and "victimized". This produced a nil result.
12. As the request specifically asks for the number of safety representatives who have made complaints, the Commissioner has considered how this status would be recorded on HSE's systems.
13. HSE stated to the Commissioner that the COIN database did not have a mandatory field for the complainant's status or job title, and that most individuals who make a complaint tend to remain anonymous. HSE also stated that the COIN database, local network drives and the electronic document and record management system were searched for complaints with the relevant job title or status. This produced a nil result.
14. The Commissioner has also considered whether any manual records would contain relevant information. HSE explained to the Commissioner that for all complaints entered into the COIN database there are accompanying manual records. HSE has confirmed that these records, along with Complaints Officers files were searched, and no relevant documents were located.
15. Whilst the Commissioner considers that there is a possibility that information could be held, he notes that HSE has performed all the reasonable searches which produced nil results. Therefore the Commissioner's decision is that on the balance of probabilities HSE is unlikely to hold the requested information.

Request 2

How many times in the past 10 yrs has the HSE intervened in a situation where a Safety Rep was sacked/victimized.

16. As established for request 1, the Commissioner's decision is that on the balance of probabilities HSE is unlikely to hold information about complaints made over safety representatives being sacked or victimised.
17. Given that the Commissioner considers it unlikely that HSE has recorded information concerning safety representatives being sacked or victimised the Commissioner accepts that it is also unlikely that HSE has recorded information on where it has intervened in such situations.
18. Again the Commissioner notes that HSE has performed the relevant searches and confirmed that it does not hold any relevant information for this request.

Requests 3 and 4

What is the HSE 'Policy' when it comes to this kind of dispute?

Do the HSE inspectors get specific training or guidelines relating to when Safety Reps and Companies are in dispute.

19. Section 21 of the Act states that:

Information accessible to applicant by other means

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

20. In HSE's response to the complainant's request it stated that disputes between employers and employees was beyond its jurisdiction, and that HSE officials would recommend referring the dispute to the Advisory, Conciliation and Arbitration Service (Acas). HSE directed the Commissioner to two separate publications which are available for free on-line which confirm this is the case.^{1 2}
21. The Commissioner accepts this explanation as reasonable, and does not see any reason why HSE would become formally involved in disputes

¹ <http://www.hse.gov.uk/pubns/priced/l146.pdf>

² <http://www.hse.gov.uk/pubns/priced/hsg263.pdf>

between employers and employees. As such, he considers that HSE has no requirement for providing its Complaint Officers with training in areas beyond its remit.

22. Nevertheless, whilst the cited information is neither a "policy" nor "guidelines", it is HSE good practice guidance which outlines their formal position. The Commissioner considers this to be relevant information held by HSE. However, as this information is reasonably accessible to the applicant the Commissioner's decision is that HSE should have either provided this information to the complainant or issued a refusal notice on the basis of section 21, together with details of how the information can be accessed.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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