

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 February 2023

**Public Authority:** Health and Safety Executive

**Address:** Redgrave Court

Merton Road

Bootle

Merseyside

L20 7HS

#### **Decision (including any steps ordered)**

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1. The complainant has requested all information held by HSE regarding a particular accident that occurred in April 2018.
2. The Health and Safety Executive withheld the requested information, citing section 30(1)(b) (investigations and proceedings) of FOIA.
3. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
4. The Commissioner does not require any further steps to be taken.

#### **Request and response**

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5. On 6 September 2022, the complainant wrote to the Health and Safety Executive (HSE) and requested information in the following terms:

"Pursuant the Freedom of Information Act 2000, and on behalf of our client, we request copies of all information held by you in relation to the accident that took place at [redacted] on 12 April 2018. For the avoidance of doubt, this request includes any internal reports prepared by the HSE in connection to our client, any other connected entity, [redacted] and any individuals involved in the accident.
6. The HSE responded on 4 October 2022, it refused to provide the requested information relating to its investigation file under section 30(1)(b) FOIA.

7. In this case HSE agreed to waive its opportunity to review its position and the Commissioner accepted the case for investigation without an internal review.

## **Scope of investigation**

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8. The complainant contacted the Commissioner as he was dissatisfied with HSE's response to this request.
9. In addition to the information withheld under section 30(1)(b) FOIA (this includes the HSE's internal investigation report and investigation file), HSE subsequently confirmed it also held information relating to a prosecution. However the complainant confirmed that they do not wish to dispute any of the exemptions applied by HSE to any of the documents held on the prosecution file.
10. The Commissioner therefore determined that the scope of this investigation was to consider whether HSE was correct to withhold the internal investigation report and documentation from the investigation file under section 30(1)(b) FOIA.

## **Reasons for decision**

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### **Section 30 – investigations and proceedings**

11. Section 30(1) of the FOIA states that:

'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct.'

12. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, abandoned or even closed investigations.
13. In this case due to the volume of information held, HSE has provided the Commissioner with a copy of its internal investigation report regarding this incident and a list of the of the information held within its

Electronic Document Records Management System relating to HSE's investigation into this incident.

14. Section 30(1)(b) is a class-based exemption. There is no requirement to demonstrate that disclosure of this information might be harmful in order for section 30(1)(b) to be engaged.
15. Section 30(1)(b) is also a qualified exemption. This means that, even if the exemption is engaged, consideration must be given as to whether the public interest lies in disclosure or in maintaining the exemption.

### **Is the exemption engaged?**

16. The first step is to determine whether the withheld information falls within the class described in section 30(1)(b).
17. The Commissioner's guidance 'Investigations and Proceedings'<sup>1</sup> clarifies that section 30(1)(b) '... applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.'
18. HSE explained that it is the statutory body responsible for the regulation and enforcement of workplace health, safety and welfare within the UK and its statutory powers and responsibilities are derived from the Health and Safety at Work etc Act 1974 (HSWA) and associated relevant statutory provisions. Section 20 – 23 of the HSWA and associated legislation provides HSE Inspectors with powers of entry to work-places, powers to investigate incidents and powers to take enforcement action, including prosecution, against those responsible for offences under the HSWA and associated legislation.
19. HSE confirmed that all information held relating to its investigation into this incident is held for the purpose of an investigation that HSE has the statutory power to investigation under the HSWA. All the information held was either acquired or generated with a view that it may be used to institute criminal proceedings against one or more of the parties being investigated. HSE's investigation of the incident was complete at the time of the complainant's request.

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<sup>1</sup> [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

20. Section 30(1)(b) can only be utilised by public authorities that have a duty to investigate, however that investigation may occur, whether an individual should be charged with an offence. The public authority must also be able to prosecute any individual should such an investigation require it to do so.
21. Taking into account the nature of the HSE's work, its powers under the HSWA and the nature of the information requested in this case relating to a particular investigation, the Commissioner is satisfied that the withheld information falls within the class described in section 30(1)(b). Therefore, the exemption is engaged.
22. To reiterate, section 30(1)(b) is a qualified exemption. Therefore, the Commissioner must determine whether the public interest lies in disclosure or in maintaining the exemption.

### **Public interest test**

#### **Public interest arguments in favour of disclosing the information**

23. HSE acknowledged that there will be occasions when disclosure of its investigation material will support the overall public interest however, it does not deem this to be relevant in this case. An example of this would be where health and safety failings have caused or have the potential to cause detriment to the public at large.

#### **Public interest arguments in maintaining the exemption**

24. HSE presented the following public interest arguments in favour of maintaining the exemption:
  - Disclosure would likely only benefit the private interests of the requester but would not benefit the interests of other individuals or organisations involved in the investigation, nor the public in general;
  - Disclosure may significantly prejudice HSE's ability to conduct future investigations effectively as those under investigation in the future may be less willing to disclose information to HSE on a voluntary basis. Although HSE Inspectors have powers to compel those under investigation to provide information during the course of an investigation, its preference is to proactively work with those under investigation as this style of enforcement often results in HSE acquiring much more information on a voluntary basis than it might have received if it engaged its regulatory powers to mandate the provision of information. If HSE start to routinely disclose into the public domain information it has acquired voluntarily during the course of an investigation, those under investigation now and in the future are likely

to be much less likely to proactively volunteer information to HSE and this would ultimately not serve the overall public interest because it might impact its ability to bring about successful enforcement action.

- Disclosure would be unfair in cases where HSE's investigation had not resulted in enforcement action against those under investigation which is relevant to one of the entities involved in this incident.
- Disclosure would undermine trust in HSE particularly with regard to third parties who might support HSE during the course of an investigation but are not being investigated themselves. In this case, the Investigating Inspector consulted a third party, to assist in providing technical information that was used to support HSE's investigation. Disclosure of this information into the public domain could adversely impact HSE's ability to engage similar parties in the future if it became known that information provided to support an investigation process had been disclosed into the public arena. This would not support the overall public interest and could have a detrimental impact on HSE's ability to bring about enforcement action, including prosecution.
- Disclosure may adversely affect third parties who have provided witness statements to HSE during the course of an investigation. This is particularly relevant when dealing with workplace incidents where statements have been provided by other employees who may provide information about poor health and safety standards. Disclosure of this information into the public domain could have serious consequences to the third party from their employer or other parties.
- Disclosure could hamper the free and frank exchange of information between HSE and those under investigation. If routine communications between parties under investigation are disclosed into the public arena, this is likely to result in those under investigation refusing to provide frank responses to questions posed by HSE Inspectors and this would not serve the overall public interest as it would make HSE's role as a regulator and enforcer of health and safety legislation more difficult.

### **The balance of the public interest arguments**

25. The Commissioner considers that there is a public interest in understanding how the HSE carries out its investigative work and how it makes decisions as to whether a prosecution should be brought.
26. However key to the consideration of any section 30 case is to determine whether disclosure could in some way compromise a public authority's

ability to carry out its investigative work effectively. Clearly, it is not in the public interest to jeopardise the ability of the HSE to regulate and enforce compliance with the HSWA.

27. The Commissioner accepts that organisations with functions to investigate and prosecute criminal offences rely on the voluntary co-operation of victims and witnesses – as well as those under investigation. Whilst those bodies usually have enforcement powers to require information to be provided, these are most effective when used sparingly and it is important not to obstruct the voluntary flow of information.
28. In this case, despite the fact that the investigation was complete at the time of the request, given disclosure under FOIA is disclosure into the public domain and enforcement action was not taken against one of the entities under investigation, the Commissioner has determined that the public interest lies in maintaining the exemption.

### **Other matters**

29. Within its response HSE did provide details of an alternative potential route to obtain the requested information outside of FOIA under the Civil Procedure Rules 31.17. HSE provided the complainant with a link to information on its website setting out the terms of an order it would be unlikely to oppose (as opposed to disclosure under FOIA which is disclosure into the public domain). The complainant may therefore wish to consider applying for the required information via this alternative route.

## Right of appeal

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30. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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.....**

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**