

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2023

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

Decision (including any steps ordered)

1. The complainant has requested a copy of an inspection report, undertaken in relation to the work of a specific registered gas engineer, at a specific property.
2. The Health and Safety Executive denied holding the requested information.
3. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold the requested information.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background information

5. The Health and Safety Executive ('HSE') has provided the Commissioner with the following background in order to help him understand the circumstances surrounding this case.
6. The HSE has explained the 'Gas Safe Register is a gas registration scheme owned by the Health and Safety Executive (HSE) but operated on our behalf by Gas Safe Register. The Gas Safe Register is a register of gas engineers who are competent and safe to work with gas.'
7. The Commissioner understands that landlords are legally responsible for the safety of their tenants in relation to gas safety and must ensure that an annual gas safety check is undertaken.

8. The Gas Safe Register is not a public authority in its own right for the purposes of FOIA. However, as a contractor working on HSE's behalf, any FOI request that it receives is forwarded onto HSE to respond to.

Request and response

9. The Commissioner understands that the complainant has raised a service complaint with Gas Safe Register about work undertaken at a specific property.
10. During this service complaint, the complainant made a request for information under FOIA relating to that same property. The request, laid out below, was made directly to Gas Safe Register. It was then received by the HSE on 15 September 2022.

"I would like a copy of the report that was conducted by gas safe in a case of negligence involving my property and a gas safe engineer to:

- 1) verify the investigation was conducted correctly
 - 2) verify they are for filling the role to audit and verify engineers correctly
 - 3) verify that all relevant facts were taken into consideration."
11. The HSE responded on 28 September 2022, confirming that it did not hold the requested information.
 12. The complainant requested an internal review, from Gas Safety Register directly, on 19 October 2022.
 13. On 10 November 2022 the HSE provided the outcome to its internal review.

Reasons for decision

14. Section 1 of FOIA states 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 the information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

15. In this case, the complainant disputes the HSE's position that it does not hold any information relevant to their request.
16. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request at the time that the request was received.
17. In order to reach his determination, the Commissioner has considered the HSE's explanation as to why it does not hold any information that would fall within the scope of the complainant's request.
18. The HSE has explained that the property to which the request relates is owned by the complainant's father and was previously rented out to a tenant who happened to be a registered gas engineer.
19. During their tenancy, the tenant refused the landlord access to conduct the annual gas safety check. The tenant advised that they would conduct the gas safety check themselves.
20. The HSE has stressed, to both the complainant and the Commissioner, that the tenant did not carry out any gas safety checks in their official capacity, as a registered gas engineer upon instruction from the Gas Safety Register. Any gas safety check that the tenant carried out at the property was done in a private capacity. Therefore, it wouldn't fall within the remit of the HSE to investigate the work that was carried out at the property.
21. The complainant disputes this, emphasising that the tenant is a member of the Gas Safe Register and therefore, any work carried out on the property was done in a professional capacity. The complainant considers it irrelevant that the individual who carried out the checks at the property was also the tenant.
22. It's not the role of the Commissioner to comment on the appropriateness of the tenant's behaviour, or any registered gas engineer who might carry out work at their own property. It's only his role to determine whether the public authority holds any information that falls within the scope of the request.
23. The HSE has explained that it does hold an inspection report in relation to the now ex-tenant. However, whilst this inspection report relates to gas safety checks carried out by the ex-tenant, in their official capacity as a registered gas engineer, it occurred after they vacated the property owned by the complainant's father and at another property. Since the inspection report relates to a property that is not, in any way, associated

with the complainant or their father, the HSE does not consider that it falls within the scope of the request.

The Commissioner's view

24. The Commissioner is satisfied with the HSE's explanation as to why it does not hold the requested information and, on the balance of probabilities, is satisfied that the requested information is not held. Whilst the individual who carried out the gas safety work is a registered gas engineer; they did not conduct these checks in their professional capacity but rather a private capacity and HSE holds no record for that reason.
25. The Commissioner acknowledges the complainant's position, however, it's not his role to comment on the appropriateness of the HSE's remit. The HSE has explained that since this work would fall outside of its remit to investigate, no inspection was carried out and therefore no inspection report is held.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF