

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2023

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the Health and Safety Executive (HSE) holds no further information within scope of the complainant's request for information about the Horse Hill oilfield. HSE has complied with regulation 5(1) of the EIR but breached regulation 11(4) as it didn't provide an internal review within the statutory timeframe.
2. It's not necessary for the HSE to take any corrective steps.

Request and response

3. The complainant made the following information request to the HSE on 8 September 2022:

"I would like to request information under the Freedom Of Information Act. It concerns the Horsehill Oil Site at Horsehill, Horley RH6 0HN.

1) Please provide details of/ documentation regarding all site visits by the HSE since August 2018 (you have previously sent me the COMAH report with inspection date of 02/09/2020 so I don't need that one please)

2) Please provide details of all incidents at the site noted/ reported since August 2018

3) Please provide all documentation between HSE and the oil site/ operator regarding the decision to install the new flare (the LC500) that was installed in November 2021

4) Please provide all documentation between HSE and the oil site/ operator regarding the decision to remove the old flare (EWT9.5)”

4. Following the Commissioner’s decision in IC-200316-P6G4¹ the HSE provided a response to the request on 23 December 2022. The HSE advised that it would disclose the information it held within scope of part 1 of the request and that it doesn’t hold information within scope of parts 2 to 4.
5. The complainant requested an internal review on 24 January 2023. He provided material which he considered was evidence that the HSE held further information relevant to the request.
6. The HSE didn’t provide an internal review and didn’t provide one following the Commissioner’s correspondence to it of 22 March 2023. The Commissioner therefore accepted the new complaint without an internal review having been carried out.
7. The Commissioner didn’t go on to receive a submission from the HSE within the required timeframe. It was therefore necessary for him to serve an Information Notice on the HSE on 16 June 2023 in order to receive the submission.
8. On 21 August 2023, the HSE provided the complainant with an internal review and the Commissioner with a submission. It maintained its position that it holds no further relevant information.

Reasons for decision

9. This reasoning covers whether, on the balance of probabilities, the HSE holds any further information within scope of the complainant’s request. It will also cover the timeliness of the HSE’s internal review.
10. Under regulation 5(1) of the EIR, a public authority that holds environmental information must make it available on request if the information isn’t exempt from disclosure.

¹ [ic-200316-p6g4.pdf \(ico.org.uk\)](https://ico.org.uk/subject-access/ic-200316-p6g4.pdf)

11. In correspondence to the Commissioner on 21 August 2023, the complainant noted that, regarding part 2 of their request, the HSE had confirmed that it had identified one incident, from 2019. The complainant said that he's aware of other correspondence from the HSE from 2022 in which the HSE refers to an incident at the [Horse Hill] site being "currently under investigation". He considers that, given that three years had passed since 2019, this must refer to a second incident. The complainant had originally raised this point in his request for a review.
12. The Commissioner put this point to the HSE. On 23 August 2023, the HSE responded, as follows:

"Accidents and incidents within the work place are reported to HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). This legislation places employers, and other people in charge of work premises, under a statutory duty to report and keep records of – work-related accidents which cause deaths, work-related accidents which cause certain serious injuries (reportable injuries), diagnosed cases of certain industrial diseases and certain 'dangerous occurrences' (incidents with the potential to cause harm). Full details relating to RIDDOR can be found via the following link of HSE's website - RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 - HSE. All reports submitted to HSE are held within a RIDDOR database that can be search in a variety of ways.

In response to this ICO complaint, I undertook a search of the RIDDOR database for any incidents occurring at the site operated by Horse Hill Developments Ltd for the period 1/8/2018 to 8/9/2022 and the only incident I identified was the Dangerous Occurrence that occurred in November 2019. A copy of the RIDDOR notification associated with this incident was partially disclosed to [the complainant] in response to his original request for information as Document 11. I did not identify any other incidents associated with the site operated by Horse Hill Developments Ltd over the time period specified by [the complainant].

I confirm HSE received an information request from a third party in March 2022 that requested the following information – "Could you please provide all copies of relevant documentation from any site visits from the HSE to Horse Hill Developments' oil site, Horse Hill, RH6 0HN from March 2018 to present". HSE issued a non-disclosure response to this request advising we held information about an incident however the incident was currently under investigation and actions arising from the investigation had not yet been completed. We engaged Section 30(1)(b) of the FOI Act to withhold the information requested from disclosure. I believe this is the request [the complainant] is referring to that quite rightly indicates HSE were investigating an incident at the

site operated by Horse Hill Developments Ltd. I can confirm this was not the case and the response issued by HSE to the third party was incorrect.

In response to this ICO complaint I have reviewed the corporate database used by HSE to record interactions and interventions we have with dutyholder's. The corporate system is used to record all investigations we undertake with one or more dutyholders and is also used to record ongoing interactions we have with dutyholders subject to COMAH regulations. The site [the complainant] is interested in, operated by Horse Hill Developments Ltd, is a COMAH Site and there are therefore a number of entries associated with site. All of the entries relating to HSE visits to this site were disclosed to [the complainant] in response to his original request for information as Documents 1 - 10. I can confirm there are no entries associated with either an open or closed investigation relating to an incident at the site.

As detailed above, I am of the view the response HSE issued to the third party who requested copies of relevant documents from any site visits from the HSE to Horse Hill Developments from March 2018 to present was incorrect. When issuing a response the author has clearly misunderstood both the scope of the request, because the requester was not seeking incident data, they have also misunderstood the corporate entries associated with the site operated by Horse Hill Development Ltd. I have addressed this error with the author to ensure such an error does not occur going forward."

13. The HSE provided the Commissioner with screen prints of its search of the RIDDOR database and of HSE's corporate records relating to Horse Hill Developments Ltd. It hoped this would support its view that HSE doesn't hold additional information about any incident at the site operated by Horse Hill Developments Ltd, other than the incident already disclosed to the complainant.
14. The Commissioner has reviewed HSE's screen prints and considered its explanation of the situation, above. He accepts HSE's explanation and has decided, on the balance of probabilities, that HSE holds no further information within scope of the request and has complied with regulation 5(1) of the EIR.
15. The Commissioner considers it regrettable, however, that the HSE's inaccurate response to a separate request for information had the effect of leading the complainant to think that the HSE held more information within scope of his request than it in fact does.

Procedural matters

16. Under regulation 11(4) of the EIR a public authority must provide an internal review within 40 working days of the request for one. The HSE exceeded 40 working days in this case and therefore breached regulation 11(4).
17. Had the HSE provided a timely internal review and provided the complainant with the explanation it's now given, a complaint to the Commissioner with the associated work for both the Commissioner and the HSE might have been avoided.

Right of appeal

18. 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

19. 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.
20. 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

Cressida Woodall
Senior Case Officer`
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF