

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Health and Safety Executive (HSE) for information regarding a prosecution involving a company called Eagle Star Insurance. The HSE refused the request under section 12 of FOIA on the grounds that the cost of complying with it would exceed the appropriate limit.
2. The Commissioner has investigated the complaint and found that section 12 was correctly applied. He requires no steps to be taken.

Request and response

3. On 20 May 2013 the complainant made a request for information to the HSE for information regarding a prosecution involving Eagle Star Insurance. The complainant had previously made a request for similar information which had been refused on the grounds of cost and this new request was an attempt to narrow the scope of the request to bring it within the appropriate limit. This new request read as follows:

"I wish to narrow the scope of my request and as a result the time + cost of providing the information. You state the HSE holds 10 files with information that may relate to Eagle Star Insurance.

I do not expect you to make a manual search of each file. However, could you supply from each file:

- a) The Court name and address where any action / prosecution has taken place and the date.*
- b) The roll number of the court case.*
- c) Each file will have a contents page or equivalent. Could you please supply photocopies of such."*

4. The HSE responded to the request on 2 August 2013. It now said that the request was refused under section 14(2) because it was considered to be a repeat of the complainant's previous request. However, the HSE indicated that this request could also be refused under section 12 on the basis that the cost would exceed the appropriate limit. The HSE confirmed that of the 10 files it held relating to Eagle Star Insurance, none contained a contents page.
5. The complainant wrote to the HSE on 12 August 2013 expressing his dissatisfaction at the response to his request.
6. On 29 November 2013 the complainant contacted the HSE again to specifically ask that it carry out an internal review of its handling of his request.
7. At the time of commencing his investigation, no internal review had been completed.

Scope of the case

8. The complainant initially contacted the Commissioner to complain about the decision to refuse his request on 15 November 2014. At this point the complaint was not taken forward as the HSE had not yet completed an internal review. Instead the complainant was advised to contact the HSE and ask it to complete an internal review.
9. The complainant received no response to his request for internal review and so on 7 February 2014 the Commissioner contacted the HSE to remind it that it had a duty to carry out an internal review. The HSE was referred to his guidance which advises that in most cases internal reviews should be completed within 20 working days and that in no cases should the total time exceed 40 working days.
10. On 13 March 2014 the complainant contacted the Commissioner to say that he had still not received the internal review and therefore the Commissioner decided to exercise his discretion and consider the complaint in the absence of an internal review.

11. During the course of the Commissioner's investigation the HSE acknowledged that section 14(2) could not be applied to the complainant's request. Therefore, the Commissioner considers the scope of his investigation to be to consider whether section 12(1) has been applied correctly.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

12. Section 12(1) of FOIA provides that a public authority may refuse a request if it estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit for the HSE and other public authorities outside of central government is set at £450. In estimating the costs it expects to incur a public authority is allowed to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
13. The HSE has provided the Commissioner with a breakdown of the costs it would expect to incur in dealing with the request but first of all, it said that it believes that the information the complainant is seeking has most probably been destroyed. The Commissioner understands that the court case the complainant is interested in took place in 1978/79, however, the HSE has said that its policy at the time was to review information to see whether it ought to have been retained after 9 years. Therefore it has said that it is likely that prosecution data relating to a case brought in 1978/79 would have been reviewed for retention in 1987/88.
14. Due to the volume of enforcement cases it undertakes the HSE has said that its policy is to only retain information beyond this 9 year period if it is considered key or of particular significance. The HSE gave the example of information relating to the Piper Alpha disaster as information which was considered as sufficiently significant to be worth retaining beyond the 9 year period. In contrast it said that information relating to the prosecution of Eagle Star Insurance is likely to have been considered routine and not retained beyond the first review period. On this basis, it considers that it is more than probable that the information the complainant is seeking was destroyed in either 1987 or 1988.

However, it cannot absolutely confirm this without searching the files referred to in the complainant's request and it is on this basis that the request was refused under section 12 of FOIA.

15. The HSE has said that it has identified 12 files containing the words "Eagle Star" and that of these 3 have been destroyed and 2 are missing. For the remaining 7 files these would need to be recovered from its storage depot and manually searched. The HSE explained that the information is not held electronically as its database used to record enforcement cases only became operation in 2006 and it only migrated legacy data on to it for the period 1999 onwards.
16. The HSE has said that it estimates that each file is likely to hold a minimum of 500 sheets of paper as this is the standard minimum within hard copy files although it has said that most files contain in excess of this. To establish if the information within each of the files falls within the scope of the request – i.e. court name and address where the prosecution took place, the date and role number of the court case - would require one person to review each sheet of paper within the file. As the HSE explained to the complainant in its response to the request, the files do not contain a contents page.
17. The HSE estimates that it would take one person at least one minute to review a double-sided piece of paper to establish if the information on it fell within the scope of the request. Based on these facts the HSE estimates that reviewing all seven files manually would take one person 70 hours which equates to £1750.00.

0.02 (1 minute) x 500 pages x 7 files = 70 hours x £25.00 per hour = £1750.00

18. The Commissioner has considered the cost estimate provided by the HSE and its explanation of the time it expects would be needed to comply with the complainant's request. The Commissioner finds that the cost of determining if it holds the requested information would well exceed the appropriate limit. This is because it is clear that there is a very significant amount of information that would need to be reviewed to comply with the request and given that this is only held in hard copy there is no easy way to do this except by manually reviewing all of the paperwork. The Commissioner is satisfied that the HSE's estimates of the time involved in searching through the files are reasonable and realistic and that only relevant costs have been taken into account. Therefore, the Commissioner has reached the view that the HSE was correct to apply section 12(1) to the request.

Right of appeal

19. 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: GRC@hmcts.gsi.gov.uk

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

20. 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.
21. 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

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**