

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 25 May 2017

Public Authority: Health and Safety Executive (HSE)
Address: 1.G Redgrave Court
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant made a request to the HSE for information relating to a particular company and a HSE investigation into this company. The HSE refused to comply with the request under regulation 12(4)(b) EIR as it considers it to be vexatious.
2. The Commissioner's decision is that the HSE correctly applied regulation 12(4)(b) EIR to the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following request for information on 22 November 2016:
 1. A copy of Form F2508G2 completed by [named company].
 2. Gas Industry Unsafe Procedures Certificate in relation to [named company].
 3. Copy of advisory given to the Minister at the Department of Work and Pensions which leads the Minister to conclude that the Health and Safety Executive pursued all avenues in all the official investigations which has the support of Dr Judge in a recent communications to Mr Nigel Evans MP.

5. On 25 November 2016 the HSE responded. It refused to comply with the request under regulation 12(4)(b) EIR.
6. On 10 December 2016 the complainant requested an internal review. On 4 January 2017 the HSE wrote to the complainant with the result of the internal review it had carried out. It upheld its application of regulation 12(4)(b) EIR as it said the complainant had already been provided with all information held relevant to the scope of the request and HSE had nothing further to provide. It therefore considers the request to be manifestly unreasonable under regulation 12(4)(b) EIR.

Scope of the case

7. The complainant contacted the Commissioner 28 March 2017 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the HSE correctly applied regulation 12(4)(b) EIR to the request.

Reasons for decision

Regulation 12(4)(b)

9. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
10. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
11. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
12. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield*

(GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as “manifestly unjustified, inappropriate or improper use of formal procedure.” The Tribunal identified four factors likely to be relevant in vexatious requests:

- The burden imposed by the request on the public authority and its staff
- The motive of the requestor
- Harassment or distress caused to staff
- The value or serious purpose of the request.

13. The Upper Tribunal’s decision established the concepts of “proportionality” and “justification” as being central to any consideration of whether a request for information is vexatious.
14. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.
15. The HSE has explained that the complainant raised a concern with HSE in 2005 regarding the disconnection of a gas fire at his home by a particular company. Although HSE are responsible for taking enforcement action against gas engineers who breach health and safety legislation, responsibility for (a) maintaining the register of gas engineers and (b) investigating complaints relating to those engineers is undertaken by a private company who have been approved by HSE to undertake this function.
16. At the time of the complaint to the HSE in 2005, CORGI was the gas registration body responsible for undertaking this process and they undertook a full investigation of the complaint and concluded it to be unfounded.
17. The complainant has been unwilling or unable to accept this decision and this has resulted in him becoming a prolific communicator with HSE over the past 12 years. The complainant has also become a

prolific communicator with others such as MPs, Ministers, The Royal Household, The Prime Minister and the European Commission. His communications with these individuals has also resulted in HSE having to answer questions posed by these individuals relating to its decision making regarding the complaint.

18. In addition to the above communications, the complainant has also submitted numerous information requests to the HSE that it has answered under FOI, EIR and Data Protection Act 1998 (DPA) legislation, providing him with all information it holds relating to his complaint and himself as a data subject. It confirmed that it has nothing further to offer the complainant and he has been advised of this on numerous occasions but this does not deter him from continuing to seek disclosure of information.
19. It said that the complainant's continued communications with HSE causes a significant drain on its resources as all his communications have to be read before it can decide on the relevant course of action. It went on to state that the complainant's letters are often several pages long, include numerous attachments and often wish to resurrect issues that have been fully investigated.
20. The Commissioner considers that the complainant's request for information in this case is excessively burdensome on the HSE, given the context and history to it. The HSE has confirmed that the complainant regularly writes to it regarding this complaint in an attempt to re-open matters. Although the Commissioner doesn't have specific numbers in relation to the amount of correspondence received by the HSE, the Commissioner has been copied into a number of pieces of correspondence and notes the length and volume of this correspondence. The HSE has explained that because the correspondence dates back 12 years, much of this will no longer be held, particularly as it changed systems back in 2015. HSE confirmed that it would be time consuming even to gather together all of the correspondence going back to 2015 again due to the volume and amount.
21. CORGI (the body responsible at the time of the complaint to the HSE) undertook an investigation into the complaint and concluded that it was unfounded. The HSE has subsequently addressed questions posed by external individuals relating to the investigation carried out. The HSE has answered numerous requests for information under FOI, EIR and DPA and has provided the complainant with all information it holds

relating to his complaint. Despite the HSE's actions the complainant continues to make requests and complaints to it. The Commissioner considers that given the length of time this matter has been pursued by the complainant (12 years), the fact that an investigation has found the complaint to be unfounded and that this has been subject to external scrutiny and as the HSE has provided all information it holds to the complainant regarding his complaint under various access regimes, this demonstrates that even if the HSE were to respond to the request it would be unlikely to bring the matter to a conclusion.

22. The Commissioner considers that, to the requestor, there is clearly a serious purpose or value behind the request, but again given that the investigation (which has been subject to external scrutiny) concluded the complaint was unfounded and because the HSE has provided the complainant with all information it holds relating to this complaint under various access regimes, this has to diminish any objective value behind the request.
23. The Commissioner therefore finds that the HSE has correctly applied regulation 12(4)(b) to the request in this case.

Public interest test

Public interest arguments in favour of disclosure

24. There is a public interest in the HSE operating in an open and transparent manner and being accountable as a health and safety regulator.

Public interest in favour of maintaining the exception

25. It is not in the public interest to impose a manifestly unreasonable burden upon the HSE to comply with the request.

Balance of the public interest

26. The Commissioner considers that it is difficult to identify a wider public interest in the requested information. She is of the view that the requests and interactions with the HSE are about a personal matter which, despite the efforts of the HSE, the complainant will not accept as closed.
27. The Commissioner is aware that the HSE has already provided all information it holds to the complainant under various access regimes which goes some way to meeting any public interest in disclosure.

28. However there is a strong public interest in not placing a manifestly unreasonable burden upon public authorities and in this case due to the length of time the complainant has been corresponding with the HSE regarding his complaint and the fact that it has been investigated and has been subject to external scrutiny, it would be manifestly unreasonable to comply with this most recent request.

Right of appeal

29. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

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