

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2019

Public Authority: Health and Safety Executive
Address: 151 Buckingham Palace Road
London
SW1W 9SZ

Decision (including any steps ordered)

1. The complainant has requested information relating to an accident he was involved in and subsequent referral to the Health & Safety Executive (HSE).
2. The Commissioner's decision is that HSE does not hold any information within the scope of the request and has complied with its obligations under section 1 of the FOIA. The Commissioner does not require HSE to take any action as a result of this decision notice.

Background

3. HSE 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.
4. 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.
5. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, commonly known as RIDDOR, puts duties on employers, the self-employed and people in control of work premises (the Responsible person) to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) to HSE. RIDDOR notifications are reported to HSE using a specific form called an F2508.

6. Following receipt of a RIDDOR notification, HSE will assess the incident being reported using its incident selection criteria - <http://www.hse.gov.uk/foi/internalops/og/ogprocedures/investigation/incidselcrits.htm> - to decide if the incident should be investigated further by an inspector. HSE do not investigate all RIDDOR incidents notified to it.
7. In August 2017 the complainant made a request for 'copies of photographic evidence/information submitted by [company name]'.
8. HSE partially disclosed the only information it holds – a copy of the RIDDOR report (F2508) notified to it by [company name]. It withheld the names of third parties detailed on the form under Section 40(2) of the FOIA.

Request and response

9. On 22 November 2018, the complainant wrote to HSE and requested information in the following terms:
"On 13/11/18 [redacted] Construction Division Visiting Officer Health/Safety/Executive submitted on my behalf, a request for copies of written statements, submitted by [company name] and [company name], could you please confirm acknowledgement of request."
10. HSE responded on 10 December 2018 and advised the complainant that it did not hold the information requested because it did not investigate the incident reported. HSE will only collect additional information from relevant parties when it has decided to formally investigate an incident reported to it under RIDDOR.
11. On 14 December 2018 the complainant again wrote to HSE stating:
"I have previously corresponded regarding, Freedom of Information request in 2017 regarding Riddor report C845988ABC your ref were foi201708401 which you duly submitted.
I am now requesting under Freedom Information Act 2000 all written or electronically statements submitted by [company name] and [company name]"
12. HSE considered this to be a request for internal review and responded on 8 February 2019, maintaining that it did not hold any information within the scope of the request.

Scope of the case

13. The complainant contacted the Commissioner on 24 January 2019 to complain about the way his request for information had been handled.
14. The Commissioner considers the scope of this case to be to determine if HSE has complied with its obligations under section 1 of the FOIA.

Reasons for decision

15. Section 1(1)(a) of FOIA states that, "*Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request*". Section 1(1)(b) of FOIA states that, "*If that is the case, to have that information communicated to him*".
16. In scenarios where there is some dispute between the public authority and the complainant about the amount of information that may be held, following the lead of a number of Information Tribunal decisions, the Commissioner applies the civil standard of the balance of probabilities.
17. For clarity, the Commissioner is not expected to prove categorically whether the information is held; she is only required to make a judgement whether on the balance of probabilities a public authority holds any information within the scope of the request.
18. As is usual in these cases, the Commissioner asked HSE what searches it had carried out in an attempt to locate any information within the scope of the request.
19. HSE explained that all RIDDOR notifications submitted to it are held on the RIDDOR database and all investigations commenced by HSE are held on a corporate database called COIN (Corporate Operational Information System).
20. HSE stated that all investigation material is registered against the name of a dutyholder. In this case the dutyholder was [company name] therefore this is the term used to search the RIDDOR and COIN database. HSE did not search locally held personal computers because the incident was not investigated by HSE and was therefore not passed to any key officials within the department.
21. In addition to the RIDDOR and COIN database, HSE also store investigation material within its EDRM system – CM9. Although HSE did not investigate the incident reported by [company name] and will therefore not hold any material within this database, a search of this database was undertaken following the Commissioner's correspondence

to establish if any information falling within scope of this request was held. It confirmed that the search resulted in a NIL return.

22. RIDDOR regulations place a statutory duty on employers, the self-employed and people in control of work premises (the Responsible person) to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) to HSE.
23. Should the incident reported under RIDDOR meet HSE's selection criteria for investigation, any information HSE gather as part of that investigation process is processed in accordance with its statutory responsibilities under the Health and Safety at Work etc Act 1974 and associated statutory provisions.
24. If an incident meets HSE's selection criteria, it has a statutory requirement to keep investigation material, particularly if it intends bringing enforcement action, including prosecution, against one or more individuals.
25. The complainant provided the Commissioner with copies of the correspondence with HSE in 2017, including the F2508 form on the RIDDOR database, as he considered this evidenced that information was held.
26. It was his view that as this had been provided under the Data Protection Act (DPA) it contradicted the assertion that no information was held with regard to his FOIA request.
27. As explained above, HSE have stated that the incident did not meet its selection criteria and no investigation was carried out. Therefore it did not obtain any other information relating to the incident, aside from the RIDDOR report.
28. The DPA 1998, which was the appropriate legislation at the time, allows individuals to access their own personal data held by an organisation, as set out in section 7. This information is only made available to the individual (data subject).
29. The FOIA allows members of the public to access any information held by a public authority (subject to any exemptions). However, the FOIA is a disclosure to 'the world at large' rather than just to the individual requestor. In other words, it would be given to any member of the public that asked for it.
30. In this case, the RIDDOR report provided to the complainant in 2017, could be considered to be his personal data as it relates to a living individual who can be identified from it, namely the complainant. HSE redacted the names of other individuals in that report to comply with the DPA.

31. Having considered all the information provided by both parties, she is satisfied that HSE does not hold any information within the scope of the request. As such she is also satisfied that HSE has complied with its obligations under section 1 of the FOIA.

Right of appeal

32. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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
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Wilmslow
Cheshire
SK9 5AF**