

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2020

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

Decision (including any steps ordered)

1. In two requests, the complainant has requested information associated with an incident at his home. The Health and Safety Executive ('HSE') has refused to comply with the requests which it considers to be vexatious requests under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - The complainant's requests of 3 April 2019 and 15 April 2019 can be categorised as vexatious requests under section 14(1) of the FOIA and HSE is not obliged to comply with them.
3. The Commissioner does not require HSE to take any remedial steps.

Request and response

4. On 26 February 2019 the complainant had submitted a 24 part request for information to HSE. In correspondence dated 22 March 2019 HSE addressed this request. With regard to some parts of this request, HSE advised that the FOIA gives access to information held in recorded form; it does not oblige a public authority to provide opinions.

5. On 3 April 2019 the complainant wrote to HSE and submitted a further, 44 part, request. Given the format in which the complainant provided a copy of his request and that the request appears to contain the personal data of the complainant and others which it is not possible to redact, this request is included in a confidential attachment to this notice.
6. On 15 April 2019, the complainant submitted two further requests, as follows (information that identifies the complainant and others has been redacted):

"Question 67:-

(For avoidance of any doubt, under the FOI Act can I request an answer to the following question please;-

Q.67. *In relation to [Redacted] and my documents 56, 57, 58 and 60 of my original submission, all of which were red tabbed and [Redacted] statements in relation to the AIB beneath my kitchen window, did the HSE enquire into how and when the AIB beneath my kitchen window was discovered?"*

"Question 68:-

For avoidance of any doubt, under the FOI Act can I request an answer to the following question please;-

Q.68. *In relation to [Redacted] and [Redacted] statements in relation to the AIB beneath my kitchen window as noted in at least documents 56, 57, 58 and 60 of my original submission, all of which were red tabbed – to quote [Redacted]: - (Obviously, asbestos fibres would be present in the air and the Contractors leave site. The area is then sealed up and notices put up to say 'keep out'). did the HSE enquire into the nature of the discovery of AIB beneath my kitchen window and to what extent it was likely, from how the asbestos was discovered, that asbestos fibres would be present in the air?"*

7. In correspondence to the complainant dated 18 April 2019 HSE refused to comply with the requests of 3 and 15 April 2019 as it considered them to be vexatious under section 14(1) of the FOIA.
8. HSE provided a review on 31 October 2019. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 9 December 2019 to complain about the way his request for information had been handled.

10. The Commissioner's investigation has focussed on whether HSE can rely on section 14(1) of the FOIA to refuse to comply with the complainant's requests.

Reasons for decision

Section 14– vexatious and repeat requests

11. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
16. In its submission to the Commissioner, HSE has provided a background to the requests. It says it was notified of a dangerous occurrence at the complainant's home address involving the release of asbestos fibres.

17. As the statutory body responsible for regulating and enforcing health and safety legislation throughout Great Britain, HSE investigated the incident at the property and established the contractor was responsible for a material breach of health and safety legislation. A material breach is an incident HSE considers serious enough to warrant formal communication with the contractor involved requiring the contractor to take action.
18. In this case, HSE identified the contractor had contravened Regulation 5 of the Control of Asbestos Regulations 2012. However, HSE says it found insufficient levels of asbestos fibres at the property to support further enforcement action against the contractor, including prosecution.
19. HSE has then gone on to explain why it considers the complainant's request is vexatious, with reference to a number of the Commissioner's suggested indicators for vexatiousness.
20. **Unreasonable persistence:** In HSE's view the complainant is attempting to re-open an issue that has been comprehensively addressed by HSE and has also been the subject of independent scrutiny.
21. The complainant has been communicating with HSE about the incident at his property since 2014 and despite its best efforts to explain HSE's position both verbally and in writing, the complainant seems unwilling or unable to accept HSE position ie that it is unable to identify sufficient evidence to bring about enforcement action against the contractor.
22. The decision taken by HSE in 2014 has been subject to review internally by senior managers and externally by the complainant's MP and The Office of the Parliamentary and Health Service Ombudsmen. Despite all investigations upholding HSE's original decision, the complainant continues to communicate with HSE on this matter.
23. **Intransigence:** The complainant's continued refusal to accept HSE's position and his refusal to accept the outcome of independent scrutiny, indicates he is taking an unreasonable entrenched position regarding this matter.
24. HSE believes this intransience may be fuelled by the fact HSE did successfully prosecute the contractor for contravening health and safety legislation at a neighbouring property to the complainant. HSE has explained to the complainant on numerous occasions the reason it was able to prosecute for offences occurring at the separate property and not his.
25. **No obvious intent to obtain information:** The FOI request submitted by the complainant in February 2019 was the first received by HSE,

however it was not seeking the disclosure of information held by HSE relating to its investigation of the incident at his property. Rather, the complainant was seeking answers to particular questions associated with his communications with HSE over recent years.

26. On receipt of the complainant's second and third request, asking HSE to respond to similar questions as detailed in his first request, HSE took the view his second and third requests were vexatious as they were not requesting the disclosure of recorded information. HSE was of the view that the complainant was abusing his right of access under FOI legislation and was using FOI as a means to harass HSE by asking questions about an issue that has been fully investigated, and as a means to vent his anger at the decisions made by HSE in 2014.
27. **Futile requests:** HSE is of the view that the complainant's second and third requests for information were futile because they were seeking answers to questions about an issue personal to him that had been conclusively investigated both internally and externally.
28. The Commissioner has reviewed material the complainant has sent to her to support his own position. This is annotations in a 14 page document that comprises the multi-part request of 3 April 2019 with HSE's responses to that request. In the notes, the complainant appears to seek to justify that further requests he subsequently submitted (in addition to the request of 15 April 2019) were because of the nature of HSE's response to some parts of the 3 April 2019 request.
29. This case concerns HSE's response to the requests of 3 and 15 April 2019. The Commissioner does not consider that the complainant has put forward a strong argument that these requests are not vexatious.

Conclusion

30. The incident at the complainant's home happened in 2014. HSE investigated it at that time and took the action it considered was appropriate. HSE's decision has subsequently been scrutinised by its senior managers, the complainant's MP and the Parliamentary and Health Service Ombudsman (PHSO). HSE's decision has been upheld on each occasion. Despite this, the complainant has been communicating with HSE about the incident and HSE's response since 2014, ie for a period of approximately five years at the time of his requests.
31. HSE has advised the Commissioner that it has explained to the complainant on numerous occasions the reasoning behind its decision about his property, and its decision about the separate property. The Commissioner acknowledges that the complainant may well be dissatisfied with that decision but notes that, following internal and

external reviews, the decision was found to have been an appropriate decision.

32. The Commissioner agrees with HSE that at the point of the requests, which were submitted some years after the incident, HSE's investigation of it and subsequent reviews of HSE's decision, there was nothing for the complainant to gain by continuing his correspondence. In the Commissioner's view, through his requests – which in this case are voluminous – the complainant is seeking to re-open and keep live a matter that has been investigated and has concluded.
33. The Commissioner finds that the HSE has made a persuasive case for the two requests being vexatious requests. She has decided that they can be categorised as vexatious under section 14(1) of the FOIA and that HSE is not obliged to comply with them.

Other Matters

34. At least some of the requested information appears not to be the complainant's own personal data, which is why HSE handled the request under the FOIA and the Commissioner has considered the resulting complaint under section 50 of the FOIA.
35. However, a subject access request under the data protection legislation provides access to an applicant's own personal data. At least some of the information in the requests in this notice might be able to be categorised as the complainant's own personal data. If it has not already done so, the Commissioner therefore advises HSE to consider the requests in this notice under the data protection legislation and to provide the complainant with an appropriate response under that legislation, if necessary.

Right of appeal

36. 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

37. 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.
38. 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
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