

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2022

Public Authority: Health and Safety Executive
Address: 1.3 Redgrave Court
Merton Road
Bootle
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested information relating to F10 notifications.
2. The HSE refused to comply with the request, citing section 14(1) (vexatious requests) of FOIA.
3. The Commissioner's decision is that:
 - The request is vexatious and therefore the HSE was entitled to rely upon section 14(1) to refuse it.
 - However, in failing to provide adequate advice and assistance to the complainant the HSE breached section 16 (advice and assistance) of FOIA.
4. The Commissioner does not require the public authority to take any steps.

Background information

5. The HSE is responsible for regulating health and safety legislation in the U.K. One such piece of legislation is the Construction (Design and Management) Regulations 2015 (CDM 2015) which ensures the safety and welfare of people involved in construction projects.

6. The Commissioner understands that if a construction project lasts longer than 30 days or has more than 20 workers working at the same time at any point on the project, or exceed 500 person days, the client is required to inform the HSE via a F10 form.¹

Request and response

7. On 5 June 2021 the complainant wrote to the HSE and requested the following information:

"The following request relates to non-personal data only.

Please provide an excel/CSV export of the F10 Notifications database since 1/1/2016, including the following information for each notification:

- Date of Submission
- Local Authority Name
- Geographical Area
- Client Organisation Name
- Client Organisation Address & Postcode
- Principal Designer Organisation Name
- Principal Designer Address & Postcode
- Principal Contractor Organisation Name
- Principal Contractor Address & Postcode
- Organisation Name, Address and Postcode for any other Designers and Contractors notified
- Site Address, Street & Postcode
- Type of Project
- Project Category
- Total weeks allocated for construction work (under reg 4(1))

¹ [Construction - CDM 2015 FAQ's - Notifications - F10's \(hse.gov.uk\)](https://www.hse.gov.uk/cdm/faq.htm)

- Construction Phase Planned Start Date
- Construction Phase Planned End Date
- Maximum planned number of people on site
- Maximum planned number of contractors on site

NB: Excluding: Any personal information – Please ONLY provide details where an organisation's name includes the word "Ltd", "plc", "LLP" or "Limited". We do not seek any personal information."

8. The HSE responded on 28 June 2021. It stated that that the request was vexatious, on the grounds that compliance would impose a grossly oppressive burden on the HSE. Therefore it was refusing to comply with the request.
9. On 28 June 2021 the complainant requested an internal review and made several suggestions as to how the burden upon the HSE could be reduced.
10. Despite instruction from the Commissioner to provide the outcome to this internal review, the HSE had failed to do so by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 11 August 2021 to complain about the way that their request for information had been handled.
12. Therefore the Commissioner considers the scope of his investigation to be to determine if the HSE is entitled to refuse the request under section 14(1).

Reasons for decision

Section 14(1) – vexatious requests

13. Section 12 of FOIA provides an exemption from the duty to comply with a request where doing so would exceed the appropriate limit. This limit is £600 for central government departments and £400 for all other public authorities, such as the HSE.

14. This equates to either 24 or 18 hours of work at approximately £25 per hour. This limit is laid down by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.²
15. The following activities may be taken into account to determine whether compliance with a request would exceed the appropriate limit:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. The Commissioner's guidance 'Cost of compliance exceeds appropriate limit' states³, 'An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.' For such circumstances a public authority may apply section 14(1) of FOIA which provides an exemption from the duty to comply with a request if the request is vexatious.
17. The Commissioner's guidance 'Dealing with vexatious requests'⁴ states that a public authority 'may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.'
18. The Commissioner considers the threshold for such a refusal to be high and he considers it appropriate where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

²² [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1000/contents/part-1/section-12)

³ [costs_of_compliance_exceeds_appropriate_limit.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-foia/section-12-costs-of-compliance-exceeds-appropriate-limit.pdf)

⁴ [Dealing with vexatious requests \(section 14\) | ICO](#)

19. In the HSE's refusal notice it confirmed that, as the request stood, 'The scope of your current request has identified a considerable volume of information in the form of 332,400 F10 records.' The HSE also confirmed that it had real concerns that 'F10's hold information relating to Contractors, Designers, Architects etc which is exempt information in the form of personal data' and such information 'cannot easily be isolated as it is scattered through the requested material.'
20. The HSE has elaborated that 'F10 notifications are made to HSE via an on-line form and the form must include details of the client, principle designer and principle contractor. As the F10 notification process applies to both commercial and domestic clients, the name of a client will either be the name of a commercial company or the name of an individual involved in a domestic project.'
21. As it has previously advised, the HSE identified 332,400 F10 forms that fall within the scope of the complainant's request. The HSE has explained that, even though the complainant has stipulated they do not wish to receive personal data, by default the client field will either contain the name of a domestic or corporate client.
22. The Commissioner also notes that the client field is not the only information that the complainant has requested that could potentially be identifying; they have also requested the names of designers and contractors associated with the project.
23. When relying upon section 14(1) on the grounds that compliance with a single request would impose a grossly oppressive burden, the Commissioner expects a public authority to provide clear evidence to substantiate its claim. Usually, public authorities undertake a sampling exercise in order to provide an estimate as to how long compliance with the request would take.
24. The HSE has explained that 'to identify and remove any personal data held within the client field that relates to a domestic client would require the manually review of all 332,400 records falling within scope of the original request and HSE have established that this would take approximately 6,648 hours to undertake.'
25. The HSE has explained that this figure is based 'on the assumption it would take one person one minute to review the client field of each F10 record to establish if the field contained corporate or personal data (0.02 (1 minute) x 332,400 records = 6,648 hours).'
26. The Commissioner is sceptical of this assumption. He does not think it will take one minute for an individual to review the client field of the F10 form in order to ascertain if it relates to a sole trader or another identifiable individual.

27. However, the HSE has also stated 'Even if HSE reduced this estimated time down to 30 seconds or 15 seconds per record, we remain of the view the time required to review the client field of all 332,400 F10 notifications for personal data would take either 3,324 hours (30 seconds) or 1,662 hours (15 seconds).' The Commissioner considers 15 seconds a much more realistic timeframe.
28. The Commissioner considers that there is an extremely high bar for engaging section 14(1) on the grounds of the grossly oppressive burden that compliance would cause. It is a much higher bar than the appropriate limits associated with section 12.
29. Even when considering the smallest estimate of 1662 hours, this figure grossly exceeds the appropriate limits outlined in paragraph 14. The Commissioner also notes that this would be a conservative estimate, as it doesn't take into account the time taken to review other fields of the F10 form or any time to actually redact any exempt information.
30. The Commissioner is satisfied that compliance with the request would certainly be laboursome but, when a public authority wishes to apply section 14(1) based on grossly oppressive burden, it must balance this burden against the purpose and value of the request to determine whether the effect on the authority would be disproportionate.
31. In their internal review request, the complainant explained 'the purpose of the request is to conduct a time-series analysis of the super-prime residential construction sector in Central London and the surrounding Home Counties - the information sought, and the detail requested, is entirely necessary in order to be able to perform this study, which is considered by the requester to be in the public interest.'
32. The Commissioner isn't entirely clear on what the complainant is referring to when they talk about super-prime residential construction. Even though the requestor claims this information is in the public interest, it is not immediately obvious to the Commissioner what serious purpose or value the requested information represents.

The Commissioner's view

33. The Commissioner is satisfied that the request is vexatious and to comply with the request would impose a grossly disproportionate burden on the HSE.
34. The HSE processes personal data as part of the F10 notification process in accordance with its role as the regulator of health and safety law. Whilst the scope of this investigation is section 14(1) and not section 40(2), the Commissioner agrees with the HSE when it says 'We believe there is an expectation by those that make notifications to HSE that any personal data provided as part of the notification process will remain

confidential and will not be disclosed into the public domain either generally or in response to an FOI request.'

35. Returning to paragraph 18, the Commissioner is satisfied that the request meets the three criteria listed. Specifically, each F10 form would require manual reviewing in order to ascertain whether the various fields contain personal data.
36. Whilst section 14 is separate to section 12, the Commissioner must be guided by the parameters outlined in the Appropriate Limits and Fees Regulations and notes that the time for compliance with the request, even at its most conservative estimate, grossly exceeds these standards.
37. It would require a considerable diversion of the HSE's resources to comply with the request and, when weighing this burden against the value and purpose of the request, the Commissioner has determined that the HSE was entitled to refuse the request under section 14(1).

Section 16 – duty to provide advice and assistance

38. If a public authority considers that a request is vexatious, the Commissioner expects it to provide appropriate advice and assistance to the requestor and encourage them to submit a less burdensome request.
39. The Commissioner's guidance states where a public authority decides that it is appropriate to provide advice and assistance, it should do so as soon as possible, this means that the complainant has the opportunity to withdraw their original request within the time limit for compliance. This is most likely to occur when it is clear from the outset of processing the request that compliance will be grossly oppressive.
40. However, in other cases, the extent of the burden may only become apparent once the public authority has started to process the request. In these cases, it may only be possible to provide advice and assistance as part of the refusal notice which is what the HSE did.
41. Taking into account the nature of the request and the information that falls within scope, the Commissioner doubts that the HSE would only have become aware that the request was vexatious upon processing it. Even so, the HSE did explain to the complainant in its refusal notice that 'If you wish to refine your request to reduce the scope, HSE will be happy to reconsider any new request you submit.'
42. A public authority itself is not required to find ways that the request could be reframed in order to make it less oppressive. However, it should be able to explain simple ways of reducing the scope – such as

reducing the time parameters or information requested or identifying elements of a multi-part request that could be answered.

43. Since the HSE instructed the complainant to reduce the scope but gave them no practical advice on how to do so, the Commissioner does not consider that the HSE complied with its obligations under section 16.
44. However, since the complainant has already deciphered how the scope of their request could be reduced, the Commissioner doesn't consider any further action necessary from the HSE.
45. Despite being given no direction from the HSE as to how to refine their request, the complainant submitted several suggestions in their internal review request:
 - "1) The date range requested, minus any organisation address/postcodes for the client, designers or contractors (but including their names if they include the words, "Limited", "Ltd", "LLP" or "PLC"); or
 - 2) The data requested, for the date range requested, filtered on a list of approximately 10,000 unique postcodes (to be provided by the requester); or
 - 3) The data as requested, all fields, but shortened to be applicable only to notifications made during the last 12 months?; or
 - 4) The data as requested, all fields, but filtered on a list of approximately 100 organisations (to be provided by the requester)?"
46. The HSE has explained to the Commissioner that suggestion 1 would not lessen the burden for compliance – since it would still require a manual review of all F10 forms. It has also explained that it would not be in a position to confirm whether suggestion 2 would remain grossly oppressive until it conducted a new search for this reduced timeframe. It confirmed that it would be happy to treat either suggestion 2, 3 or 4 as a fresh request should the complainant wish.
47. In its submission to the Commissioner, the HSE has explained that it questions 'why the requester did not restrict their request to F10 notifications covering the Central London and Home Counties geographical area if they only wished to analyse the super prime construction sector in these locations.' However, the HSE has not explained to either the complainant or the Commissioner if its systems can be filtered to display F10s geographically. The Commissioner assumes that it can, since the HSE has implied that suggestion 1 above is possible.

Other matters

48. There have been considerable delays in the handling of this request and case. Firstly, the Commissioner considers that a reasonable time for completing an internal review is 20 working days after the date of the request for review. The maximum amount of time taken should not be more than 40 working days⁵.
49. To date, the HSE still has not provided an internal review outcome to the complainant which is why the Commissioner has felt it necessary to include the information within paragraph 46 in this decision notice.
50. Furthermore, the HSE did not provide the Commissioner with its submissions within the timescale provided and subsequently extended on more than one occasion. The Commissioner issued an information notice on 4 July 2022, compelling the HSE to provide this information. After intervention from the Commissioner's legal team, the information notice was complied with on 31 August 2022.

⁵ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

Right of appeal

51. 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

52. 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.
53. 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

Alice Gradwell
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