

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2022

Public Authority: Health and Safety Executive

Address: Redgrave Court

Merton Road

Bootle

Merseyside

L20 7HS

Decision (including any steps ordered)

1. The complainant has requested a HSE investigation report regarding a particular incident.
2. The Health and Safety Executive withheld the requested information, citing section 30(1)(b) (investigations and proceedings) of FOIA.
3. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 10 October 2021, the complainant wrote to the Health and Safety Executive (HSE) and requested information in the following terms:

"Under the Freedom of Information Act 2000, I would like a copy of the HSE investigation Report carried out in December 2020 and January 2021 following the incident when Kent County Council Highways and Direct Enviro Services Ltd when attempting to remove a very large tree allowed it to fall onto our house at 11:51 on the 14th December 2020. This report was issued to KCCHW and Direct Enviro Services Ltd, but as the owner of the property where the tree landed on our bedroom canopy and then rolled onto the roof, not only did I not know such a report existed until the 9th February 202, the Investigator was of the view that the site of the incident should not be seen or those parties

affected by the actions of KCCHW & Direct Enviro Services Ltd staff be interviewed.”

6. The HSE responded on 5 December 2021 and confirmed it held the following documents falling within the scope of the request:

- HSE Enquiry notes – No further action
- Kent County Council – Action Log
- Direct Enviro Services – 2 x Incident Reports
- Notification of Contravention.

However it refused to provide the requested information under section 30(1)(b) FOIA.

7. The complainant requested an internal review on 6 January 2022. HSE provided the internal review on 1 September 2022. It upheld its original response.

8. The complainant contacted the Commissioner on 15 February 2022 to complain about the way that their request for information had been handled.

Scope of investigation

9. The Commissioner has determined whether HSE was correct to withhold the requested information under section 30(1)(b) FOIA.

Reasons for decision

Section 30 – investigations and proceedings

10. Section 30(1) of the FOIA states that:

‘Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct.’

11. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, abandoned or even closed investigation.
12. In this case the Commissioner has not asked the HSE to provide him with a copy of the withheld information. The Commissioner understands that the withheld information includes the documents listed at paragraph 6 above.
13. Section 30(1)(b) is a class-based exemption. There is no requirement to demonstrate that disclosure of this information might be harmful in order for section 30(1)(b) to be engaged.
14. Section 30(1)(b) is also a qualified exemption. This means that, even if the exemption is engaged, consideration must be given as to whether the public interest lies in disclosure or in maintaining the exemption.

Is the exemption engaged?

15. The first step is to determine whether the withheld information falls within the class described in section 30(1)(b).
16. The Commissioner's guidance 'Investigations and Proceedings'¹ clarifies that section 30(1)(b) '... applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.'
17. The HSE has previously explained to the Commissioner that 'HSE is a statutory body created by the Health and Safety at Work etc Act 1974² (HSWA) and one part of its statutory role is to investigate workplace incidents (and potentially dangerous workplace situations) and bring those who breach health and safety legislation to account.'
18. The Commissioner understands that the particular powers that the HSE has are outlined in section 20³ of the HSWA. The Commissioner particularly notes section 20(2)(j) which states that an inspector can

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

² [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1974/75)

³ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1974/75)

'require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation...and to answer any such questions that the inspector thinks fit to ask.'

19. The Commissioner notes that the HSE also has powers to prosecute individuals for breaching the HSWA, as outlined in section 39 of the HSWA.⁴
20. Section 30(1)(b) can only be utilised by public authorities that have a duty to investigate, however that investigation may occur, whether an individual should be charged with an offence. The public authority must also be able to prosecute any individual should such an investigation require it to do so.
21. Taking into account the nature of the HSE's work, its powers under the HSWA and the nature of the information requested in this case relating to a particular investigation, the Commissioner is satisfied that the withheld information falls within the class described in section 30(1)(b). Therefore, the exemption is engaged.
22. To reiterate, section 30(1)(b) is a qualified exemption. Therefore, the Commissioner must determine whether the public interest lies in disclosure or in maintaining the exemption.

Public interest test

Public interest arguments in favour of disclosing the information

23. The HSE acknowledges that disclosure would promote transparency and accountability.

Public interest arguments in maintaining the exemption

24. Disclosure would prejudice the voluntary disclosure of information to HSE and this would be likely to prejudice future investigations.
25. Disclosure would be unfair in cases where those under investigation were not deemed to have breached any health and safety failings.

⁴ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The balance of the public interest arguments

26. The Commissioner accepts that there is a public interest in understanding how the HSE carries out its investigative work and how it makes decisions as to whether an individual should be prosecuted or not.
27. However key to the consideration of any section 30 case is to determine whether disclosure could in some way compromise a public authority's ability to carry out its investigative work effectively. Clearly, it is not in the public interest to jeopardise the ability of the HSE to regulate and enforce compliance with the HSWA.
28. The Commissioner accepts that organisations with functions to investigate and prosecute criminal offences rely on the voluntary co-operation of victims and witnesses – as well as those under investigation. Whilst those bodies usually have enforcement powers to require information to be provided, these are most effective when used sparingly and it is important not to obstruct the voluntary flow of information.
29. In this case, where there has been a decision not to prosecute, disclosure may imply wrongdoing where no such finding has been made. This is in accordance with previous decisions reached by the Commissioner such as in IC-93294-H1J1⁵.
30. Having considered the circumstances of the case, the Commissioner has determined that the public interest lies in maintaining the exemption.

Section 10

31. Section 1(1) of FOIA states that: "Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him."

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019440/ic-93294-h1j1.pdf>

32. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
33. In this case the request was made on 10 October 2021 and a response was not provided until 5 December 2021. The Commissioner finds that HSE has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with FOIA.

Other matters

34. Whilst there is no statutory time limit for carrying out an internal review, the Commissioner considers that they should usually be completed within 20 working days and should never take longer than 40 working days. In this case, the Commissioner notes that the HSE did not complete the internal review until 1 September 2022, despite it being requested on 6 January 2022. He considers this to be extremely poor practice.
35. Within its internal review HSE did provide details of an alternative potential route to obtain the requested information outside of FOIA under the Civil Procedure Rules 31.17. HSE provided the complainant with a link to information on its website setting out the terms of an order it would be unlikely to oppose (as opposed to disclosure under FOIA which is disclosure into the public domain). The complainant may therefore wish to consider applying for the required information via this alternative route.

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@justice.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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF