

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2022

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

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between Gas Safe Register and several named individuals during a particular period. The Health and Safety Executive ("the HSE") disclosed a report with personal data redacted and stated that this was the only information it held.
2. The Commissioner's decision is that, on the balance of probabilities, the HSE has identified all the information it holds within the scope of the request. However, as the HSE failed to communicate the non-exempt information and failed to issue its refusal notice within 20 working days, it breached sections 10 and 17 of the FOIA respectively.
3. The Commissioner does not require further steps.

Request and response

4. On 27 September 2020, the complainant wrote to the HSE and requested information in the following terms:

*"All correspondence **from** either [redacted], [redacted], [redacted] or [redacted] relating to the Gas Safe Register investigation concerning the property [redacted]."*

*"Please include copies of any correspondence sent by Gas Safe Register **to** either [redacted], [redacted], [redacted] or [redacted]"*

in relation to the same investigation. Please include any items sent by post or via email.

"The timeframe that I am interested in is 1/12/2018 to 1/12/2019"
[emphasis added]

5. The HSE responded on 21 January 2021. It stated that it had identified a report, sent by Gas Safe Register ("GSR"), to one of the named individuals. It disclosed the report, with some personal data redacted. Some pages at the end were also redacted, as they did not represent communication with the named parties and so fell outside the scope of the request.
6. The complainant sought an internal review on the same day. The HSE finally completed its internal review on 29 November 2021. It upheld its original position.

Scope of the case

7. The complainant first contacted the Commissioner on 20 March 2021 to complain about the way his request for information had been handled. At that point, the HSE had yet to complete its internal review.
8. Despite an informal intervention from the Commissioner, the HSE failed to complete its internal review within a reasonable period, so the Commissioner exercised his discretion and accepted the case without waiting for the HSE to complete its review.
9. The Commissioner began his investigation on 16 August 2021 with letters to both parties. Given that the complainant had made two other complaints relating to the same HSE investigation, the Commissioner considered that it would be more practical to deal with all three cases simultaneously. The HSE did not indicate that this approach would be more burdensome.
10. When submissions failed to materialise by the deadline, the Commissioner sent chasing correspondence on 20 September and 30 September. The HSE issued a brief holding response on 1 October and a further response on 7 October. It stated that it intended to provide a submission in respect of this complaint by 15 October, but did not mention any of the other complaints – despite being asked to do so.
11. On 21 October, having failed to receive any submissions or any indication of when submissions might be forthcoming, the Commissioner issued information notices in respect of all three complaints, requiring the HSE to provide him with the information he needed to reach his

decision. The HSE had until 20 November to supply the information. It once again failed to do so and it was only when the Commissioner threatened to bring contempt proceedings that it finally responded on 29 November. No apology or explanation for the delay was offered.

12. The Commissioner has made further comment on the HSE's engagement under the "other matters" section of this notice.
13. The complainant has not disputed the personal data redactions. The Commissioner therefore considers that the scope of this particular investigation is limited to determining whether the HSE holds any further information within the scope of the request.

Reasons for decision

Section 1 – Held/Not Held

14. Section 1(1) of the 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.*

15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The HSE's position

17. The HSE explained that GSR is the official body that registers gas engineers in the United Kingdom. It carries out this function on behalf of

the HSE. All engineers must be registered with GSR in order to carry out work on gas pipes, appliances or other fittings involving gas.

18. Given that the focus of the request was correspondence either to or from GSR, the HSE argued that only GSR needed to search its records as, by definition any information not sent to, or by, GSR would not fall within scope.
19. The HSE further explained that GSR assigns a unique number to each complaint and any subsequent incoming or outgoing correspondence would be stored against that reference number. GSR had searched its database using both the complainant's name and the reference number for his complaint, but had been unable to identify any other correspondence sent or received in that timeframe – beyond that which had already been provided.
20. The HSE noted that, because GSR carries out its work on the HSE's behalf, the HSE does not have its own access to GSR's internal systems. However, it was satisfied that GSR had carried out appropriate searches and that, given these searches should have retrieved all relevant correspondence, the fact that they had been unable to locate any additional correspondence suggested that no further information was held.
21. Finally, the HSE noted that the complainant had, in his internal review, indicated that he had become aware of further correspondence that would fall within the scope of his request. The complainant indicated that this correspondence had emerged in the course of litigation that he was presently engaged in. As the HSE had not seen the correspondence, it was unable to say whether the correspondence would fall within the scope of the request or whether and, if it did, why its searches had not identified it.

The Commissioner's view

22. On the balance of probabilities, the Commissioner considers that the HSE has disclosed all the information it holds.
23. GSR is clearly the locus of both parts of the request therefore a search beyond GSR's systems appears to the Commissioner to be unnecessary.
24. GSR has explained to the HSE (and the HSE has, in turn, explained to the Commissioner) that it has carried out appropriate searches to identify relevant information and these searches have only identified a small amount of information which has been disclosed already. No compelling argument has been presented to the Commissioner that would explain why these searches would have been inadequate or what further information should exist.

25. Like the HSE, the Commissioner has not been provided with copies of any of the documents that the complainant says have emerged in the course of litigation. However, the Commissioner notes that any information that has emerged in this way is clearly already reasonably accessible to the complainant and thus the HSE would not be obliged to supply it anyway.
26. The Commissioner is therefore satisfied that, on the balance of probabilities, the HSE has complied with its duty under section 1(1) of the FOIA.

Procedural Matters

27. Section 10 of the FOIA requires a public authority to comply with its section 1(1) duty "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
28. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,*
 - (b) specifies the exemption in question, and*
 - (c) states (if that would not otherwise be apparent) why the exemption applies.*
29. It took the HSE some three months to inform the complainant that it held relevant information, communicate the information that was not subject to an exemption and issue a refusal notice. The Commissioner therefore finds that the HSE breached sections 10 and 17 of the FOIA.

Other matters

Engagement with the Commissioner

30. The Commissioner recognises that almost all public authorities have experienced increased difficulties in meeting their statutory obligations to provide information during the Covid-19 pandemic. HSE in particular informed the Commissioner during the summer that it was struggling both in terms of increased volumes and reduced capacity.

31. As a reasonable and proportionate regulator, the Commissioner is always willing to work with any public authority to minimise the burden of dealing with requests and complaints to his office. He is usually willing to extend deadlines – particularly when the public authority is able to offer a reasonable timetable for providing its response.
32. However that pragmatic approach is contingent on him receiving meaningful engagement with the public authority in question.
33. In this case, the Commissioner notes that it took almost four months to get the HSE to provide its submission. His own deadlines were ignored, the HSE was not willing to suggest any timetable for providing its responses and, the one time that it did set itself a deadline, it failed to meet it. Only when threatened with the prospect of being found in contempt did the HSE finally provide its response.
34. The Commissioner considers the HSE's engagement with his office on this case to have been unacceptably poor and he expects to see improvements when future complaints are allocated for investigation.

Internal reviews

35. Whilst there is no statutory time limit, under the FOIA, for completing an internal review, the Commissioner considers that an internal review should normally be completed within 20 working days and should never take more than 40 working days.
36. In this case, the Commissioner notes that the HSE took more than 10 months to complete its internal review. He considers such a delay to be unacceptable.
37. Finally, once the Commissioner has begun a formal investigation (ie. once his letter setting out the scope of the complaint has been sent), if the public authority in question has not already completed its internal review at that point, he sees little value in it doing so. A public authorities should reconsider its stance at the outset of an investigation anyway so duplicating this work is unnecessary. A public authority should certainly not delay its submission until such times as it has completed an internal review.

Right of appeal

38. 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

39. 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.
40. 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

Roger Cawthorne
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