

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

Public Authority: Health and Safety Executive

Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant requested information relating to cyber security for industrial automation and control systems in the United Kingdom. By the date of this notice the Health and Safety Executive (HSE) had not issued a substantive response to this request.
2. The Commissioner's decision is that HSE has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires HSE to take the following step to ensure compliance with the legislation.
 - HSE must provide a substantive response to the request in accordance with its obligations under FOIA.
4. HSE must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 14 September 2022, the complainant wrote to HSE and requested information in the following terms:
- "I would like to request the following information, relating to "Cyber Security for Industrial Automation and Control Systems (IACS) Inspection Guide" and "Cyber Security for Industrial Automation and Control Systems (IACS)", also known as OG86.
1. How many offshore installations were/are categorised under Category 1, Category 2, Category 3 in 2019, 2020, 2021 and 2022.
 2. How many onshore sites are/were categorised under Category 1, Category 2, Category 3 in 2019, 2020, 2021 and 2022.
 3. How many enforcement actions have been taken by the HSE relating to offshore installations under each category? Please break this down by type of enforcement action and year.
 4. How many enforcement actions have been taken by the HSE relating to onshore sites under each category? Please break this down by type of enforcement action and year.
 5. How many cyber incidents have been reported to HSE under NIS regulation. Please break this down by year and whether the site is onshore/offshore.
 6. How many major accident events have occurred in the UK which have cyber security as a primary cause? Please break this down by year and whether the site is onshore/offshore.
 7. How many major accident events have occurred in the UK which have cyber security as a contributing factor? Please break this down by year and whether the site is onshore/offshore." (sic)
6. HSE acknowledged the request on 27 October 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 8 February 2023 to complain about HSE's failure to respond to their request.

8. The Commissioner has considered whether HSE has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

Reasons for decision

9. 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.”

10. 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”.
11. On 14 February 2023, the Commissioner wrote to HSE, reminding it of its responsibilities and asking it to provide a substantive response to the complainant’s request within 10 working days.
12. Despite this intervention, HSE has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that HSE did not deal with the request for information in accordance with FOIA. 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.

Right of appeal

14. 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

15. 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.
16. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF