

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 May 2023

**Public Authority:** Health and Safety Executive Northern Ireland

**Address:** 83 Ladas Drive  
Belfast  
BT6 9FR  
Northern Ireland

#### **Decision (including any steps ordered)**

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1. The complainant requested from the Health and Safety Executive for Northern Ireland (HSENI) information regarding the decision made by an Inspector at HSENI. It withheld the requested information under section 30(1)(b) (investigations and proceedings) and section 44(1) (prohibitions on disclosure) of FOIA.
2. The Commissioner's decision is that the HSENI was entitled to rely on section 30(1)(b) of FOIA to refuse the request. He has therefore, not gone on to consider the application of section 44(1)(a) of FOIA. The Commissioner does not require the HSENI to take any steps as a result of this decision.

#### **Request and response**

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3. On 13 February 2023, the complainant wrote to the HSENI and requested information in the following terms:  

"I am writing to ask for a copy of the decision made by inspector [name redacted]."
4. On 22 February 2023 the HSENI responded and confirmed it holds information relevant to this request. The HSENI said a report was not generated but it holds correspondence from the complainant's employer which satisfied its enquiries. However, the HSENI withheld the

information (correspondence) under section 30(1)(b) and section 44(1) of FOIA.

5. On 5 March 2023 the complainant asked the HSENI for an internal review. The HSENI provided its review response on 27 March 2023 and maintained its original position to withhold the requested information.

## **Reasons for decision**

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6. This reasoning covers whether the HSENI was entitled to rely on section 30(1)(b) and section 44(1) of FOIA to refuse to provide the requested information.

## **Section 30 – Investigations and proceedings**

7. Section 30(1) of FOIA states:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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.

9. The phrase “at any time” means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
10. Section 30 is a class based exemption. This means that it is not necessary to demonstrate that disclosure would lead to any kind of prejudice in order to engage the exemption, only that the request falls within the class of information which the exemption is designed to protect.
11. Section 30(1) can only be relied upon by public authorities that have a duty to investigate whether someone should be charged with an offence.
12. The withheld information in this case is correspondence from the complainant’s employer which the HSENI said satisfied its enquiries and relates to the request.

13. The HSENI confirmed the requested information is held for the purposes of an investigation that HSENI has a statutory power to investigate under the Health and Safety at Work (Northern Ireland) Order 1978. This information, the HSENI said, was acquired or generated with a view that it may be used to institute criminal proceedings if necessary and warranted. This also covers information gathered during investigations/enquiries even if ultimately they do not result in a prosecution or sanctions.
14. The Commissioner has viewed the withheld information and is satisfied that it was held by the HSENI for the purposes of an investigation. This concerned a complaint about unsafe work activities and the provisions of overalls for welding activities. The Commissioner accepts HSENI has a statutory power to investigate under the Health and Safety at Work (Northern Ireland) Order 1978. It is clear this information was obtained with the prospect it may be used to set up criminal proceedings if necessary. Therefore, the Commissioner finds that the section 30(1)(b) exemption is engaged. He will now go on to consider the public interest test to determine whether the public interest lies in disclosure, or in maintaining the exemption.

### **Public interest test**

#### **Factors in favour of disclosure**

15. The HSENI recognises there is a general public interest in information being accessible to promote transparency, and to build public confidence in HSENI's investigative process. The HSENI said this is a means of allowing people to determine whether HSENI has acted appropriately and is discharging its statutory functions.

#### **Factors in favour of maintaining the exemption**

16. The HSENI set out its arguments for maintaining the exemption:
  - "In carrying out effective inquiries, HSENI depends on being able to secure the cooperation of those individuals from whom we receive information. It is clearly in the public interest we maintain the cooperation of the public and other enforcement agencies and avoid releasing information that could prevent exchange of relevant information in the future and have the effect of inhibiting HSENI's ability to investigate complaints/accidents effectively.
  - There exists a reasonable expectation that information provided by a company/person in the course of investigating an accident/complaint which would enable the public to determine their identity, would not be made available to the public at large.

- Disclosure would be unfair in cases where HSENI's enquiries had not resulted in enforcement action."
17. The HSENI considers that there is a real risk it would deter duty-holders which the HSENI regulates, from being open and expressing their opinions freely in their dealings with the HSENI, if the withheld information was disclosed.
  18. The HSENI stated; "An effective investigation is not based solely upon the threat of formal enforcement powers being deployed, it consists of a very complex and delicate mixture of legal compulsion and co-operation, it is also very much dependent upon trust being developed with duty-holders so that open and constructive engagement can take place. If this trust is negatively affected, this will result in engagements with duty-holders becoming more time consuming and more confrontational, which will inevitably result in poorer outcomes with regard to the HSENI enforcement action. It is in the interest of the public that HSENI can carry out our duties as effectively as possible."

### **Balance of the public interest arguments**

19. The Commissioner accepts that there is a public interest in information being accessible in order to promote transparency, and build public confidence in HSENI's investigative process. He also acknowledges that allowing people to determine whether HSENI acted appropriately and is performing its statutory functions, is in the public interest.
20. However, the 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. The Commissioner accepts that in this case, there is a significant public interest in protecting the integrity of ongoing investigations, so not to compromise the ability of the HSENI to investigate and enforce compliance with the Health and Safety at Work (NI) Order 1978.
21. Having considered the circumstances of this case, the Commissioner's decision is on balance, the public interest in disclosure is outweighed by the public interest in maintaining the section 30(1)(b) exemption.

### **Conclusion**

22. The Commissioner has concluded that the HSENI was entitled to rely on section 30(1)(b) of FOIA to refuse the request. He has therefore, not gone on to consider the application of section 44(1)(a) of FOIA.

## Right of appeal

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23. 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](mailto:grc@justice.gov.uk).

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**