

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 18 October 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from the Health and Safety Executive (HSE) about safety incidents at particular sites with containment level 4 (CL4) laboratories located at them. HSE withheld this information under regulation 12(5)(a) of the EIR which concerns international relations, defence, national security or public safety.
2. The Commissioner's decision that HSE is entitled to withhold the information under regulation 12(5)(a). It's not necessary for HSE to take any corrective steps.

Request and response

3. On 20 September 2021, the complainant wrote to HSE and requested information in the following terms:

"Please could you supply details of all safety breaches or near misses, including all incidents that were notified to the Health and Safety Executive, during the past 8 years at these facilities, which are listed publicly by the UK government as having CL4 laboratories:

Public Health England – Porton
Defence Science and Technology Laboratory (Dstl), Porton Down

Public Health England - Colindale
The Pirbright Institute
Animal and Plant Health Agency (APHA)
The Francis Crick Institute Containment 4 facility
Boehringer Ingelheim Animal Health UK Limited (formerly Merial
Animal Health, Biological Laboratory)
National Institute for Biological Standards and Control
BSU (Biobest Secure Unit)

Please include:

- All details included in Riddor reports to the HSE
- The date of the incident
- The matter that was investigated
- Name of duty holder
- A detailed summary of the incident including any executive summary that was prepared
- The biological agents or substances that were involved
- The outcome, including any enforcement action

If this information is held in a structured database format, please provide a copy of the structured data that covers these cases. If also held in paper or PDF form, please also provide a copy of these forms, preferably in searchable PDF form if possible.

... I'd note that the UK has disclosed the locations of its CL4 laboratories under the terms of the Biological Weapons Convention.

<https://bwc-ecbm.unog.ch/united-kingdom-great-britain-and-northern-ireland/bwccbm2021united-kingdom.>"

4. On 8 October 2021 HSE asked the complainant to clarify their request which they did the same day. The complainant confirmed that they were interested in incidents [at the referenced sites with CL4 laboratories] involving biological agents and substances, and the equipment used to handle and deal with biological agents and substances.
5. Following the Commissioner's decision in IC-227451-S3L0¹, on 23 August 2023 HSE provided a response to this request and a related request submitted on 18 September 2022 for the same information over the period from 2019 to the date of that request. HSE disclosed

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026798/ic-227451-s3l0.pdf>

information in a spreadsheet, with some information redacted, and advised it was withholding information under regulation 12(5)(a) of the EIR and regulation 13, which concerns personal data.

6. In the unusual circumstances of this case (not fully detailed here) the complainant preferred not to request an internal review on this occasion. However, the Commissioner clarified its response with HSE. This is because the disclosed (and redacted) information appeared to concern CL3 laboratories only and the complainant's interest was CL4 laboratories.
7. HSE confirmed to the Commissioner that the sites detailed in the complainant's request are listed by the UK government as having CL4 laboratories located within them. However these sites also have CL3 laboratories located at the same site. HSE noted that the complainant didn't restrict their request to information relating purely to CL4 laboratories, rather they requested details of incidents reported by specific sites that were listed as having CL4 laboratories. HSE says it therefore deemed it appropriate to include within the scope of the request all incidents reported to HSE by the named sites between 1 January 2024 to 18 September 2022, regardless of the containment level of the laboratory where the incident occurred.
8. HSE confirmed that of the incidents it had identified as falling within scope of the request, 46 of the incidents identified occurred within CL3 laboratories. The remainder of the incidents identified occurred within CL4 laboratories. HSE confirmed that it had disclosed details of the 46 incidents that occurred within CL3 laboratories located at the sites referenced, with some of the details redacted under regulation 12(5)(a) and 13. However it withheld under regulation 12(5)(a) all information about the incidents that occurred within the CL4 laboratories located at the sites referenced.

Reasons for decision

9. Having reviewed their complaint to the Commissioner dated 4 September 2023, this reasoning is focussed on whether HSE is entitled to rely on regulation 12(5)(a) of the EIR to withhold the information the complainant requested about CL4 laboratories at particular sites.
10. Under regulation 12(5)(a) a public authority may refuse to disclose environmental information to the extent that disclosure would adversely affect international relations, defence, national security or public safety.

11. In a submission to the Commissioner, HSE explained that laboratories within the UK are classified under four headings: CL1 to CL4. CL4 laboratories process the highest level of pathogens and toxins, which need the highest level of control and security. This is because the pathogens and toxins they process are potentially devastating for the economy, food security and the wellbeing of animals and humans. They are deemed Schedule 5 Agents within the Anti-terrorism, Crime and Security Act 2001.
12. HSE has withheld in full the details of incidents at CL4 laboratories located at the sites referenced in the request.
13. As the statutory body responsible for regulating and enforcing the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, HSE says it is notified of dangerous occurrences that fall within scope of Schedule 2 of the regulations. CL1 to 4 laboratories that process biological agents are required to notify HSE of **any accidents or incidents which result or could have resulted in the release or escape of a biological agent likely to cause severe human infection or illness** [HSE's emphasis].
14. HSE's position is that disclosing the requested information about incidents at CL4 laboratories located in the sites referenced would not serve the overall public interest and would have an adverse impact on national security. This is because it would show potential vulnerabilities at those CL4 laboratories.
15. HSE is concerned that disclosing this information into the public arena would provide terrorists, or other parties wishing to cause disruption, with sufficient information to target sites with CL4 laboratories perceived to be vulnerable, with a view to causing detriment to human health.
16. In their complaint, the complainant has said that they don't consider it credible that this information couldn't be released in a form that didn't activate the exception under regulation 12(5)(a). They said it's already a matter of public record, for example, that CL4 laboratories in the UK have dealt with pathogens such as anthrax and Ebola. The complainant also says that similar information has been released in the past and referred the Commissioner to a Guardian article about security incidents at high security laboratories².

² <https://www.theguardian.com/science/2014/dec/04/-sp-100-safety-breaches-uk-labs-potentially-deadly-diseases>

17. The Commissioner considers that there's a significant difference between knowing that CL4 laboratories deal with anthrax and Ebola and knowing which CL4 laboratories could potentially be perceived as being vulnerable. Regarding the Guardian article that the complainant has referenced, the article was seven years old at the time of the request. It discusses security incidents in general terms but with some focus on incidents associated one particular body. However, those incidents appear to have occurred between 2009 and 2012 ie between 12 and nine years before the complainant's request. As such, the Commissioner doesn't consider that the matters discussed in that article have a bearing on this case. The Commissioner considers the circumstances as they are at the time of a request.
18. The Commissioner is satisfied in this case that HSE is entitled to withhold the requested information about CL4 laboratories under regulation 12(5)(a) of the EIR in the interests of national security and public safety. This is because disclosing information about security incidents associated with those laboratories could indicate to potential bad actors whether those laboratories have vulnerabilities that could be exploited.
19. The Commissioner has found that disclosing the requested information would adversely affect national security and public safety. The public interest in disclosure would therefore have to be very significant indeed to justify such an affect. The complainant hasn't presented any public interest arguments and the Commissioner doesn't consider that, in this case, the general public interest in transparency about CL4 laboratories outweighs the very strong public interest in protecting national security and the public.
20. The Commissioner's decision is therefore that the requested information is excepted from disclosure under regulation 12(5)(a) of the EIR and the public interest favours maintaining this exception.

Right of appeal

21. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF