

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 27th March 2008**

**Public Authority:** Health and Safety Executive  
**Address:** Rose Court  
2 Southwark Bridge  
London  
SE1 9HS

### Summary

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The complainant asked, on behalf of his constituents, for the disclosure of information about the risks posed to members of the public from use of Acrylonitrile, a flammable and toxic chemical, at a proposed manufacturing facility. The Health and Safety Executive (HSE) withheld the information citing the exception in Regulation 12(5)(a) of the Environmental Information Regulations 2004. The Commissioner decided that: the Regulations applied; that Regulation 12(5)(a) was engaged; and that, in all the circumstances of the case, at the time of the internal review and subsequently, the public interest in maintaining the exception outweighed the public interest in disclosing the information.

The Commissioner's decision is that HSE dealt with the request for information in accordance with the Act.

### The Commissioner's Role

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.
2. On 24 February 2005 the Commissioner and the then Secretary of State for Constitutional Affairs agreed a Memorandum of Understanding (the MoU) on cooperation between government departments and the Commissioner. Annex 2 of the MoU says that, where information has been withheld on national security grounds as in the exception set out in Regulation 12(5)(a), the Commissioner will explore the scope for settling a complaint on a basis acceptable to himself and the complainant. Where such a settlement can be achieved, the Commissioner will invite the complainant to withdraw the complaint.

## The Request

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3. The complainant asked HSE for information in the context of his earlier correspondence with South Cambridgeshire District Council (the District Council), regarding an application from Hexcel Composites Ltd (Hexcel) to establish a carbon fibre precursor plant on land between Duxford and Hinxton (the application). On 5 April 2007 the complainant asked for an explanation of the factors considered during the risk assessment, and to know the basis on which the risk assessment had been made, for example: why had there been a recommendation that deliveries should be limited to 654 per year, what was the consultation zone, and how had that been arrived at?
4. On 30 April 2007 HSE replied, enclosing a document which analysed the health and safety aspects of the application and the risks posed by the storage and use at the site of Acrylonitrile (ACN), a highly flammable and toxic substance. HSE had redacted certain information from the document and had cited the exception set out in Regulation 12(5)(a) of the EIR, on the grounds that its release could pose a risk to national security.
5. On 15 May 2007 HSE replied to the questions posed by the complainant on 5 April 2007. On 15 June 2007 the complainant asked HSE for the information that had been redacted from its 30 April 2007 document on the grounds of national security. HSE treated this as a request for an internal review of the decision. On 21 June 2007 HSE also told the complainant that disclosure would prejudice the very strong public interest in ensuring public safety and national security.
6. On 12 July 2007 HSE gave the complainant the outcome of its internal review of his request, which was to reaffirm the application of the exception set out in Regulation 12(5)(a). HSE said that disclosure would adversely affect national security and public safety as the information had the potential to facilitate a terrorist attack and would also have a detrimental effect on the environment. Having reviewed the public interest considerations, HSE had concluded that disclosure of the redacted information would prejudice the very strong public interest in ensuring public safety and national security. HSE added that, while its original decision to redact the distance figures in some of the tables within the document, but not the maps, had been done with the best of intentions, its internal review had concluded that it would in fact have been appropriate to withhold both maps and distances.

## The Investigation

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### Scope of the case

7. On 20 July 2007 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- he had received a number of letters from constituents expressing concern about health and safety issues in relation to the application
- only part of the information sought had been disclosed
- the maps which had been disclosed did not show the full extent of risk from the hazardous substances but, because the distances had been redacted, it was not possible to know what the extent of the risk was.

He added that he found astonishing the proposition that the maps should not have been disclosed and questioned at what point the public interest of neighbouring villages bore on that decision.

### **Chronology of the case**

8. The complainant wrote to the Commissioner on 18 September 2007, and again on 7 November 2007, asking for his investigation of the case to be expedited as consideration of the application by the local planning authority was imminent.
9. On 4 December 2007 the Commissioner asked HSE for its comments on the matter and to see the information being withheld.
10. On 5 December 2007 the complainant told the Commissioner that he had initially been contacted about the application by two constituents, and by two parish councils in his constituency. One of the parish councils had organised a public meeting in April 2007, which he had attended. He had subsequently been keeping the constituents, five parish councils, the District Council as planning authority, and Hexcel, informed about his efforts to secure full information from HSE prior to the planning authority's consideration of the application. On 7 December 2007 he provided the Commissioner with additional views on the balance of the public interest.
11. On 14 January 2008 the complainant told the Commissioner that the application had now been approved by the District Council and was to be the subject of consideration by the Secretary of State. The complainant said that he was very concerned that the Secretary of State should have full information on which to base a decision about this important application.
12. On 16 January 2008 HSE gave the Commissioner its views, saying that it was the first duty of government to protect its citizens and that release of the information might make that task more difficult and so would not be in the public interest. HSE hoped that, in keeping with the spirit of annex 2 of the MoU (paragraph 3 above), the Commissioner would not need to see the information withheld. HSE drew attention to an earlier case, which it regarded as forming a precedent which had related to the possible impact of a terrorist attack on a major nuclear facility (ICO Decision Notice FS50102202). HSE said that ACN is a toxic, highly flammable substance that can present fire and explosion hazards. A terrorist attack could seek to take advantage of these properties of ACN. For the purposes of major hazard land use planning assessments HSE said that the off-site risk was dominated by the toxic properties of ACN, not by fire and explosion hazards.

13. HSE added that, in making decisions based on national security and public safety matters, it took note of both HSE internal guidance and guidance produced by the Cabinet Office, and gave the following references:  
(<http://www.hse.gov.uk/foi/internalops/hid/spc/spcperm18.pdf> and [http://www.ukresilience.info/news/hse\\_eir\\_guidance.aspx](http://www.ukresilience.info/news/hse_eir_guidance.aspx).)  
In addition, HSE drew attention to guidance from the Centre for the Protection of National Infrastructure (CPNI) and said that, if this further guidance had been available to the decision maker at the time of the original request, some of the information already released would also have been redacted.
14. On 22 January 2008 a member of the Commissioner's staff told HSE that he would need to see the information being withheld; this information was subsequently viewed, in strict confidence, on 13 February 2008.
15. Also, on 13 February 2008, HSE told the Commissioner that it considered there to be negligible risk from ACN usage at the site arising from fire or explosion but that there was some risk from its toxicity. The risks appeared to be generally low but, on one scenario (involving extreme weather conditions – wind speed and atmospheric stability - using data averaged over a ten year period), some small risk to residents could not be fully discounted. The harm that HSE saw arising from release of the information was its potential value to terrorists in knowing what harm could be caused to the public by a catastrophic failure within the proposed plant or other facilities that used ACN. HSE confirmed to the Commissioner that, in reaching its decision, any risks to the wider economy or the impact of a possible interruption in the supply of product from the plant had not been taken into account.
16. As regards the maps that had been disclosed, HSE said that the approximately concentric circles which had been drawn on them related to the respective risk of 0.3, 1, or 10 times in one million per year that a theoretical individual would be subjected to a dangerous toxic load as calculated by HSE's computer models. This did not directly relate to the information redacted from the tables because that information comprised raw data which was then input into the HSE risk assessment modelling process, the final output of which was the concentric circles of estimates of risk shown on the maps.
17. On 25 February 2008 HSE gave its further views to the Commissioner, which it supplemented on 12 March 2008, saying that it had provided advice to the District Council, which was also the Hazardous Substances Authority, based on its assessment of the residual risk of harm to people (residual risk is that which remains after all reasonably practicable preventive measures have been taken). Based on the evidence of its risk assessments, HSE had decided not to oppose the granting of planning permission in this case. HSE said that, as the Department for Communities and Local Government Circular 04/2000 made clear (at paragraph A3), if the District Council requested further information, then HSE would assist. Where there were national security concerns, evidence could be heard in camera. HSE said that it had not received any requests for information from the District Council or the Secretary of State, nor had it been involved in the planning issues since giving its initial advice. If safety considerations were of concern to the Secretary of State, HSE would provide any information requested, including that sought by the complainant.

18. HSE said that its principal concern was that release of the information could assist a terrorist or someone wishing to attack this particular plant, but it also had concerns about its portability, i.e. the potential application of some of the information to other facilities using ACN. HSE provided the Commissioner with evidence to show that the security services considered that release of the redacted information might aid a terrorist attack either at this site or elsewhere. HSE added that the Commissioner had been able to see, from viewing the withheld information, that it did not obviously contradict either information already released or HSE's assessment of the level of risk to residential properties from storing ACN at the site.
19. On 27 February 2008 the Commissioner's staff told the complainant that HSE had confirmed that it would provide any relevant information to the Secretary of State on request, including that being withheld from the complainant.
20. The Commissioner has seen that the Control of Major Accident Hazard Regulations 1999 (S.I. 1999 No. 743) require site operators to provide local authorities with off-site emergency plans and ensure that people in a designated area nearby are supplied with information on safety measures at the establishment, and how to respond in the event of an accident there.

### **Findings of the case**

21. The Commissioner recognised that the concerns put forward by the complainant were also held by a significant number of his constituents and their parish councils.
22. The Secretary of State had not so far asked for, or been provided with, the redacted information but the Commissioner is satisfied that HSE would provide it if asked. It is however a matter for the Secretary of State to decide whether or not to see the information.
23. The Commissioner found that HSE's advice was that there was negligible risk to residents from fire or explosion through usage of ACN but that there was some risk from its toxicity. The risk appeared to be generally low under normal weather conditions but, on one particular scenario, some risk to residents could not be fully discounted.
24. The Commissioner has seen the withheld information and has found that it does not appear either to contradict information already released or HSE's assessment that the level of risk to residential properties from the use of ACN at this site is low.
25. The Commissioner has noted the view of the security services that release of the redacted information might aid a terrorist attack at this site, or at other sites where ACN is used.

### **Analysis**

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26. The Commissioner has considered the public authority's response to the complainant's request for information.

27. The Commissioner is satisfied that the withheld information on ACN, its properties and potential impact on the environment, is information about a substance the escape of which is likely to affect the elements of the environment and the state of human health and safety. He is therefore satisfied that the EIRs apply in this matter.

### **Exceptions to the duty to disclose environmental information**

28. The Commissioner has seen that the exception made out in Regulation 12(5)(a) would cover both information whose disclosure would impact adversely upon the protection of the public, public buildings, industrial sites, etc from accident or acts of sabotage and information whose disclosure would have an adverse effect on the health and safety of the public including measures such as plans, programmes and activities affecting or likely to affect factors and elements of the environment. The Commissioner has seen that disclosure of the information requested would adversely affect national security or public safety and so is satisfied that the exception set out under Regulation 12(5)(a) is engaged.

### **Public Interest Test**

29. As with all the EIR exceptions, HSE may refuse to disclose the information requested if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information (Regulation 12(1)(b)).

30. The complainant told the Commissioner that he found astonishing the proposition that the maps which had been provided should not have been disclosed and that the public interest of neighbouring villages had a bearing on this. The maps which had been disclosed did not show the full extent of risk from the hazardous substances but, because the distances had been redacted, it was not possible to establish the full extent of the risk. He made it clear that he represented the concerns of numbers of his constituents, some of which had been put to him at a public meeting, and also the views of five parish councils.

31. The complainant added that HSE appeared to have disclosed a certain amount of information on the map which had been provided but that there were distances which had been withheld and which appeared to be inconsistent with the published maps. He said that the public interest was substantially engaged because people would be living close to the site of the proposed facility. He said that either the information on the map was accurate and sufficient, in which case he failed to see why the distances in the HSE report could not be published, or his constituents had been given inadequate information which would be the basis on which planning decisions would be made. He could not see that it was in the public interest if planning decisions were to be made other than on the basis of full information.

32. HSE told the Commissioner that its main concern was the harm that would be caused by giving potential terrorists the ability to access the redacted information, thus alerting them to the harm that could be caused to the public by a catastrophic failure within the proposed facility. The ongoing safety and secure storage of hazardous substances was clearly paramount, and very strongly in the public interest. Any risks to the wider economy, or the impact of a possible interruption in

the supply of products from the facility, had been of less concern to HSE in reaching its decision to withhold the information.

33. HSE accepted that there were factors favouring disclosure, which included that it was in the public interest for the public to be fully informed about the potential environmental, health and safety issues of the facility and that there should be as much information as possible to enable people to make informed decisions about where they chose to live and work. HSE saw, too, that there was a strong public interest in transparency and accountability in the work done by HSE in assessing risks and providing advice to the land use planning decision makers. Public scrutiny of its work acted as a strong incentive for HSE to ensure that all assessments were carried out thoroughly, and would improve public confidence in its procedures. It accepted that local residents had a particularly strong interest in accessing information about any possible risks to their health and safety.
34. HSE saw as factors against disclosure the fact that the three-zone map provided to the District Council, showing the risks to proposed developments around the site, was already available to the public. Such maps enabled HSE to provide land use planning advice on proposed developments and were a valuable source of information for the public. HSE did not believe that refusing to disclose the information redacted from the tables would put the community at risk through ignorance as enough information was already available by way of the published maps and the information given to the local community by Hexcel. HSE said that it was difficult to accurately assess the risk that disclosure of the information would encourage a terrorist attack, but the information would be of assistance to a terrorist seeking to maximise the harm caused by any such attack. In the light of the toxic nature of ACN, a terrorist attack had the potential to result in serious injury or even death. HSE said that the first duty of government was to protect its citizens; the release of information which might make the task of protecting those citizens more difficult was something which would not be in the public interest, which required that the dispersion data be withheld. HSE explained that it had withheld the dispersion data because such information would provide useful information to someone intent on causing deliberate harm as it would provide information about the scale of that harm. HSE said that, as it had already indicated, any effects would be negligible to the local community and it did not accept that there was any public interest in saying exactly how far any fallout would travel as, taken together with open source information, this data could be used by terrorists in planning attacks on this (and similar installations) to maximise their impact.
35. The Commissioner has, at the request of HSE, considered this matter in the light of his decision in a previous case relating to the risks arising in the environs of a major nuclear facility: these matters are set out in his Decision Notice of 30 August 2007 (case reference FS50102202). However, he sees the facts of this case and the level of risk to national security and public safety arising from the proposed ACN facility to be materially different, and significantly lower.
36. The Commissioner has seen that the harm caused by withholding the information is likely to include uncertainty arising from the risks of: physical harm to members of the public in the surrounding area from the potential toxic effects of ACN; psychological harm to the residents from concerns for their safety relating to the plant being

constructed nearby; possible economic harm caused to the value of adjacent property and from which residents will have no means to protect themselves or seek compensation; and, harm resulting from a loss of public confidence in the land use planning process due to the withholding of significant information.

37. The Commissioner accepts that there is a strong public interest in local residents having full access to relevant information concerning the risks posed by the storage and use of ACN at the site. He has seen too that the District Council and Secretary of State need access to full information but he has also seen that the District Council has now made its decision and that no information is being withheld from the Secretary of State. He has seen advice from the security services giving reasons why release of the redacted information might aid a terrorist attack at this site or at another facility using ACN. This is advice to which he gives considerable weight in view of the threat to public safety locally, nationally and internationally. Primarily for that reason the Commissioner has decided that, in all the circumstances of this case, at the time of the internal review and subsequently, the public interest in maintaining the exception outweighed the public interest in disclosing the information.

## **The Decision**

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38. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

39. The Commissioner requires no steps to be taken.

## **Other Matters**

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40. While it does not form part of his decision, the Commissioner noted, but did not accept, HSE's 12 July 2007 view that it should not have disclosed the maps showing the levels of risk to the public at locations outside the perimeter of the Hexcel facility. HSE has since said that it would always have been willing to disclose the three-zone map unedited.



## Right of Appeal

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41. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 27th day of March 2008**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

Annex

**Statutory Instrument 2004 No. 3391**

The Environmental Information Regulations 2004

**Exceptions to the duty to disclose environmental information**

**12.** - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

(a) an exception to disclosure applies under paragraphs (4) or (5);  
and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

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(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

(a) international relations, defence, national security or public safety;