

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about the inspection of HSE's investigation material relating to an incident involving one of their clients in 2017.
2. The Health and Safety Executive withheld the requested information, citing section 30(1)(b) (investigations and proceedings) of FOIA.
3. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 11 October 2021, the complainant wrote to the Health and Safety Executive (HSE) and requested information in the following terms:

"To this end, we would be grateful if you could please note our interest in this matter for future reference. We should also be grateful if you could please advise us of the current position regarding your investigations into this incident."

6. The HSE responded on 28 October 2021 confirming that the request was received on 27 October 2022. It said that:

"I can confirm that HSE holds information about this incident. However, the incident is currently under investigation and action arising from the investigation has not yet been completed.

The information is therefore exempt from disclosure under section 30(1)(b) of the Act (investigations and proceedings conducted by public authorities) in that it is information held by HSE for the purposes of an investigation which may lead to a decision to institute criminal proceedings."

7. The complainant requested an internal review on 27 January 2022.
8. HSE provided the result of the internal review on 27 September 2022. It upheld its application of section 30(1)(b) FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 4 January 2023 to complain about the way that their request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine whether the HSE is entitled to withhold the requested information under section 30(1)(b) FOIA.

Reasons for decision

Section 30 – investigations and proceedings

11. Section 30(1) of the FOIA states that:

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

12. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, abandoned or even closed investigation.

13. In this case the Commisisoner has not asked the HSE to provide him with a copy of the withheld information. The Commisisoner understands that the withheld information will include all documentation relating to an investigation carried out by the HSE into an accident involving the requester's client in 2017.
14. Section 30(1)(b) is a class-based exemption. There is no requirement to demonstrate that disclosure of this information might be harmful in order for section 30(1)(b) to be engaged.
15. Section 30(1)(b) is also a qualified exemption. This means that, even if the exemption is engaged, consideration must be given as to whether the public interest lies in disclosure or in maintaining the exemption.

Is the exemption engaged?

16. The first step is to determine whether the withheld information falls within the class described in section 30(1)(b).
17. The Commissioner's guidance 'Investigations and Proceedings'¹ clarifies that section 30(1)(b) '... applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.'
18. The HSE has previously explained to the Commissioner that 'HSE is a statutory body created by the Health and Safety at Work etc Act 1974² (HSWA) and one part of its statutory role is to investigate workplace incidents (and potentially dangerous workplace situations) and bring those who breach health and safety legislation to account.'
19. The Commissioner understands that the particular powers that the HSE has are outlined in section 20³ of the HSWA. The Commissioner particularly notes section 20(2)(j) which states that an inspector can 'require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation...and to answer any such questions that the inspector thinks fit to ask.'

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](#)

² [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](#)

³ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](#)

20. The Commissioner notes that the HSE also has powers to prosecute individuals for breaching the HSWA, as outlined in section 39 of the HSWA.⁴
21. Section 30(1)(b) can only be utilised by public authorities that have a duty to investigate, however that investigation may occur, whether an individual should be charged with an offence. The public authority must also be able to prosecute any individual should such an investigation require it to do so.
22. Taking into account the nature of the HSE's work, its powers under the HSWA and the nature of the information requested in this case relating to an investigation into an accident, the Commissioner is satisfied that the withheld information falls within the class described in section 30(1)(b). Therefore, the exemption is engaged.
23. To reiterate, section 30(1)(b) is a qualified exemption. Therefore, the Commissioner must determine whether the public interest lies in disclosure or in maintaining the exemption.

Public interest test

Public interest arguments in favour of disclosing the information

24. Promote transparency and build public confidence in HSE's investigative process.
25. Secure the health and safety of employees and others.

Public interest arguments in maintaining the exemption

26. Impede an ongoing investigation by hampering the gathering of information and evidence.
27. Inhibit HSE's ability to conduct further investigations effectively because, for example, third parties may be less willing to volunteer information to HSE if information is disclosed inappropriately.
28. Reduce the chances of a successful prosecution should the investigation have concluded that this course of action was appropriate.
29. Unfair in cases where a decision is taken not to proceed to prosecution.

⁴ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The balance of the public interest arguments

30. The Commissioner accepts that there is a public interest in understanding how the HSE carries out its investigative work and how it makes decisions as to whether an individual should be prosecuted or not.
31. However 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. Clearly, it is not in the public interest to jeopardise the ability of the HSE to regulate and enforce compliance with the HSWA.
32. The Commissioner accepts that organisations with functions to investigate and prosecute criminal offences rely on the voluntary co-operation of victims and witnesses – as well as those under investigation. Whilst those bodies usually have enforcement powers to require information to be provided, these are most effective when used sparingly and it is important not to obstruct the voluntary flow of information.
33. In this case, at the time of the request a decision had not yet been taken as to whether or not to prosecute and where a decision is ultimately taken not to prosecute, disclosure may imply wrongdoing where no such finding has been made. This is in accordance with previous decisions reached by the Commissioner such as in IC-93294-H1J1⁵.
34. Having considered the circumstances of the case, the Commissioner has determined that the public interest lies in maintaining the exemption.

Other matters

35. Whilst there is no statutory time limit for completing an internal review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days after the date of the request for review. The maximum amount of time taken should not be more than 40 working days. This longer period may be justified if an internal review is complex, requires consultation with third parties or there is a high volume of relevant information covered by the request. There will only occasionally be legitimate reasons why an extension longer than 40 working days is needed.

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019440/ic-93294-h1j1.pdf>

36. In this case HSE took 8 months to carry out the internal review.

Right of appeal

37. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.

39. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF