

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 January 2013

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

#### Decision (including any steps ordered)

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1. The complainant has requested copies of the investigation undertaken by the Health and Safety Executive ("HSE") at any of the 6 PFI schools in Exeter. At internal review HSE provided a briefing note to the complainant and explained this was the only information it held with respect to the request.
2. The Commissioner's decision is that HSE holds no further information and has handled the request in accordance with the FOIA.

#### Request and response

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3. On 6 February 2012, the complainant wrote to HSE and requested information in the following terms:

*"Please provide me with copies of the HSE Investigation undertaken at any of the 6 PFI schools in Exeter."*

4. HSE responded on 6 February 2012. It informed the complainant that it would not be responding to the request as it considered it to be vexatious under section 14(1) of the FOIA. Following the Commissioner's intervention, the complainant requested an internal review on 12 April 2012.
5. HSE sent him the outcome of its internal review on 21 May 2012. It revised its position and provided the complainant with a briefing note which it had compiled in 2006 following his original complaint to HSE regarding PFI schools in Exeter. Personal data within the briefing note was redacted under section 40(2) of the FOIA.
6. HSE confirmed that it does not hold any further information relating to PFI schools in Exeter as the issues the complainant had raised are not within the enforcement remit of HSE and would not be investigated by it.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 6 February 2012 to complain about HSE's application of section 14(1) to his request. Following the internal review, the complainant confirmed he wished to pursue his complaint against HSE.
8. The Commissioner has therefore considered HSE's argument that it does not hold further information with respect to this request. However the complainant has argued that this case is concerned with HSE's argument that his request was vexatious. This has not been investigated by the Commissioner as HSE altered its initial response at internal review.
9. The complainant has not complained about the application of section 40(2) to the personal data contained in the briefing note.
10. The Commissioner therefore considers that the scope of this case is concerned with HSE's argument that it does not hold further information with respect to this request.

### **Reasons for decision**

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11. Section 1(1) provides 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."*

12. HSE has explained that the complainant first raised concerns about a PFI school in Exeter in March 2006 with the National Audit Office (the "NAO"). This concerned a footbridge at a named school. The NAO discussed the issue with HSE and it was agreed that the matter should be referred to Building Control in Exeter City Council. When this department was contacted, it explained that the issues had been looked at and the complaint was closed.
13. The complainant continued to raise concerns about PFI schools in Exeter. In late March 2006 HSE wrote to him and explained that the issues he had raised did not fall under its remit.
14. HSE has explained to the Commissioner that following a further complaint from the complainant in June 2006, about safety issues involving scaffolding at a construction site in Exeter, a site visit was undertaken in order to establish whether the complaint fell within HSE's remit. It concluded that there was no breach of health and safety law and closed the case. However this complaint did not concern a PFI school.
15. HSE has confirmed that the only information it holds with respect to the complainant's original complaint about the footbridge at a PFI school is the briefing note which has now been provided to him (with redactions).
16. HSE has explained that it did not undertake any formal investigations into the issues raised by the complainant concerning the 6 PFI schools in Exeter as the complaints he raised did not fall within its remit.
17. HSE has provided the Commissioner with links to its website which explains its enforcement role.
18. The complainant has argued that HSE should have investigated his complaints and that the issues he raised do fall under its remit. However, the FOIA is concerned only with the provision of recorded information which is held at the time a request is made. The Commissioner has no jurisdiction over the remit of HSE and cannot determine what actions it should or should not have taken as a result of the complainant's complaint in 2006.
19. The complainant has asked why the Commissioner did not ask for all the details of the site report concerning his scaffolding complaint and why the Commissioner did not ask for all details regarding the scaffolding safety issue as part of his investigation into this case.

20. Both HSE and the Commissioner consider that the current request concerns information about any formal HSE investigations into the complainant's complaints concerning PFI schools.
21. HSE has confirmed that the only information it holds relating to the complainant's scaffolding complaint and its related site visit is a summary contained in its 'COIN' system (Corporate Operational Information System). This is a record that the complaint has been considered but rejected and that no formal investigation will take place.
22. This record was disclosed (with the redaction of third party names) in response to a subject access request submitted on behalf of the complainant on 18 May 2012.
23. All information relating to the scaffolding complaint and the subsequent site visit is held in the COIN record and relates to the decision of HSE *not* to conduct an investigation.
24. However, as this complaint does not concern PFI schools it does not fall under the scope of the request.
25. The Commissioner is not concerned with the decision of HSE not to formally investigate the issues raised by the complainant concerning PFI schools in his complaints to HSE. He therefore did not require a copy of the site report or any details of the scaffolding safety issue in order to be satisfied that HSE holds no further information on this matter.
26. The Commissioner is satisfied that HSE does not hold further information about any investigations into PFI schools in Exeter. He therefore considers that the complainant has been provided with all the information held by HSE with respect to this request.

## **Other matters**

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27. HSE has stated its intention to apply section 14(1) to any future requests the complainant may submit, should they relate to the same or similar information.
28. The complainant has argued that HSE was incorrect to apply section 14(1) to his request and has argued that it is apparent HSE still considers his request to be vexatious. However, although the complainant's initial complaint to the Commissioner was concerned with HSE's application of section 14(1), in cases where a public authority has provided a late internal review and amended its initial response, the Commissioner will only investigate its final response.

## Right of appeal

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29. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 .....**

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