

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2022

Public Authority: Health and Safety Executive

Address: Redgrave Court
Merton Road
Bootle
L20 7HS

Decision (including any steps ordered)

1. In two requests the complainant has requested correspondence about an investigation. The Health and Safety Executive (HSE) considered them to be repeated requests and refused to comply with them under section 14(2) of FOIA.
2. The Commissioner's decision is as follows:
 - HSE wrongly applied section 14(2) of FOIA to the requests as they are not repeated requests.
3. The Commissioner requires HSE to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a fresh response to their requests of 22 January 2021 that complies with the relevant legislation and does not rely on section 14(2) of FOIA.
 - If HSE considers that the refined requests of 22 January 2021 remain too broad, in line with its obligation under section 16(1) of FOIA to offer advice and assistance, HSE should indicate how the requests might be further refined to bring complying with them within the appropriate cost limit. If the requests cannot be so refined, HSE should explain to the complainant why that is the case.

4. The HSE must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 January 2021, the complainant wrote to HSE in two separate emails and requested information in the following terms:

Request 1 - IC-137337-R5P1

"Please supply me with all internal correspondence sent by any Gas Safe Register employees relating to the Gas Safe Register investigation concerning the property at [Address redacted]. Please include any items sent by post or via email. The timeframe that I am interested in is 1st December 2018 to 28th February 2019."

Request 2 - IC-138712-R1T5

"Please supply me with all internal correspondence sent by any Health and Safety Executive employees to other Health and Safety Executive employees relating to the Health and Safety Executive investigation concerning the property at [Address redacted]. Please include any items sent by post or via email. Please also include any minutes for internal meetings where the above investigation was discussed. The timeframe that I am interested in is 1st December 2018 to 28th February 2019."

6. The complainant did not receive a response to the requests which resulted in the Commissioner's decision in IC-101325-N6Q6¹. In that decision, dated 9 June 2021, the Commissioner instructed HSE to respond to the requests.
7. HSE provided a response to both requests under FOIA on 2 August 2021. It refused the requests under section 14(2) as it considered them to be a repeated requests.
8. The complainant requested an internal review on 26 August 2021.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619954/ic-101325-n6q6.pdf>

Scope of the case

9. The complainant contacted the Commissioner on 28 October 2021 to complain about the way their requests for information had been handled.
10. On 5 November 2021, the Commissioner instructed HSE to provide an internal review of its response to the requests. HSE did not provide reviews and the complainant's cases were accepted as eligible without internal reviews having been carried out.
11. The Commissioner wrote to HSE on 15 July 2022 to ask it to explain its reliance on section 14(2) and to provide copies of the requests that it considered the current requests repeated. HSE did not provide its submission within the required time scale and did not then engage with the Commissioner when he requested updates on the situation. It was therefore necessary to serve HSE with an information notice, under section 51 of FOIA, on 16 September 2022. The notice instructed the HSE to provide the Commissioner with its submission within 30 calendar days.
12. The focus of this investigation will be to consider whether the complainant's requests are repeated requests under section 14(2) of FOIA.

Reasons for decision

Section 14(2) – repeated requests

13. Section 14(2) of FOIA says that where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
14. In its submission the HSE has provided the following background. In 2018 the complainant engaged a gas engineer to install a new boiler at their home. The complainant purchased the boiler and the parts prior to the work commencing. The boiler was installed by the heating engineer and two others. The complainant reported the engineer to the Gas Safe Register as they were concerned the engineer may not have been a registered engineer with Gas Safe.

15. The Gas Safe Register is a register of businesses and operatives who are competent to undertake both piped natural gas and liquefied petroleum gas work in Great Britain, Northern Ireland, the Isle of Man and Guernsey. Under the Gas Safety (Installation and Use) Regulations 1998 for a gas engineering business to legally undertake gas work that is within the scope of the Regulations they must be on the Gas Safe Register.
16. The Gas Safe Register operates under an agreement with HSE and all complaints relating to gas engineering business or to gas engineers are undertaken by the Gas Safe Register. Gas Safe Register has a team of inspectors who monitor that gas work is being undertaken competently and safely. They deal with complaints and undertake risk based proactive inspections, and work closely with regulators such as HSE and local authorities.
17. Following an initial investigation by Gas Safe Register, HSE began a separate investigation into the gas engineer in this case.
18. The HSE says that the information the complainant requested relating to complaint IC-137337-R5P1 was created by and or acquired by Gas Safe Register as part of its initial investigation into the incident raised by the complainant. The information the complainant requested relating to complaint IC-138712-R1T5 was created by and or acquired by the Health and Safety Executive as part of its investigation into the incident raised by the complainant. Both Gas Safe Register and the Health and Safety Executive have, prior to receiving the complainant's requests under FOI/EIR, disclosed material to them under normal course of business.
19. HSE confirmed that it wished to maintain its position; that the requests under consideration are repeats of requests that HSE addressed in "August 2022".
20. HSE provided the Commissioner with a table of all the requests the complainant has submitted to it. Given the reference to "August 2022" above, the Commissioner subsequently clarified with HSE the dates of the two earlier requests. HSE confirmed that it received the two earlier requests on 28 September 2020 and had responded to them on 21 January 2021.
21. With regard to Request 1, HSE says that it considers the scope of this request to be sufficiently similar to the scope of the request it answered in "August 2022" ie in January 2021 (HSE reference 202101192). It had refused that request under section 12 of FOIA because responding to it would have exceeded the FOI cost limit.

22. That earlier request was as follows:

"Please supply me all internal correspondence sent by a Gas Safe Register employee relating to the Gas Safe Register investigation concerning the property at [redacted]."

23. HSE has acknowledged that the complainant did include a search period within the scope of the current request that they had not included within the earlier request, but it says they were still seeking disclosure of internal correspondence sent by any Gas Safe Register employees relating to the Gas Safe Register investigation concerning their property.

24. HSE had estimated that simply identifying emails falling within scope of the current request, even for a three month period, would exceed the FOIA cost limit. This is because it would have to initially identify the accounts of Gas Safe Register employees who were employed during the three month period the complainant specified. Once identified, HSE would have to undertake a search of all of these accounts to identify if they held any information falling within scope of the complainant's request.

25. In light of this, HSE says, it deemed the current request to be a repeat of the earlier request. This is because the scope of both requests was similar. They were both seeking disclosure of internal correspondence sent by any Gas Safe Register employee relating to the Gas Safe Register investigation concerning their property.

26. With regard to Request 2, HSE says it considers the scope of this request to be sufficiently similar to the scope of the request it addressed in January 2021 (HSE Reference 202101195). It had again refused the earlier request by applying section 12 of FOIA because responding to it would have exceeded the cost limit.

27. That earlier request was as follows:

"Please supply me all internal correspondence sent by any Health and Safety employee to other Health and Safety employees relating to the Health and Safety Executive investigation concerning the property at [redacted]. Please include items sent by post and include any minutes for internal meetings where the investigation was discussed."

28. Again, although the complainant included a search period within the scope of the current request that they had not included within the earlier, HSE says they were still seeking the disclosure of internal correspondence sent by any HSE employees relating to its investigation of gas work undertaken at their property.

29. HSE estimated that simply identifying emails falling within scope of this request, even for a three month period, would exceed the FOIA cost limit. This is because it would have to initially identify the accounts of HSE employees employed during the three month period the complainant specified. Once identified HSE would have to undertake a search of all of these accounts to identify if they held any information falling within scope of the request.
30. In light of this, HSE says, it deemed the current to be a repeat of the earlier request because the scope of both requests was similar. They were both seeking disclosure of internal correspondence sent by any HSE employees relating to its investigation of gas work undertaken at their property.
31. The HSE concludes its submission by noting that the complainant is familiar with the names of the investigating inspectors [presumably, HSE means only its own HSE inspectors] who investigated gas work undertaken at their property. This is because the complainant received direct communications from these individuals under normal course of business. On this basis the HSE considers that the complainant does not need to submit requests with such a broad scope.

The Commissioner's conclusion

32. The complainant submitted two broad requests on 28 September 2020 to which HSE had responded on 19 January 2021, refusing them under section 12(1) of FOIA. This generated the complainant's requests of 22 January 2021 that are being considered in this notice.
33. The Commissioner has not seen HSE's responses of 19 January 2021 and so does not know whether HSE advised the complainant to refine their requests to bring complying with them within the cost limit. But whether it did or did not, the complainant in effect submitted refined requests on 22 January 2021. They were refined as the complainant had introduced a timeframe for the information they are seeking.
34. It may be the case, as HSE has suggested, that these refined requests are still too broad. However, these requests cannot be categorised as "repeat requests". A repeat request would be a request that is exactly the same as, or substantially similar to, a previous request. The requests of 22 January 2021 in this case are not in the Commissioner's view so substantially similar to the requests of 28 September 2020 as to make them repeated requests. They are refined requests and so, in effect, new requests. As such, the Commissioner cannot find that the requests of 22 January 2021 are repeated requests under section 14(2) of FOIA.

Right of appeal

35. 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@justice.gov.uk

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

36. 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.
37. 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
Cheshire
SK9 5AF