

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 September 2023

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the Health and Safety Executive (HSE) breached section 10(1) of FOIA as it didn't communicate all the information about a report to which the complainant is entitled within the statutory timeframe. HSE is entitled to withhold personal data from the disclosed report under section 40(2) of FOIA.
2. It's not necessary for the HSE to take any corrective steps.

Request and response

3. The complainant submitted a request for a "report" about Vossloh Cogifer UK Ltd on 8 June 2020.
4. On 3 July 2020, HSE disclosed pages 3 to 14 of the report, with a small amount of information redacted on page 3, which it said was personal data.
5. Wider correspondence between the complainant and HSE continued and on 3 April 2022 the complainant asked for an internal review; they disputed the redaction HSE had made to the report and considered that HSE wasn't entitled to withhold the first two pages of the report.

6. The complainant requested an internal review again on 6 June 2023. The HSE didn't provide a review and, despite the age of the request and the length of time that had passed since the complainant first requested a review, the complaint was accepted for further consideration on this occasion.
7. On 30 August 2023 HSE disclosed to the complainant the information it had redacted from page 3. It advised the Commissioner that it didn't consider pages 1 and 2 fell within scope of the request as the request was for the "report".
8. Page 1 and 2 is a generic, covering 'Notice of Contravention' letter. HSE has told the Commissioner that Notice of Contravention letters and associated reports are usually stand-alone documents but, in this case, they were linked into one document.
9. Page 1 of the Notice of Contravention letter in this case says, "This letter explains..." with "This letter" referring to page 3 onwards, all of which was disclosed. This suggested to the Commissioner that pages 1 and 2 are integral to the whole document and are all part of one 'letter' or 'report'.
10. Pages 1 and 2 are also paginated 'page 1 of 14', 'page 2 of 14', which again suggests it's all one document in this case.
11. Furthermore, pages 1 and 2 don't give any additional insight or information over and above what's contained in page 3 onwards.
12. Whilst he notes that HSE usually holds Notice of Contravention letters and associated reports as two discrete documents, the Commissioner is satisfied that pages 1 and 2 fall within scope of the request in this case, for the above reasons. He therefore advised HSE to disclose pages 1 and 2 to the complainant, with personal data redacted as appropriate. HSE did so on 1 September 2023.

Reasons for decision

13. This reasoning covers HSE's application of section 40(2) of FOIA to some of the information in scope, and the timeliness of its response.
14. Section 40(2) says that information is exempt information if it's the personal data of another individual ('the data subject') and disclosure would contravene one of the data protection principles. The relevant principle is Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR). This says that personal data must be processed lawfully.

15. When considering whether disclosure would be lawful, the Commissioner considers the complainant's legitimate interests and whether disclosure is necessary to meet those legitimate interests. If appropriate he will finally go on to balance the complainant's legitimate interests against the data subjects' rights and freedoms.
16. In this case, names, contact details and a signature have been redacted from the Notice of Contravention letter under section 40. The Commissioner is satisfied that the withheld information is the data subjects' personal data – they can be identified from this information, and it relates to them.
17. The Commissioner appreciates that, for personal reasons, the complainant has a legitimate interest in this information and there's also a legitimate interest in public authorities demonstrating they're open and transparent.
18. In the Commissioner's view HSE has now demonstrated transparency by finally disclosing the report and the majority of the Notice of Contravention letter.
19. And the Commissioner doesn't consider that disclosing the personal data in the letter under FOIA is necessary to address the complainant's legitimate interest in this case. This is because the Commissioner understands that the complainant is already aware of who is named in the letter.
20. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interest in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. Disclosure would therefore contravene a data protection principle; that set out under Article 5(1)(a) of the UK GDPR.
21. As such, the Commissioner's decision is that HSE is entitled to withhold some of the requested information under section 40(2) of FOIA.

Section 10 – time for compliance

22. Under section 10(1) of FOIA, a public authority must communicate relevant information that it holds, and that's not exempt information, promptly and within 20 working days following the date of receipt of the request for it.
23. In this case, the complainant submitted their request to HSE on 8 June 2020 and HSE didn't communicate all the relevant and non-exempt information that it holds until more than three years later, on 31 August 2023. HSE therefore breached section 10(1) of FOIA.

Right of appeal

24. 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

25. 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.
26. 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