

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 19 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about an investigation. The above public authority ("the public authority") relied on regulation 12(5)(b) of the EIR (course of justice) to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied on regulation 12(5)(b) and that the balance of the public interest favours maintaining the exception. The public authority breached regulation 11 of the EIR because it failed to complete its internal review within 40 working days.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 29 July 2023, the complainant wrote to the public authority and, referring to a particular incident at a waste treatment plant, requested information in the following terms:

"I kindly request the following information:

- 1) **The status of the investigation:** I would like to know the current status of the investigation into the explosion at the Avon

mouth waste treatment plant. Please provide any relevant updates or milestones achieved so far

- 2) **Dates of sample collection and analysis results:** Please provide details of the dates when samples were collected from the affected silo and any other locations on the site for analysis and any subsequent results obtained from analyses.
- 3) **Findings of the investigation to date:** I request access to the findings of the investigation conducted by the HSE concerning the explosion at the. Please provide any preliminary or final reports, assessments or summaries of the investigation's findings, thus far.
- 4) **Cost of the investigation to the HSE:** I would like to obtain information regarding the total cost incurred by the HSE in conducting the investigation into the Avonmouth waste treatment plant explosion to date. This should include costs associated with personnel, equipment, laboratory analysis and any other relevant expenses.
- 5) **Cause of the explosion:** Please provide information on the cause of the explosion, as determined by the investigation conducted by the HSE. I would appreciate any information or documentation that outlines the causes of the incident, according to the information collated to date.
- 6) **Possible negligence of Wessex Water or other parties:** I request details on whether Wessex Water or any other parties involved in the operation of the waste treatment plant were found to be negligent by the HSE investigation. If negligence was identified, please provide specific grounds or evidence supporting this conclusion.
- 7) **Recommendations of the inquiry:** I kindly request any recommendations or suggestions put forth by the inquiry conducted by the HSE regarding the explosion at the Avonmouth waste treatment plant. Please provide any reports, documents or correspondence that outlines the recommendations for improving safety or preventing similar incidents in the future.
- 8) **Length of the investigation:** Please disclose the duration of the investigation conducted by HSE into the Avonmouth waste treatment plant explosion. I would like to know the start and end dates of the investigation or, if ongoing, the duration elapsed thus far.

- 9) **Number of people interviewed and their identities:** I request information on the number of individuals interviewed as part of the investigation into the Avonmouth waste treatment plant explosion. Additionally, please provide the identities of the individuals interviewed or a breakdown of their roles and affiliations.
 - 10) **Number of allocated HSE staff:** Please disclose the number of HSE staff allocated to investigating this case throughout its entirety.”
5. The public authority responded on 24 August 2023. It relied on regulation 12(5)(b) of the EIR to withhold the requested information.
 6. Following an internal review the public authority wrote to the complainant on 22 January 2024. It upheld its original position.

Reasons for decision

7. Given the nature of the request, the Commissioner is satisfied that he can reach a decision without seeing the information itself.

Is the requested information environmental?

8. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;

- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
9. Although he has not seen the requested information, as it is information relating to a fatal explosion at a waste treatment works, the Commissioner believes that the requested information is likely to be information on a measure affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(5)(b) – course of justice

10. Regulation 12(5)(b) of the EIR allows a public authority to withhold information whose disclosure would adversely affect someone's ability to receive a fair trial, the ability of an authority to carry out a criminal inquiry, or the course of justice more generally.
11. The public authority explained in its refusal notice (and the complainant accepts) that the incident was, at that time, the subject of ongoing criminal proceedings.
12. In a [recent statement](#) issued in July 2024, Avon and Somerset Police confirmed that, having investigated the explosion, there was insufficient evidence to provide a realistic prospect of a prosecution for manslaughter. However, it stated that the public authority would continue its work to establish whether there had been any criminal breaches of the Health and Safety at Work Act 1974.
13. Therefore the Commissioner is satisfied that, at the point the public authority responded, there was both an ongoing police investigation and a criminal investigation by the public authority.
14. The request seeks to establish both the number and the identities of every witness that the public authority has interviewed. Disclosing that information into the public domain, especially before the investigation has concluded, will deter other witnesses from coming forward and make those that do come forward less likely to be candid, because potential witnesses may fear reprisals from others involved in the case. Reducing the quality of the available evidence will adversely affect the

public authority's ability to conduct a criminal inquiry thoroughly and fairly.

15. The request also seeks information about the investigation's findings – at a point where the investigation is yet to conclude and where investigators are unlikely to have either collected all the necessary evidence, or to have fully analysed it, or both.
16. It is perfectly plausible that investigators will change their minds over the course of the investigation as they gather more evidence and get a clearer picture of events. Publishing a running commentary or some kind of "swingometer" indicating guilt or innocence is neither helpful to the investigation nor fair to any suspects.
17. For example, at a particular point in an investigation, there may be strong evidence suggesting that a particular person is guilty but, at a late stage, evidence emerges exonerating them. Equally, new evidence might indicate that someone has committed an offence when it was initially thought they had not done so.
18. It would be unfair to a suspect, on trial for a criminal offence, for a part-formed opinion, based on partial evidence, stating that they were guilty, to have been made publicly by the organisation investigating them. Equally, it would not help prosecutors to have a similarly part-formed opinion stating that the individual was innocent.
19. There is also a real risk that any suspects (whether guilty or innocent) will be exposed to a trial by media before the full facts are known and before they have had the opportunity to present their defence to a jury.
20. The Commissioner is therefore satisfied that disclosing the withheld information would adversely affect someone's right to a fair trial. It would be near impossible for someone to have a fair trial if incomplete, untested portions of the evidence against them were to be made available for all to see in advance of that trial.
21. Finally, the Commissioner accepts that disclosure would adversely affect the course of justice more generally. As well as the specific impacts to this investigation, potential witnesses in future investigations will be less likely to come forward or less likely to be candid (or both) with the public authority if they are afraid that their identities and the information they have provided will be placed in the public domain whilst the investigation is ongoing.
22. The Commissioner is therefore satisfied that it is more likely than not that disclosure of this information would adversely affect the course of justice, the ability of someone to receive a fair trial and the conduct of a criminal investigation. Regulation 12(5)(b) is thus engaged.

Public interest test

23. Information that would adversely affect the course of justice must still be disclosed unless the balance of the public interest favours maintaining the exception.
24. The complainant has drawn attention to the fact that the explosion killed several people. There was a strong public interest in finding out how the explosion happened and who was responsible for it.
25. The Commissioner accepts that the public interest in establishing the cause of the explosion and whether criminal negligence contributed to it is a very strong public interest. But he notes that this is not compelling argument for publishing the information **at the point the request was made**. In particular, there is no compelling case for disclosure whilst investigators are still completing their work and when there appears to be a realistic prospect of future criminal or civil litigation.
26. In the Commissioner's view, there is a much stronger public interest in protecting the ability of specialist investigators to gather evidence, analyse it and, if appropriate, launch a prosecution capable of establishing guilt beyond reasonable doubt. There is also an exceptionally strong public interest in ensuring that anyone who may be prosecuted in future is able to receive a fair trial.
27. Finally, the Commissioner notes that there is a strong public interest in protecting the public authority's ability to conduct investigations of this nature thoroughly and fairly in future.
28. Although the Commissioner has considered the EIR's presumption in favour of disclosure, he does not consider that this is sufficient to override the very strong public interest in maintaining the exception.
29. The Commissioner is therefore satisfied that regulation 12(5)(b) is engaged and that the balance of the public interest favours maintaining the exception.

Procedural matters

30. Regulation 11 of the EIR requires a public authority to carry out a reconsideration (internal review) of a response to a request within 40 working days of being asked to do so. The public authority breached regulation 11 of the EIR because it failed to complete its internal review within 40 working days of being asked to do so.

Right of appeal

31. 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

32. 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.
33. 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

Roger Cawthorne
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