

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2014

Public Authority: Health and Safety Executive
Address: 1.G Redgrave Court
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant requested the Health and Safety Executive ('the H&SE') to disclose information relating to the Gas Safe Register and the administration of this register by Capita. The H&SE responded providing the requested information to the complainant. Some information was withheld under section 43 of the FOIA but this was not the issue the complainant wished the Commissioner to pursue. The complainant's concerns related to the overall handling of his request, the timeframes involved and whether his request should be consider under the FOIA or the EIR.
2. With regards to which legislation is applicable, it is the Commissioner's decision that the FOIA applies to this request not the EIR. He has considered whether there have been any procedural breaches of the FOIA and he has decided that the H&SE breached section 17 of the FOIA in this case. This is because the H&SE did not inform the complainant that it was refusing to disclose information under section 43 of the FOIA within 20 working days of his request.
3. Although he has found the H&SE in breach of section 17 of the FOIA, he does not require any further action to be taken on this matter.

Request and response

4. On 7 May 2013, the complainant wrote to the H&SE and requested information in the following terms:

"Please supply answers to the following questions from the documents which the H&SE (Health & Safety Executive) hold relating to the Gas Safe Register Scheme

1. What is the purpose of the Gas Safe Register?
2. Does the H&SE (Health & Safety Executive) have a legally binding contract with Capita Group to administer the scheme on behalf of the H&SE, and what is the duration of this contract?
3. How are Capita Groups activities in administering Gas Safe financed?
4. What are Capita Groups obligations to the H&SE and the public under this contract?
5. How does the H&SE monitor and ensure Capita Group meet those obligations?
6. Does Capita Group submit both financial accounts and KPI's (Key Performance Indicators) relating to its Gas Safe activities to the H&SE?
7. Is there a documented process for the public to escalate complaints relating to Gas Safe to the H&SE once Gas Safe's complaints process has been completed, and are Capita Group obliged to advise the public of their rights to refer a complaint to the H&SE?
8. How many complaints have the H&SE received relating to the Gas Safe register since its inception and does the H&SE perform an analysis of these complaints by category?
9. Does the H&SE audit Capita Groups complaints process, register and documentation relating to the Gas Safe Register?
10. Does the H&SE audit the Gas Safe Register independently of the Capita Group?
11. How often does the H7SE test samples of the businesses shown on the register to ensure a reasonable proportion of them are accurate and up to date?
- 12.

Copies of documents requested

1. A copy of the schedule of Capita Groups obligations contained within its contract with the H&SE.

2. A copy of the latest KPI's submitted to the H&SE by Capita Group together with any related targets agreed with or given by the H&SE to Capita Groups.
3. A copy of H&SE own procedure for handling complaints submitted to it relating to the Gas Safe Register.
4. Analysis of the complaints received relating to the Gas Safe Register by category."
5. The H&SE responded on 3 June 2013. It addressed each of the 11 questions in turn providing a response to each. In relation to the specific documents the complainant requested, the H&SE again responded to each of the four requests. Regarding 1 and 2, the H&SE provided some information to the complainant. In respect of 3 and 4, the H&SE confirmed that the information is not held.
6. The complainant contacted the H&SE on 5 and 8 June 2013 to raise concerns with the H&SE's response of 3 June 2013. It is understood that the complainant was dissatisfied that the H&SE had not provided the schedules to the Service Concession Agreement that was disclosed on 3 June 2013 in answer to part 1 of the list of the four documents he requested in his initial request. He also raised some other concerns about a specific complaint he had against the Gas Safe Register and how to escalate this within the H&SE.
7. The H&SE responded on 21 June 2013. It apologised that its response of 3 June 2013 was incomplete and confirmed that it had withheld the schedules to the Service Concession Agreement under section 43 of the FOIA. The H&SE informed the complainant that his other concerns were not freedom of information issues but addressed them none the less in order to assist him.
8. The complainant first requested an internal review on 23 June 2013. He then later submitted a further request for an internal review to the H&SE on 27 July 2013. The complainant's correspondence of 27 July 2013 requested the H&SE to respond to eight specific points.
9. The H&SE carried out an internal review and notified the complainant of its findings on 16 September 2013. The H&SE decided at this point that the request should have been considered under the Environmental Information Regulations (EIR) and that it was now willing to disclose several schedules to the Service Concession Agreement to the complainant. The H&SE felt that eight schedules should still be withheld and informed the complainant that it considered the remaining information was exempt under regulation 12(5)(e) and 13 of the EIR.

Scope of the case

10. The complainant contacted the Commissioner on 24 November 2013 to complain about the way his request for information had been handled. Specifically, the complainant was unhappy that the H&SE had not responded to all the eight points he raised in his request for internal review. He was also unhappy with H&SE's website and the information available to the public on how to make a request and where and to whom it should be submitted to. The complainant also raised concerns over the length of time it had taken the H&SE to issue a complete refusal notice and to inform him of the outcome of its internal review.
11. During the Commissioner's investigation it was established with the complainant that he had no complaint with regards to the application of section 43 of the FOIA or regulation 12(5)(e) of the EIR to the remaining withheld schedules to the Service Concession Agreement. The complainant informed the Commissioner that he was satisfied with the level of information he had received on this point and therefore did not wish to pursue access to the remaining schedules.
12. A dispute did however arise between the Commissioner and the complainant with regards to the legislation that should apply to his request. This notice will therefore outline the Commissioner's decision on which legislation applies (whether the FOIA or the EIR) and record any procedural breaches of that legislation.

Reasons for decision

Is the FOI or EIR applicable?

13. The Commissioner considers the request should be considered under the FOIA not the EIR, as the H&SE initially did, and he will now explain why.
14. Regulation 2(1) of the EIR defines environmental information. For a request to be considered under the EIR the information requested must be information *on* –
 - (a) the state of the elements of the environment, such as the 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) and (b) 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 states 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).

16. It is clear from the wording of the complainant's request that the request relates to the Gas Safe Register – its administration by Capita and the procedures in place or not in place for complaints about the register and those on it rather than any environmental factors. The request is also seeking information on the H&SE responsibilities in respect of the register – its monitoring of it and Capita and how it deals with complaints if at all about the register and Capita itself.
17. The Commissioner considers the Gas Safe Register is not a measure as defined by regulation 2(1)(c) of the EIR that directly affects or is likely to directly affect the elements of the environment as outlined in regulation 2(1)(a). It is the Commissioner's view that the primary purpose of this register is safety and the official registration of gas engineers qualified to carry out gas installations not the environment and for these reasons the request itself is too far removed to be considered a request for environmental information.
18. The Commissioner is therefore satisfied that the request should be considered under the FOIA. The Commissioner notes the complainant's view that gas appliances can release emissions and that there can be an effect on the environment if an appliance is not fitted correctly and an explosion was to occur and so it is not unreasonable to hold the view that the EIR may be applicable. He also notes that the complainant is of the view that the request should be considered under the legislation which provides him with the best access rights and the best channel to pursue his remaining concerns and he believes this is the EIR.

19. However, the Commissioner considers the information being sought in this particular request is too far removed to fall within the definition of environmental information. It is also necessary for the Commissioner to decide one way or another which legislation applies in order to judge how a request has been handled and to know if any procedural breaches of that legislation need to be recorded against that public authority. It is not possible to use one access regime over another purely because it gives the applicant better rights of access or better channels to pursue a particular complaint.
20. As he is satisfied that the FOIA is applicable here, he will now consider whether there has been any procedural breaches.

Procedural matters

21. The Commissioner notes that the H&SE failed to address the exempt schedules to the Service Concession Agreement and therefore its application of section 43 of the FOIA in its response of 3 June 2013. He notes that it was only when the complainant contacted the H&SE on 5 and 8 June 2013 that this element of his request was addressed in full. The H&SE then issued the complainant with a refusal notice on 23 June 2013 but this was then outside the statutory time for compliance.
22. It is the Commissioner's view that the H&SE should have issued a refusal notice stating that it was withholding these schedules under section 43 of the FOIA within 20 working days of the request. As it did not and only did so when the complainant chased the matter up, the Commissioner has found the H&SE in breach of section 17 of the FOIA in this case.

Other matters

23. This section is for issues that are worthy of note but cannot be considered in the main body of the notice because they are issues of good practice rather than matters relating to the Commissioner's statutory powers.
24. The Commissioner notes that the H&SE took around 12 weeks to carry out its internal review. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay. The Section 45 Code of Practice

contains comprehensive information on how an internal review should be conducted.

25. The Commissioner also considers that it is good practice for a public authority to address all issues that are raised by an applicant whether these are raised with the initial request or at the internal review stage. Even if this is to say that some issues are new issues and will be dealt with separately or do not relate to the public authority's functions under the FOIA and will therefore be dealt with in the normal course of business.
26. The Commissioner notes in this case that the complainant experienced difficulties when making his initial request to the H&SE. He stated that the H&SE's website does not advise the public clearly where to direct requests to and does not provide an FOI email address to make the process easy to follow.
27. The Commissioner would remind the H&SE that the Section 45 Code of Practice advises public authorities to provide advice and assistance to applicants wishing to make a request. The code states that the public authority should clearly publish its procedures for making requests for information or assistance. The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided and where possible that of a named individual who can provide assistance.

Right of appeal

28. 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: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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
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