

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2023

Public Authority: Health and Safety Executive

Address: Redgrave Court

Merton Road

Bootle

Merseyside

L20 7HS

Decision (including any steps ordered)

1. The complainant requested information from the Health and Safety Executive (HSE) about staff hiring and retention. By the date of this notice HSE had not issued a substantive response to this request.
2. The Commissioner's decision is that HSE has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires HSE to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information, if held, or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of FOIA.
4. HSE must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 29 March 2023, the complainant made the following request for information to HSE:

“Can you please provide me with:

- A copy of the analysis of the specific areas of concern regarding the HSE’s inability to attract, secure and retain the right people with the right skills and capabilities mentioned on page 67 of the HSE Annual Report and Accounts 2021/22. And any papers produced in response to this and any further analysis taken on the subject in the months since.
- A copy of the new contract for contingent labour mentioned on the same page of the same annual report.
- Any papers relating to your proposals to pay reform detailed under the Retaining Staff heading of the same page of the same annual report.”

6. On 16 May 2023, HSE wrote to the complainant to explain that it held information relevant to the complainant’s request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 43(2) (commercial interests) of FOIA.

Reasons for decision

7. Section 1(1) of FOIA states 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.”

8. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

9. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
11. On 27 June 2023, the Commissioner wrote to HSE, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
12. In this case, the total time taken by HSE has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, HSE has not complied with section 17(3) of FOIA.
13. HSE is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

14. 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

15. 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.
16. 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

Pamela Clements
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Cheshire
SK9 5AF