

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 March 2024

**Public Authority:** Health and Safety Executive  
**Address:** 1.3 Redgrave Court  
Merton Road, Bootle, L20 7HS

### **Decision (including any steps ordered)**

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1. The complainant has requested the Health and Safety Executive (HSE) to disclose any photographs or live footage of the accident involving Andrew Flintoff at Dunsfold Park Aerodrome on 13 December 2022. HSE disclosed the recorded information it holds.
2. The complainant however believes HSE holds further recorded information to that disclosed. The Commissioner's decision is that on the balance of probabilities HSE does not hold any further recorded information to that already disclosed. He is therefore satisfied that HSE has complied with the request, in accordance with its obligations under FOIA. He does not require any further action to be taken.

### **Request and response**

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3. On 9 October 2023, the complainant wrote to HSE and requested information in the following terms:

"My request for information concerns a widely publicised crash/accident involving the television personality and Top Gear presenter Andrew 'Freddie' Flintoff. The crash/accident took place at Dunsfold Park Aerodrome on 13 December 2022

I understand that HSE has now completed its investigation into the crash and reported its findings

1. Can the HSE provide copies of all still photographs and or still images held by the HSE which in any way relate to Mr Flintoff's presence at the Aerodrome on 13 December 2022 and or his driving on the day and or the vehicle he drove on the day and or the aforementioned accident/crash. Some of these photographs and or still images may have been taken at the point of impact. Some of these photographs and or still images may have been taken in the aftermath of the crash. I would like to receive copies of all photographs and or still images held. If for whatever reason the HSE feels it cannot provide any particular photographs and or still images, can it state how many photographs and or still images it is withholding and in accordance with what FOI AND EIR exemption(s). If the HSE feels it can provide photographs and or still images but only in a form where the identity of particular individuals is obscured can it state, the reasons why in accordance with the relevant FOI/EIR exemptions.
2. Can the HSE provide copies of all video and or moving film footage held by the HSE which in any way relates to Mr Flintoff's presence at the Aerodrome on 13 December 2022 and or his driving on the day and or the vehicle he drove on the day and or the aforementioned accident/crash. Some of this video and or moving film footage may have been taken prior to the crash/accident itself. Some of this video and or moving film footage may have been taken at the point of impact. Some of this video and or moving film footage may have been taken after the crash/accident. I am interested in all video and or moving film footage irrespective of the kind of device on which it was recorded (for example it will include but not limited to video and or moving film footage taken on drones and or TV camera and or film cameras and or CCTV cameras and or mobile phones and or laptops and or tablets. If for whatever reason the HSE feels it cannot provide particular video and or moving film footage, can it state how many seconds of footage it is withholding and in accordance with which FOI/EIR exemption. If the HSE feels it can provide footage but only in a form where the identity of particular individuals is obscured can it state, the reasons why in accordance with the relevant FOI/EIR exemption(s) "
4. HSE responded on 6 November 2023. Regarding question one, HSE disclosed three still photographs in full. For question two, HSE confirmed that it does not hold any recorded information.

5. The complainant requested an internal review on 7 November 2023. They stated that they believe it is highly likely that HSE will hold further recorded information to that already disclosed.
6. HSE carried out an internal review on 13 November 2023 and notified the complainant of its findings. It confirmed that it does not hold any further recorded information falling within the scope of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. The complaint was accepted for investigation on 2 December 2023.
8. The Commissioner considers that the scope of his investigation is to establish whether on the balance of probabilities HSE holds any further recorded information falling within the scope of the complainant's request.

### **Reasons for decision**

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#### **Section 1 – general right of access**

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
10. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
11. HSE explained that all incidents it investigates are recorded within its Corporate Operational Information System (COIN) under the name of the dutyholder being investigated. Where an incident has caused injury or death to an individual, the corporate record will also include the name of the injured party or deceased person. As the statutory body responsible for regulating and enforcing health and safety legislation in the UK, HSE investigates workplace incidents with a view to understanding the cause of the incident and establishing if there has been a breach of health and safety legislation by those in control of

premises. HSE's level of investigation can vary considerably depending on the incident in question. This can range from initial enquiries with the dutyholder to full enforcement action in the form of prosecution.

12. It said that following the receipt of the complainant's requests, HSE's Central Disclosure Team undertook a search of COIN using the name of the injured person – Andrew Flintoff – rather than the name of the duty holder as this information was not known at the time of the request. This search identified one record falling in the scope of the request, an incident involving BBC Studio Productions Limited relating to a motor vehicle incident involving the Top Gear presenter Andrew Flintoff. A copy of the COIN record was provided to the Commissioner to highlight this.
13. HSE advised that during its investigation of this incident, it asked the BBC a series of questions associated with the incident involving Mr Flintoff and received a number of responses. One of the questions it posed related to the bend on the circuit where the incident occurred and in response to this question the BBC advised they held photographs of the bend taken post incident. Following receipt of this response, HSE requested disclosure of these photographs and the BBC provided HSE with three photographs of the tarmac/bend of the circuit where the incident occurred. It said that these photographs were subsequently disclosed to the complainant in response to this request.
14. HSE confirmed that it does not hold any further stills or live footage falling within the scope of the request. Whilst the complainant may believe it received further evidence from the BBC due to nature and profile of the accident, this is not case. The BBC advised that they were not filming at the time of the incident therefore live footage is not held by the dutyholder or HSE. It can therefore only reiterate that the only information it holds is the three photographs already disclosed, nothing more.
15. Again HSE said that whilst the complainant is of the view that it should hold more information, this is not the case. Regardless of the profile of the injured party, it is for HSE to determine if the incident in question meets its investigation criteria not the public. In this case, HSE confirmed that the injuries sustained by Mr Flintoff did not meet its investigation criteria and as such it closed its enquiries with on further action.
16. At the request of the Commissioner HSE carried out fresh searches to ensure that all the recorded information it does hold has been identified. It said that these fresh searches did not locate or reveal any additional recorded information.

17. The Commissioner is satisfied that on the balance of probabilities HSE does not hold any further recorded information. It has explained why it does not hold any additional information and conducted fresh searches to ensure that this is indeed the case. It has outlined the extent of its investigation into the incident and what information it received from the BBC. HSE only received three photographs and these have been disclosed to the complainant. It has also explained why it does not hold any further still images or any live footage.
18. The Commissioner has no reason to doubt HSE's position and has not received any evidence to the contrary. He is therefore satisfied that HSE has complied with the requirements of FOIA in relation to this request.

## Right of appeal

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19. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**