

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2024

Public Authority: Health and Safety Executive (HSE)

Address: Redgrave Court
Merton Road
Bootle
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested information on Fee for Intervention invoices relating to Employment Tribunals. HSE refused the request on the basis of section 14(1) – vexatious requests.
2. The Commissioner's decision is that HSE is entitled to rely on section 14(1) of FOIA in this case because the request is vexatious. However the Commissioner does find that HSE failed to rely on section 14 within 20 working days and therefore breached section 17(5) FOIA.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 25 May 2023 the complainant made the following request to HSE for information on Fee For Intervention (FFI) invoices relating to Employment Tribunals:

“please can you provide me information relating to 24 January 2023:

- 1) A note of the number of FFI invoices issued for work wholly or partly relating to an appeal to the Employment Tribunal.
- 2) A note of the number of those invoices which have been queried.

- 3) A note of the number of queries which were upheld.
 - 4) Reasons given for upholding the queries and a breakdown for each reason.
 - 5) A note of the number of those invoices which were not queried.
 - 6) A note of the number of those invoices which were not queried, and which were paid.
 - 7) A note of the number of those invoices which were paid and have not been refunded by 31 March 2023 and the value thereof.
 - 8) A note of the number of those invoices which were cancelled by 31 March 2023.
 - 9) A note of the number of those invoices which were not cancelled by 31 March 2023 and the value thereof.”
5. Despite chasing a response several times, a response was not sent by HSE until 12 February 2024, refusing the request under section 14 FOIA.
 6. The complainant requested an internal review on 1 April 2024. An internal review was conducted, and the outcome sent to the complainant on 6 May 2024 upholding HSE’s position.

Scope of the case

7. The complainant contacted the Commissioner on 19 June 2024 to complain about HSE’s refusal to comply with the request.
8. The Commissioner considers the scope of his investigation is to determine if HSE has correctly refused the request as vexatious under section 14 FOIA.

Reasons for decision

Section 14 – vexatious requests

9. Under section 14(1) of FOIA a public authority isn’t obliged to comply with a request for information if the request is vexatious.
10. Broadly, vexatiousness involves considering whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.

11. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal developed in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (ACC):
 - Value or serious purpose;
 - Motive;
 - Burden; and
 - Harassment of staff

The public authority's position

12. HSE explained that as the statutory body responsible for the regulation and enforcement of workplace health, safety and welfare in the UK it has a range of powers and responsibilities. Enforcement options, or interventions, used by HSE when investigating health and safety concerns vary and include the provision of advice, the service of notices, withdrawal of licences and prosecution.
13. Any business or individual found in material breach of their legal duties will be served with a Notification of Contravention letter by the investigating inspector and the dutyholder will become subject to the FFI cost recovery scheme under the Health and Safety and Nuclear (Fees) Regulations 2021.
14. HSE has provided some detail to the Commissioner as to the potential motivation for the request. This detail has not been included here but, in short, the complainant was served with a Notice of Contravention letter following a visit from a HSE inspector.
15. Following on from this an appeal was lodged against the serving of the letter and the FFI costs associated with the HSE visit. This was done via an established appeals procedure. The complainant also made a complaint about HSE's regulatory activity via the official HSE complaints process.
16. HSE advised that in a very short period of two months between April and May 2023 the complainant submitted four FOIA requests and two subject access requests under the Data Protection Act 2018 using three different email addresses. Two of the requests submitted to HSE sought the same FFI information as this request.
17. HSE explained it had received an almost identical request on 23 May 2023 – two days before this request was received. In response to that request, it had explained that FFI information is not held in a format that would readily identify the requested information. As such, locating

and retrieving the information would exceed the cost limit under section 12 FOIA. HSE acknowledged the earlier request did not relate to Employment Tribunal appeals but it did relate to FFI invoices that had been queried. HSE therefore considered, given the similarities between the requests, the request should be refused as vexatious.

18. HSE considered responding to this substantially similar request, submitted only days after the earlier request, would impose an unreasonable burden on its resources and divert resources away from core activities with little added value.
19. HSE states that as a public authority partially funded by public funds it recognises the importance of disclosing FFI information to comply with its transparency and accountability agenda. It publishes information associated with FFI runs via its website¹ and publishes other financial information associated with its enforcement activities via the HSE annual report.
20. It argues the impact of processing the request would be disproportionate to the value of the request itself. This is because the subject matter is likely only of interest to the complainant in assisting with their appeals that were being addressed via appropriate official appeals processes. HSE considers disclosing the requested information, even if it could be located in a reasonable amount of time, would be unlikely to serve the wider public interest. It is not convinced it would even serve the complainant's interests as appeals by other dutyholders would have little relevance to other appeals as each appeal will have very different supporting factors involved.

The complainant's position

21. The complainant stated they understand HSE doesn't hold FFI data in format that readily identifies FFI invoices issued which are not recoverable through the FFI scheme and these are only brought to the attention of HSE when a dutyholder raises a query.
22. Where queries are raised, the complainant acknowledges a query and dispute process is in place and is effective in resolving such matters correctly. However, queries are not always raised and there is a public interest in knowing the value of any invoices issued incorrectly because of administrative errors or negligence or any other reason, and how much was paid or how much was refunded.

¹ [ffi-invoice-information.xlsx](#)

23. They state that, based on HSE's own statistics, in 2018/2019 there were 20,015 invoices issued. Of those, 2.5% of the invoices were queried which equates to approximately 501 invoices. 263 of these (or 52%) were upheld in full. The complainant argues this shows that despite HSE's systems and checks half of the invoices that are queried are upheld and this is evidence there is something wrong with the procedures in place.
24. The complainant is also clear that the request that was refused on cost grounds was a request related to invoices for the whole month of January 2023 and this request is for invoices raised on single day in January 2023.

The Commissioner's view

25. Whilst HSE has not refused this request on cost grounds under section 12 FOIA it has argued that there would still be a grossly oppressive burden in responding to this request. It explained that the FFI run that took place on the 24 January 2023 issued 3,319 invoices. To locate and retrieve information to answer even one part of the request would involve HSE cross-referencing invoices served on a dutyholder on this database against the corresponding record in the corporate database where HSE Inspectors and staff log all interactions with a dutyholder. This information would have to be manually reviewed to determine if the dutyholder had raised an appeal via the Employment Tribunal. HSE had suggested that it would take one minute to review each record in its corporate system, cross-reference it and determine if it was information in scope of the request. This would amount to over 56 hours of work.
26. The Information Tribunal² had previously found that:

"A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12."
27. In practice this means that section 14 can apply where burden is the sole consideration, but the Commissioner's view is that if this is the case section 12 should be considered in the first instance where possible.
28. In terms of the burden, the Commissioner considers HSE's estimate is very high but the complainant has not disputed that FFI data is not

² [Microsoft Word - 20120329 Decision EA20110222.doc](#)

readily available. It follows, from HSE's explanations, that the specific information requested would involve a degree of manual interpretation and cross-checking. The fact the requested information relates to only one day in January does not seem to matter as the amount of invoices filed is still in the thousands. As such whilst the Commissioner is somewhat sceptical of the public authority's estimate he does still consider the burden is disproportionate. This is because HSE is relying on the burden alongside other factors, including the repeated nature of the request and what it considers is the minimal wider public interest in the information.

29. HSE states this request is one of four FOIA requests (and two subject access requests) received in one month relating to FFI invoices. This is not a significant number, but the Commissioner accepts it does demonstrate a level of persistence and does not provide HSE time to respond to one request before another is received.
30. The Commissioner accepts the complainant has a genuine interest in understanding whether invoices that are issued are queried and, if so, what the grounds are and why they are upheld/not upheld.
31. However, the information requested is for one single day in January. If HSE were to provide this information and it could be used to analyse if there are fundamental underlying problems with the serving of FFI invoices it would only be providing a snapshot of a very brief period. This would not necessarily be indicative of the overall efficacy of the FFI process.
32. The complainant, by his own admission, has been able to use published statistics to deduce that only 2.5% of invoices over a whole year are queried and half of these result in queries being upheld. This suggests 1.25% of invoices a year may have been incorrect. The fact that queries can be raised and there is a recognised process for doing this demonstrates there is an avenue by which individuals or businesses can challenge FFI invoices and, if there are genuine claims, queries will be upheld.
33. Based on the figures above if, of the 3,319 invoices raised on 24 January 2023, 2.5% were queried this would amount to approximately 82 invoices. Of these roughly 40 would be upheld. To go through 3,319 invoices to find the small number queried to provide a breakdown of the reasons does not seem proportionate to the burden involved. Added to this the request asked for details of invoices that were not queried. The Commissioner does not consider there is any obvious wider public interest in invoices that were not queried. This is because there is a process open for querying that was not taken up by those who were in receipt of these invoices.

34. The Commissioner appreciates the complainant is of the view that the whole FFI invoicing process should be scrutinised as there are clearly cases where queries have been raised and invoices successfully challenged. However the Commissioner's view is that there are appropriate mechanisms in place for challenges and appeals and requiring HSE to undertake a burdensome activity, likely to distract from its day to day activities would not be proportionate to the value of the request. The request is therefore vexatious.

Procedural matters

35. In this case, the complainant submitted their request to HSE on 25 May 2023 and HSE did not respond until nearly nine months later on 12 February 2024.

36. HSE failed to rely on section 14 within 20 working days and therefore breached section 17(5) FOIA.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
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