

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 March 2022

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

Decision (including any steps ordered)

1. The complainant has requested information relating to an investigation that the Health and Safety Executive carried out.
2. The Health and Safety Executive withheld the requested information, citing section 30(1)(b) (investigations and proceedings) of FOIA.
3. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 7 April 2021, the complainant wrote to the Health and Safety Executive (HSE) and requested information in the following terms:

 'Recently I reported my employer for H&S violations... The HSE case worker has informed me that the investigation has concluded and closed. I am now requesting that report under FOI Act, so that I can view the findings and ensure that the employer is complying the laws (sic) and implementing safety procedures, devices, proper training, equipment and making our workplace safe for Lone Night Worker.'
6. The HSE responded on 12 April 2021 and confirmed that it held 'email correspondence with the dutyholder.' The HSE confirmed that this information was exempt from disclosure under section 41 (information provided in confidence) of FOIA.

7. The complainant requested an internal review on 17 April 2021.
8. The HSE sent the outcome of its internal review on 6 July 2021 and explained that it was incorrect to apply section 41. The HSE confirmed that it held correspondence exchanged with the complainant for the purposes of investigating their concern. The HSE explained that it was withholding this correspondence under section 21 (information accessible to applicant by other means) of FOIA. The HSE also confirmed that it was withholding all correspondence with the requestor's employer ('the dutyholder') under section 30(1)(b).

Scope of the case

9. The complainant contacted the Commissioner on 1 July 2021 to complain about the way that their request for information had been handled.
10. During the course of this investigation, the complainant confirmed that they were not concerned with the HSE's application of section 21. The Commissioner therefore considers the scope of his investigation to be to determine whether the HSE is entitled to withhold the correspondence that it exchanged with the dutyholder under section 30(1)(b).

Reasons for decision

Section 30 – investigations and proceedings

11. Section 30(1) of the FOIA states that:

'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct.'
12. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, abandoned or even closed investigation.
13. As part of his investigation, the HSE has provided the Commissioner with a copy of the withheld information. It is email correspondence between the HSE and the dutyholder.
14. Section 30(1)(b) is a class-based exemption. This means that all documents that fall within the description as outlined in paragraph 11

will be covered. There is no requirement to demonstrate that disclosure of this information might be harmful in order for section 30(1)(b) to be engaged.

15. Section 30(1)(b) is also a qualified exemption. This means that, even if the exemption is engaged, consideration must be given as to whether the public interest lies in disclosure or in maintaining the exemption.

Is the exemption engaged?

16. The first step is to determine whether the withheld information falls within the class described in section 30(1)(b).
17. The Commissioner's guidance 'Investigations and Proceedings'¹ clarifies that section 30(1)(b) '... applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.'
18. The HSE has explained to the Commissioner that 'HSE is a statutory body created by the Health and Safety at Work etc Act 1974² (HSWA) and one part of its statutory role is to investigate workplace incidents (and potentially dangerous workplace situations) and bring those who breach health and safety legislation to account.'
19. The Commissioner understands that the particular powers that the HSE has are outlined in section 20³ of the HSWA. The Commissioner particularly notes section 20(2)(j) which states that an inspector can 'require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation...and to answer any such questions that the inspector thinks fit to ask.'
20. The Commissioner notes that the HSE also has powers to prosecute individuals for breaching the HSWA, as outlined in section 39 of the HSWA.⁴

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

² [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1974/75)

³ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1974/75)

⁴ [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1974/75)

21. Returning to paragraph 17, section 30(1)(b) can only be utilised by public authorities that have a duty to investigate, however that investigation may occur, whether an individual should be charged with an offence. The public authority must also be able to prosecute any individual should such an investigation require it to do so.
22. Taking into account the nature of the HSE's work, its powers under the HSWA and the purpose for which the withheld information was exchanged, the Commissioner is satisfied that the withheld information falls within the class described in section 30(1)(b). Therefore, the exemption is engaged.
23. To reiterate, section 30(1)(b) is a qualified exemption. Therefore, the Commissioner must determine whether the public interest lies in disclosure or in maintaining the exemption.

Public interest test**Public interest arguments in favour of disclosing the information**

24. The HSE acknowledges that disclosure would promote transparency, accountability and build confidence in its investigative and enforcement powers.
25. The HSE has also acknowledged that disclosure would allow individuals to better understand the HSE's investigation process, how it decides whether or not to pursue an investigation to the next stage and when it considers enforcement action appropriate.
26. The Commissioner notes that, as the concern raised relates to the safety of lone night workers, disclosure would help to understand the criteria that the HSE take into account in ensuring the safety of these workers.
27. The Commissioner also notes that the complainant is concerned that their employer has been allowed to continue its practices 'without any enforcement, penalties, prosecution or follow up.' Disclosure would demonstrate if the HSE instructed the dutyholder to change any of its practices and, if so, whether this happened. This may be beneficial to any other employee of the dutyholder who might share the complainant's concerns.

Public interest arguments in maintaining the exemption

28. The HSE has explained that disclosure would compromise its ability to perform its regulatory functions effectively. Keeping in mind that the HSE is responsible for the encouragement, regulation and enforcement of workplace health, safety and welfare, this would not be in the public interest.

29. Whilst the Commissioner notes that the HSE has powers to compel engagement with dutyholders, it is often more efficient and beneficial for dutyholders to engage with the HSE voluntarily. The HSE is concerned that disclosure would discourage dutyholders to engage with the HSE on a voluntary basis which, again, would compromise the HSE's ability to perform its regulatory functions.
30. The HSE has also explained that disclosure has the potential to damage the relationship it has with the dutyholder in question, as well as others. The HSE notes that this investigation was closed without the need for any enforcement action. To place this information within the public domain would be unfair to the dutyholder and may cause it reputational damage.

The balance of the public interest arguments

31. Having considered the withheld information and the circumstances of the case, the Commissioner has determined that the public interest lies in maintaining the exemption.
32. Key to the consideration of any section 30 case is to consider whether disclosure could in some way compromise a public authority's ability to carry out its investigative work effectively. Clearly, it is not in the public interest to jeopardise the ability of the HSE to regulate and enforce compliance with the HSWA.
33. The Commissioner has had sight of the correspondence between the complainant and the HSE. The Commissioner can see that the HSE clearly explained its decision to investigate the concern the way it did and why it chose to close the case.
34. Furthermore, any other lone night worker or employee of the dutyholder can bring a concern to the HSE at any time. They do not require the withheld information to do so.
35. The complainant's concerns seem individual and, for this reason, the Commissioner cannot assign much weight to the public interest in disclosure. However, he assigns a significant public interest to the continued encouragement, regulation and enforcement of workplace health, safety and welfare which has never been more important than during the pandemic.
36. The Commissioner acknowledges and is sympathetic to the complainant's concerns. However, it is not the Commissioner's role to comment on the effectiveness or reasoning behind the HSE's decision. If the complainant feels that the wrong decision has been made, they can escalate a complaint through the HSE and then onto the Parliamentary and Health Service Ombudsman.

Other matters

37. The Commissioner notes that there have been considerable delays in the handling of this request and case. Firstly, the Commissioner considers that a reasonable time for completing an internal review is 20 working days after the date of the request for review. The maximum amount of time taken should not be more than 40 working days⁵. The HSE exceeded this timescale.
38. Furthermore, the HSE did not provide the Commissioner with its submissions and the withheld information within the timescale that was stated and subsequently extended. The Commissioner issued an information notice on 22 February 2022, compelling the HSE to provide this information which it subsequently did on 21 March 2022.

⁵ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](#)
([publishing.service.gov.uk](#))

Right of appeal

39. 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: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

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