

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2014

Public Authority: Health and Safety Executive

Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant's requests broadly concern information on investigations of amusement devices.
2. The Commissioner's decision is that the Health & Safety Executive (HSE) has correctly applied section 14(1) to the requested information
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 2 November 2012, the complainant wrote to the HSE and requested information in the following terms:

"A copy of the prohibition notice served upon [redacted information].

Copies of the inspection reports on [redacted information] authorised by you, carried out by a third party to the issue of the said notice [redacted information]"

5. The complainant made another request on 20 January 2013 for the following information:

"1. Copies of the four inspection reports on [redacted information] carried out by third party four months after [redacted information] and the final reports, the cause of you both [redacted information].

2. Your opinion of why these reports gave rise to serious personal injury. This is a legal requirement needed of you both before the issue of a prohibition notice."

6. The HSE did not respond to these two requests. The Commissioner understands that this is because the HSE had previously told the complainant that his requests on this subject were classed as vexatious and on 1 November 2012 it explained that any future requests would not be answered.

Scope of the case

7. The complainant contacted the Commissioner on 5 June 2013 to complain about the way his requests for information had been handled. Specifically he complained about the HSE's non response to his information requests.
8. The Commissioner has had to consider whether the HSE was correct to rely on section 14 and therefore correct to not issue a refusal notice under section 17(6).
9. The Commissioner considers that the first request of 2 November 2012 was the complainant's own personal data and therefore this request is removed from the scope of the case.

Background and history to this case

10. The HSE started investigating the complainant in 2006 with a view to establish if he had committed offences under health and safety legislation. As part of the investigation, the HSE issued a prohibition notice against the complainant in 2008 preventing him from carrying out inspections on amusement devices and of issuing test documents. In 2009, the HSE successfully prosecuted the complainant for breaches of health and safety legislation. The prohibition notice issued in 2008 remains in place as the complainant has failed to comply with the requirements of the notice. The HSE state that to date it still prosecutes the complainant for persistent breaches of the prohibition notice.

Reasons for decision

Section 17

11. Section 17(5) of the FOIA provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

12. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

"(a) the public authority is relying on a claim that section 14 applies, (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

13. The Commissioner understands that as far back as 2009 the HSE had explained that it was not prepared to respond to requests by the complainant which relate to enforcement actions against him.
14. On 16 August 2012 the HSE responded to a request for information made by the complainant on 8 August 2012, and reiterated its position that it would not respond to his repeated and vexatious requests.
15. On 1 November 2012 the HSE further reiterated its position described in paragraphs 13 and 14. The HSE explained that the complainant's repeated correspondence on the whole matter had put an unacceptable drain on its resources.
16. The Commissioner has decided that it was reasonable for the HSE to apply section 17(6). The Commissioner accepts that the HSE gave the complainant significant warning that future requests for the same information would not be responded to.

Section 14 (vexatious requests)

17. Section 14 of FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
18. Guidance on vexatious requests provided by the Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011)¹ places emphasis on the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.

¹ <http://www.osspsc.gov.uk/Aspx/view.aspx?id=3680>

19. The Upper Tribunal's judgment proposed four broad issues that public authorities should bear in mind when considering whether FOI requests are vexatious: (i) the burden of meeting the request; (ii) the motive of the requester; (iii) the value or serious purpose of requests; and (iv) any harassment or distress caused. The judgment concurred with an earlier First-tier Tribunal decision in *Lee vs Information Commissioner and King's College Cambridge* (EA/2012/0015, 0049 and 0085) that vexation implies an unjustified, inappropriate or improper use of a formal procedure.
20. The judgment noted that the four broad issues are "*not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist*". It stated the importance of remembering that Parliament has expressly declined to define the term 'vexatious'. Consequently, the four broad issues, "*should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.*"
21. The Commissioner's guidance² on the application of section 14(1) indicates that the key question for a public authority is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The public authority should take into account the background and history of the request where this is relevant.

Burden of requests and level of disruption, irritation or distress

22. The Commissioner understands from the HSE that the complainant has made a number of requests since January 2007 in addition to other queries with regards to enforcement actions it has taken against the complainant. The HSE has explained that the complainant's requests are often repeat requests for information he has already received on a number of occasions.
23. The HSE has explained that the information has been disclosed to the complainant on a number of times. The HSE has commenced criminal proceedings against the complainant on at least three occasions and as a result of this, the information has been disclosed under the Criminal Procedures and Investigations Act 1996 and the Civil Procedure Rules 1998. The HSE does acknowledge that not all of the requested information has been disclosed under the FOIA. However it does argue

²http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

that the information has been disclosed on a number of times through other legislation. It therefore states the complainant has had access to the information under consideration on a number of times.

24. The HSE provided the Commissioner with evidence that the complainant has received the requested information. The evidence presented by the HSE is a Court Committal Bundle which illustrates a list of documents that have been disclosed to the complainant. The listed documents include the information under consideration in this decision notice.
25. The HSE has argued that it believes the complainant is abusing his right of access to information under FOIA as a means to vent his anger at HSE's decision to issue a prohibition notice.
26. The HSE further explained that the complainant's entrenched view that a specific member of staff has a private vendetta against him has resulted in the member of staff becoming the recipient of lengthy, accusatory, defamatory and offensive correspondence from him. The complainant has also brought civil claims against this member of staff. The HSE has argued that these activities undertaken by the complainant has caused the member of staff actual distress.
27. The HSE does note that it has responded to requests for information where the information has not previously been disclosed to the complainant. It explains that it has only withheld information under section 14(1) where the complainant has sought disclosure of information the HSE has already disclosed.
28. The HSE is of the view that it has been as helpful as possible to the complainant and has disclosed the requested information under both the FOIA and other legislation. However the complainant continues to submit requests for the same information.
29. It further explains that it cannot continue to respond to the complainant's requests because they are made with the sole purpose of re-opening an issue that has been fully investigated.

Conclusion

30. Taking into consideration the above, the Commissioner is satisfied that the HSE correctly applies the exemption for vexatious requests at section 14(1) of FOIA.

Right of appeal

31. 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

32. 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.
33. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF