

Freedom of Information Act 2000 (Section 50)

Decision Notice

21 July 2008

Public Authority: Health & Safety Executive
Address: Rose Court
Southwark Bridge Road
London
SE1 9HS

Complainant: Mr D Bergman
Address: Centre for Corporate Accountability
Fourth Floor
197-199 City Road
London
EC1V 1JN

Summary Decision

The complainant asked the Health and Safety Executive (HSE) to tell him the names of those who had died as a result of incidents in the workplace which were reported to it. HSE refused, citing the section 44 exemption under the Act. HSE referred to: the Health and Safety at Work Act 1974; the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR); and, Article 8 of the European Convention on Human Rights in conjunction with the Human Rights Act 1998.

In later discussions with the Commissioner, HSE additionally relied on the section 21 and section 41 exemptions.

The Commissioner found that HSE had not complied with sections 10 and 17 of the Act. He decided that the section 21, 41 and 44 exemptions were not engaged and that HSE should have provided to the complainant the information requested.

The Commissioner invited HSE to respond favourably to such requests in the future but to provide the information not more frequently than at monthly intervals.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On 3 February 2005 the complainant asked the Health and Safety Executive (HSE) to clarify, in relation to reported deaths in the workplace, whether it was now willing to provide the names of those who had died and, if not, to say why not. He also asked HSE to explain why its position differed from that of the police and the coroners' courts.
3. On 21 March 2005 HSE refused to provide the information citing section 44(1)(b) of the Act (Prohibitions on disclosure) in conjunction with Article 8(1) of the European Convention on Human Rights. HSE said that releasing the information could cause distress to the surviving members of the families of the deceased.
4. On 22 March 2005 the complainant asked HSE to review its decision, saying that, within 10 days or so of a death at work, an inquest would have been opened, which would normally be held in open court, and in many cases details would have been reported in the local media. He added that HSE itself, through its press office, released information to the media including the identity of the deceased.
5. On 3 May 2005 HSE told the complainant that it had acted correctly in withholding the information but that section 44(1)(a) of the Act applied rather than section 44(1)(b). HSE added that, if it was to provide names of victims of reportable deaths on demand, it was reasonable to foresee circumstances arising when HSE might release the name before the next of kin and others had been informed by police and that this could be considered a breach of their human rights. HSE added that if it were to release information after the opening of coroners' inquests, it would have to monitor those proceedings both for timing and to ensure that the coroners' courts had not restricted public access to the information - which was not HSE's role.

The Investigation

Scope of the case

6. The Commissioner considered the application by HSE of sections 21, 41 and 44 of the Act. While doing so he had regard to the custom and practice of HSE and of another public authority in publishing the names of deceased persons - and to the provisions of RIDDOR, the Health and Safety at Work Act 1974 and the Human Rights Act 1998.

Chronology of the case

7. On 8 February 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant apologised for the delay in appealing to the Commissioner but asked him to accept it, in spite of the delay, as he had ascertained that HSE's view and the reasoning on which it relied had not changed. On 9 February 2006 the

Commissioner's office told the complainant that, while there had been an element of undue delay in bringing the complaint, the Commissioner had agreed to investigate it.

8. On 16 May 2007 the complainant provided the Commissioner with additional evidence in support of his appeal. The complainant said that he only requested information from HSE after the relevant inquests had opened, which meant that the names of the deceased would, by then, be in the public domain and accessible to local journalists. The complainant said that there were regional variations in HSE's practice and added that it was in the public interest for HSE to provide the information sought on request.
9. On 4 July 2007 HSE provided the Commissioner with its formal response on the matter. HSE maintained that section 44(1)(a) of the Act applied and drew his attention to Regulation 4 of the Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 1995 (SI 1995 No 3163) as amended (RIDDOR). HSE added that it now considered that section 41 of the Act (Information provided in confidence) also applied.
10. On 5 July 2007 the complainant issued a news release saying that in his view HSE had no lawful reason to restrict information about work-related deaths, which was anyway in the public domain, though accessing it was often very difficult and time consuming.
11. On 24 July 2007 the complainant told the Commissioner that he had learned that the National Offender Management Service (NOMS) had, since 1996, provided details of all deaths in prisons to three named charitable organisations, and had placed no conditions on the use of the information. On 1 October 2007 HSE responded that, although the names of deceased prisoners were released, they could not be identified further from the information disclosed so that there was little likelihood that relatives of the deceased prisoners could be identified and their privacy invaded. HSE said that the information requested from it, on the other hand, did have the potential to cause distress to relatives of the deceased.
12. On 11 October 2007 HSE told the Commissioner how it used the information provided to it by employers, company health and safety officials, self employed persons, and others under the RIDDOR statutory duty. HSE said that the information was shared under the terms of an agreed protocol with several official bodies including the police, local authorities and the Crown Prosecution Service. HSE also provided an anonymised and unvalidated monthly statistical update on fatal notifications to the Health and Safety Commission.
13. On 13 November 2007 HSE told the Commissioner that it placed no restrictions on the release of information on fatalities to journalists other than the name of the deceased.
14. On 25 January 2008 HSE told the Commissioner that it did not (and never had) released the names of the deceased; HSE later clarified this to say in response to requests from journalists. HSE said that it did not treat the complainant's journalists any differently from other journalists. HSE added that, in so far as the

information was not in the public domain, it stood by its submissions on section 44(1)(a). In so far as the information was already in the public domain, it relied upon the absolute exemption in section 21 of the Act (Information accessible to applicant by other means) to refuse the request.

15. On 22 February 2008 the complainant provided the Commissioner with his further views on some of the points that HSE had raised in correspondence.
16. On 2 April 2008 HSE told the Commissioner that neither HSE nor its publicity agent proactively gave out the names of the deceased or of injured persons immediately after a reported incident. HSE might, or might not, name the deceased or injured persons in documents that signalled the commencement of legal proceedings. HSE said that, once a case had been through the court process and proceedings had been concluded, it made an assessment as to whether or not others could learn from knowing the details of the case by way of publicity. HSE said that media coverage of a case provided an excellent way of getting health and safety messages across to a wide audience, to improve understanding and act as a deterrent. In those cases HSE said that it checked with the bereaved family or injured person whether they were content to be part of that publicity by being named in any news release or media interview following the conclusion of a court case. HSE said that it would not, in the main, proactively seek publicity if it was not the lead investigator or prosecutor, or if the family of the deceased or the injured person particularly requested no publicity. HSE added that unsolicited approaches by the media or pressure groups to the families of deceased persons could cause acute distress and said that it did not facilitate such approaches.
17. In an undated letter received by the Commissioner's office on 30 April 2008, HSE told the Commissioner that it had nothing further that it wished to add to its earlier submissions.
18. On 14 May 2008 the Commissioner's staff asked HSE if, in the event of his finding against it, HSE wished to make any representations about the frequency of provision of the information. HSE replied that any future requests from the complainant would need to be assessed on their individual merits at the time of the request; otherwise HSE had no further comment to make.
19. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Findings of the case

20. The Commissioner has seen that, where he is able to access the information, the complainant routinely publishes information about work related deaths, listing: the full name of the deceased, age, date of death, status, local authority, industry and immediate employer. A commentary of details is also provided in some cases. This information is said to be sourced from the websites of other public authorities, including the BBC, as well as local news media and the coroners' courts.

21. The Commissioner noted that a coroner's inquest is a public hearing in open court, to which witnesses are called to give evidence about a death; proceedings are inquisitorial and the coroner decides which witnesses to call and question. Some people, such as those with an emotional or financial interest in the death, are allowed, as interested persons, to attend the hearing and to ask questions, either in person or through a lawyer. The coroner may report the facts of the matter to an appropriate authority to consider further action. In principle, a coroner's inquest is open to the public and anyone may attend.
22. The Commissioner has also seen examples of instances where HSE and its agents issue official news releases, and that HSE itself routinely names, and gives the home town of, those who have died in work related accidents. These news releases often follow successful prosecutions by HSE and appear to be intended to raise awareness of health and safety matters. The Commissioner has seen evidence from the complainant suggesting that, in 2007, HSE issued press releases in 33% of cases where it had instituted successful proceedings following industrial injury and 54% of successful prosecutions that had involved a death.
23. The Commissioner has seen examples of cases where the police have named deceased persons and examples of reports in local and national media of the names of deceased persons and details of the circumstances in which they had died. The Independent Police Complaints Commission and Press Complaints Commission protocol, current at the time of the request, says that a deceased person "shall be named" when he or she has been positively identified and the next of kin informed; the name will always become public when the inquest is officially opened. The protocol says that the Independent Police Complaints Commission, the Press Complaints Commissioner and investigators would resist families' natural tendency to want neither publicity nor the name to be given out.
24. The Commissioner considered the practice of the National Offenders Management Service (NOMS) which has disclosed under the Act the following information about persons who have died while being held in custody: surname, first name, date of death, age, prison and whether death was due to natural causes or appeared to have been self-inflicted.
25. HSE told the Commissioner that deaths in the workplace reported under RIDDOR are recorded and collated on its Incident Contact Centre database and are then processed in line with its business process. HSE publishes an anonymised fatal statistics report annually in July. HSE has a protocol for sharing information with several official bodies including the police, local authorities and the Crown Prosecution Service. It also provides an anonymised and unvalidated monthly statistical update on fatal notifications to the Health and Safety Commission.

Analysis

26. The Commissioner has considered HSE's response to the complainant's request for information.

Procedural breaches

27. Section 10(1) of the Act requires public authorities to respond to a request for information within 20 working days of its receipt. HSE did not respond to the complainant's request of 3 February 2005 until 21 March 2005 and so were in breach of this provision.
28. HSE told the Commissioner that contacting surviving relatives to seek their consent before passing on the name of the deceased would require disproportionate diversion of scarce resources on HSE's part. However HSE did not, either in its correspondence with the complainant or in its submissions to the Commissioner, invite the Commissioner to consider the application of section 12 of the Act (Exemption where the cost of compliance exceeds the appropriate limit) and he has not done so.
29. Section 17(1)(b) of the Act (Refusal of request) requires public authorities to specify the exemptions in question when refusing requests for information. HSE did not, either in its refusal notice or in its response following internal review, indicate reliance on the section 21 and 41 exemptions. HSE later told the Commissioner that it wished additionally to rely on these exemptions. In doing this, HSE were in breach of section 17(1)(b) of the Act.
30. It is the Commissioner's expectation that complainants will normally appeal to him within two months of receiving an adverse internal review decision. In this instance, the complainant did not approach the Commissioner until some nine months later. However the complainant made clear that, if his appeal were to be rejected solely on grounds of timing then, as he still wanted to receive the information, he would make further similar requests. The Commissioner agreed to accept his late appeal.

Exemptions

Section 21 – information accessible to applicant by other means

31. HSE told the Commissioner that, in so far as the information was in the public domain already, it relied on the absolute exemption in section 21 of the Act. HSE said that it provided the same information to journalists working for the complainant as it did to journalists working in, for example, TV, radio or the newspapers. HSE went on to say that it did not, and never had, released the names of deceased persons to journalists, and later clarified this point by saying that this related to requests from journalists. HSE said that neither it, nor its press agent, proactively gave out the names of deceased or injured persons immediately after a fatality or incident. It said it might or might not name deceased or injured persons in documents that signalled the commencement of legal proceedings. HSE added that once a case had been through the court process, and proceedings have been concluded, then it made an assessment as to whether or not others could learn from knowing the details of the case by way of publicity as media coverage of a case provided an excellent way of getting across health and safety messages to a wide audience, to improve understanding and act as a deterrent. In those cases HSE said it would check with the bereaved

family or injured person whether they were content to be part of that publicity by being named in any news release or other media following the conclusion of a court case. HSE said it would, in the main, not proactively seek publicity if it was not the lead investigator or prosecutor or if the family of the deceased injured person particularly requested no publicity. HSE said that it might not follow that, just because the name of a deceased person was made public at an inquest (but not otherwise widely published, or available), there was no useful purpose in prohibiting further publication and cited the case of *Douglas (Douglas and others v. Hello! Ltd and others (No. 3) [2005] 4 All ER 128)* in support of its view.

32. The complainant told the Commissioner that his organisation wanted to receive a weekly or monthly list of the names of workers who had died through accidents at work to supplement the information that he already obtained from coroners and from local and national press reports. He said that his organisation used this information to highlight public safety issues and recognised that the information it held was incomplete. The request as put was prospective as well as retrospective but, for the purpose of this decision, the Commissioner has interpreted the request as having been for information about the list of names as it stood at the date of the request, i.e. 3 February 2005.
33. The complainant said that NOMS released information about those who had died while being held in custody and that the HSE press office already gave out the names of the deceased to journalists in selected cases. He added that once an inquest had opened, the name of the deceased was always made public. The public could gain access, via each individual coroner's office, to the names of the deceased persons. However he submitted that this information was not reasonably accessible to him as there were some 60 coroners' courts, each of which would need to be monitored individually. The coroners' courts did not categorise deaths in a way that allowed the public to know which deaths were work related and which were not, so that the information requested was not reasonably available. He only wanted to receive the information from HSE once the relevant inquests had been opened, not before. The only reliable way to get the information on names of those who had died, and whose deaths had been reported, was through HSE. Moreover, given the practice of other government departments, HSE's position was untenable. He considered that a weekly or monthly list would be ideal for his purpose.
34. The Commissioner has seen that, in cases where it chooses to do so, HSE gives full publicity to information about reported deaths, including the names of the deceased and much other personal and circumstantial detail besides - but also that there are many fatalities that do not receive publicity in this way. He has taken the circumstances of the complainant (the applicant) into account and has seen that the complainant would need to approach each of some 60 coroners' courts individually for the information made public within each one of them to all of those persons present there on the day in question. To gather the information reliably, the complainant would need to visit each of the 60 coroner's courts on a daily basis to be sure of not missing a relevant reported death. The Commissioner therefore considers that this information is not reasonably accessible to the complainant. HSE has the information stored in collated form already and the Commissioner decided that it was reasonable for HSE to provide

the names of deceased persons reported to it. The Commissioner saw that the complainant wanted the information to be available to his organisation only after the inquest had opened and he decided that this was appropriate timing since the information was by then in the public domain and was held in suitable form by HSE.

Section 44 – Prohibitions on disclosure

RIDDOR 1995 and Health and Safety at Work Act 1974

35. HSE told the Commissioner that RIDDOR imposed a statutory duty on the employer or other responsible person to provide HSE with specified information and that this should be considered to have been provided in confidence. HSE added that, under section 28(2) of the Health and Safety at Work etc Act 1974 (the 1974 Act), relevant information, as defined in section 28(1)(a) of the 1974 Act, could only be disclosed with the consent of the person providing it, or where disclosure was made to certain specified public authorities, or to the police or for the purpose of legal proceedings, or where disclosed in a form calculated to prevent it from being identified to a particular person or case. HSE said that RIDDOR information was subject to this provision which prevented it from disclosing the names of the deceased to the complainant. A new sub-paragraph, section 28(3)(f), was inserted into the 1974 Act by The Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004, Statutory Instrument 2004 No. 3363. HSE said that, under section 28(3)(f) of the 1974 Act, information may be disclosed to a person who is, or acts on behalf of, another public authority. Section 28(3)(f) creates a further gateway for the disclosure of relevant information by the recipient, ie the person by whom the information was obtained or to whom it was furnished (section 28(1)(b) of the 1974 Act).
36. The complainant made no specific representations to the Commissioner on the issue of the 1974 Act and RIDDOR. He did however make plain to the Commissioner his key argument that the names (and addresses) of all those who had died in incidents reportable to HSE would be made public at the opening of the inquests into the deaths. He also said, correctly, that it was the practice of some other government departments to disclose information on the names of relevant deceased persons. He instanced NOMS who had disclosed names and other details of those who had died in custody.
37. The Commissioner turned to the application of section 28(2) and section 28(3)(f) of the 1974 Act and Regulation 4 of RIDDOR. He decided that the statutory bar did not apply because section 28(3)(f) provides that the statutory bar in the preceding subsection does not apply if the recipient is a public authority for the purposes of the Act. HSE is the recipient of the information, and is a public authority, so the statutory bar did not apply.

Human Rights Act 1998

38. HSE said that, as regards human rights, disclosure of the names of deceased persons to the complainant was not necessary in a democratic society for any of the purposes specified in Article 8(2) of the European Convention on Human Rights. In particular, HSE did not see how passing the names of deceased

persons to the complainant would further public safety or protect health and would therefore be in contravention of the prohibition in section 6(1) of the Human Rights Act 1998 (the 1998 Act). HSE said that the courts had sought to protect certain personal matters and to counter unsought publicity, not only for the confider, but also for others who were shielded by the confidence. HSE submitted that the surviving relatives of the deceased person were entitled to have their privacy protected from unnecessary intrusion and that disclosing the names of the deceased would intrude upon that privacy. HSE had said that providing the information would distress surviving family members. It could foresee circumstances arising when it could release the names before the next of kin and other family members had been informed by the police (such circumstances were not envisaged by the complainant in his request nor by the Commissioner in reaching his decision who would not expect the information to be disclosed until after the family members had been informed).

39. Commenting on the disclosure by NOMS of the details of deaths of those held in custody, HSE said that these were straightforward factual lists. Although the names had been released, the deceased could not be identified further from the information disclosed. There was little likelihood that relatives of the deceased could be identified and their privacy invaded in contravention of Article 8.
40. The complainant told the Commissioner that, as regards application of the section 44 exemption to the 1998 Act HSE, in its original decision, had said that providing the information would distress surviving family members. However, he said that all deaths reported to HSE would result in an inquest opening within a week of the death, usually within two or three days. The name of the deceased (along with their last address) was announced in public in open court. Therefore, after the time of inquest opening, the name of the deceased was in the public domain and available to local or national media. Any member of the public who was present would know the name of the deceased or could subsequently ask the coroners court for it. In addition, any member of the public asking the local police press office about the incident would also be given the name - once the family had been notified of the death. He added that he knew of no relevant instance in which a coroner had ever restricted access to the name of the deceased. The risk which the HSE sought to rely on was therefore entirely fanciful, and without foundation.
41. The complainant said that, taking into account the context, HSE appeared to have given no proper consideration to whether releasing the name could distress the surviving families. It was difficult to see how it could when the name and the fact of the death had already been disclosed by another public body and possibly reported in the local media. The HSE would have to show that, despite the earlier disclosure of the name of the deceased, release by HSE would still cause additional distress to the family. He said that the HSE press office released some names, particularly in relation to high profile incidents; the HSE press office would first wait until the police had released the name and other information about the deceased and then HSE too would release it. He submitted that HSE was fully aware that Article 8 would not be breached by disclosing information that was already publicly available. The complainant added that no monitoring of inquests by HSE was required, since HSE held the names reported to it in an electronic database from which they could easily be extracted.

42. The Commissioner has considered the evidence and arguments advanced by both HSE and the complainant and made independent enquiries. As regards the information disclosed by NOMS, the Commissioner has seen that HSE has said that the NOMS information did not breach the Article 8 rights of the surviving relatives of the deceased. The information disclosed by NOMS in connection with relevant deaths includes name, age, prison and whether or not death was by natural causes. This information is far more extensive, personal and potentially intrusive than the simple disclosure of the names, which was all that the complainant requested from HSE. The Commissioner saw this as persuasive evidence that Article 8 could not apply to prevent HSE from disclosing the names, and only the names, of the deceased to the complainant.
43. HSE initially told the Commissioner that its press office did not (and never had) released the names of the deceased in response to requests from journalists but later qualified this statement. The Commissioner found that HSE frequently publishes details of deaths and other reported incidents in cases where it sees benefit in so doing.
44. The Commissioner saw that when persons report to HSE the names of those whose deaths resulted from reportable incidents and details of the circumstances of the incidents, they do not give explicit consent to wider dissemination of the information. However, information providers do supply the names of the deceased and other information, in the expectation and in the full knowledge that, at the very least, the names of the deceased will be reported to the coroner and then made available to all members of the public, including any media representatives present at that coroner's court on that day, through the normal coroner's court public hearing process. That will be the normal and reasonable expectation of the person reporting the death. The Commissioner has seen that there is a strong public interest in the disclosure of the names of the deceased and much supporting detail to the coroner and inevitably also therefore to those members of the public who would, or could, attend the public hearings in the coroner's court.
45. The Commissioner has seen that the 1998 Act incorporates the Council of Europe Convention on Human Rights into United Kingdom law and that Article 8 of the Convention provides that there shall be no interference with the right to family and private life. In the case of *Bluck (Pauline Bluck v IC & Epsom & St Hellier University NHS Trust EA/2006/0090)* the Information Tribunal took the view that it:
"would not be in favour of translating the general principles laid down in Article 8 into the form of specific legal prohibition to which we believe section 44 is intended to apply."
It continued
"...we do not believe that the effect of the Human Rights Act is to elevate to the level of a directly enforceable legal prohibition the general terms of Article 8".
The complainant's request is just for the names of deceased. In cases where the death has already been reported it may be possible to find other details from other sources which may be sufficient to identify living relatives. However, in many cases, such as those where the name is very common or where there have

been no press reports, it will not be possible to identify family members. If identification of relatives is not possible, there can be no interference with their Article 8 rights.

46. Having considered the view from the Information Tribunal in the case of Bluck, the disclosures by NOMS and other public authorities, other disclosures by HSE itself, the evidence from the complainant, and after taking full account of the representations from HSE, the Commissioner decided that Article 8 and the 1998 Act did not act as a statutory bar to disclosure and that the exemption in section 44 (1)(a) of the Act was therefore not engaged.

Section 41 – Information provided in confidence

47. On 4 July 2007 HSE told the Commissioner that it had not previously relied upon the section 41 exemption but now wished to do so for the reasons it had already provided in support of the section 21 and section 44 exemptions and which are set out above. HSE did not provide any additional reasoning to support reliance upon the newly introduced section 41 exemption, either in its 4 July 2007 letter to the Commissioner or in its subsequent correspondence with his staff.
48. HSE said that it was well established that there was jurisdiction in equity to protect confidence. HSE added that, as a matter of law, equity may impose a duty of confidentiality towards another after the death of the original confider (*Morison v Moat (1851) 9 Hare 241; affirmed (1852) 21 L.J. Chanc. 248*) and that a duty of confidence may be invoked when information is communicated in circumstances imposing a duty of confidence. HSE cited the case of Taylor (*Taylor and others v Serious Fraud Office and others ([1998] 4 All ER 801)* where the court commented:

"Many people give assistance to ... investigative agencies ... [and] ... must accept that the interests of justice may in the end require the publication of the information ... But there seems no reason why the law should not encourage their assistance by offering them the assurance that, subject to these overriding requirements, their privacy and confidentiality will be respected."

HSE said that the essential features of confidentiality of information were that: its availability to the public must be restricted; and, the information to be protected must be clearly identified. HSE said that it would be a breach of confidence to use or disclose information for a purpose other than that for which it had been provided. HSE could not see that providing the names of the deceased to a pressure group, such as the complainant's organisation, given the distress which such disclosure might give to surviving relatives, justified not maintaining confidentiality. It reiterated that to require HSE to contact surviving relatives to seek consent would require disproportionate diversion of its resources.

49. The complainant has argued that the names were supplied to HSE pursuant to a statutory obligation and that there is no expectation of confidence.
50. The Commissioner has seen, as regards the application of the section 41 exemption, that, for section 41 (1)(a) to apply, HSE must have obtained the

names of the deceased from another person. He was satisfied that this had been done. For the section 41 (1)(b) part of the exemption to apply, the disclosure of the names must be actionable by that person or another due to an obligation of confidence. The Commissioner has seen that the names are disclosed to HSE under RIDDOR and that the reasonable expectation of those providing the information is that HSE will use that information itself and provide it, directly or indirectly, to the coroner who will make the names public to all those present within his court on the day in question, including any media representatives, and potentially to some other public authorities. The information providers know, or can reasonably be expected to know, that HSE itself will publish many of the names reported to it, along with considerable supporting circumstantial and personal detail. It follows that the further disclosure of the names of the deceased to the complainant is very unlikely to result in any additional detriment arising to the information provider or in an actionable breach of confidence. Accordingly the Commissioner decided that the section 41 exemption was not engaged.

Public Interest Test

51. As the section 21, 41 and 44 exemptions are all absolute, the Commissioner has not been required to consider the public interest test under section 2 of the Act.

The Decision

52. The Commissioner's decision is that HSE did not deal with the request for information in accordance with the Act.
53. The Commissioner noted the probability that HSE would receive more similar requests for the names of deceased persons from the complainant in the future. He invited HSE to consider such requests favourably and also considered the frequency with which it would be reasonable for HSE to provide the information in response to such requests. The complainant had asked for the information to be provided either weekly or monthly. HSE said that any future requests from the complainant would be assessed on their individual merits at the time of the request and declined the Commissioner's invitation to comment further. The Commissioner noted HSE's concerns about the possible demands on its resources of meeting repeated requests and has seen nothing to suggest that the complainant's need for the information is immediate. He saw that HSE provides comparable information to the Health and Safety Commission monthly and invited HSE to provide the names of deceased persons to the complainant on request, but only after the coroner's inquests had opened, and not more frequently than at monthly intervals.

Steps Required

54. The Commissioner required HSE to provide to the complainant the names of the relevant deceased persons at the date of the request.

55. The public authority must take the step required by this notice within 35 calendar days from the date of this notice.

56. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal


57. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 21st day of July 2008

Signed 

Graham Smith
Deputy Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Freedom of information Act 2000

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Refusal of Request

Section 17(1) provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Information provided in confidence.

Section 41(1) provides that –
"Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

Prohibitions on disclosure.

Section 44(1) provides that –
"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court."

Human Rights Act 1998

Section 6(1) provides that –

"It is unlawful for a public authority to act in a way which is incompatible with a Convention right."

Schedule 1 provides that -

Article 8 – right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Health and Safety at Work Act 1974

Section 28(2) provides that –

"Subject to the following subsection, no relevant information shall be disclosed without the consent of the person by whom it was furnished."

Section 28(3)(f) provides that –

“The preceding subsection shall not apply to –
(f) any other disclosure of information by the recipient, if –
(i) the recipient is, or is acting on behalf of a public authority for the purposes of the Freedom of Information Act 2000,
(ii) the information is not held by the authority on behalf of another person.”

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995. Statutory Instrument 1995. No 3163

Reporting of the death of an employee

Regulation 4 provides that –

“Subject to regulation 10, where an employee, as a result of an accident at work, has suffered an injury reportable under regulation 3 which is a cause of his death within one year of the date of that accident, the employer shall inform the relevant enforcing authority in writing of the death as soon as it comes to his knowledge, whether or not the accident has been reported under regulation 3.”