

Mr Carroll  
Whatdotheyknow.com  
Via email: request-322941-  
b2f3d417@whatdotheyknow.com

Date: 11<sup>th</sup> May 2016

Our Ref: 201603294 IB  
Your Ref: Request-322941-b2f3d417

Hazardous Installations  
Directorate

Kay Brookes

HM Inspector of Health and Safety

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Acting Principal Inspector  
Mark Dixon

Dear Mr Carroll

**Environmental Information Regulations Request Reference No: 201603294**

Thank you for your request for information about the incident at Solvay Solutions UK Ltd on 2<sup>nd</sup> January 2009 at the Oldbury site. You requested information in two key areas;

- i) The conclusion of the report investigation.
- ii) Information presented in the report documentation in relation to the risk to human health of the "dangerous" chemicals released in the incident.

Your request was received on 8<sup>th</sup> February 2016 and I am dealing with it under the terms of the Environmental Information Regulations 2004 (EIR)

I can confirm that the Health and Safety Executive (HSE) holds the following information which contains the information you have requested:

1. HSE Investigation Report

The report contains a number of sections and can be disclosed in part, a copy is enclosed.

Parts A to D of the report are subject to EIR exceptions 12(3), 12(5)(a) and 12(5)(b) and where information has been partially or fully withheld, the relevant exception has been indicated for you on the enclosed report copy.

Information has been withheld as it falls within the exception 12(3) of the Regulations which relates to Personal Information.

Information has been withheld as it falls within the exception 12(5)(a) – International relations, defence, national security or public safety. This is a qualified exception that is subject to the public interest test. This means that HSE has to balance the public interest factors favouring disclosure against those favouring non-disclosure. A full explanation of my decision is given in Annex 1 attached to this letter as well as the factors considered when deciding where the public interest lay.

Information has been withheld as it falls within the exception 12(5)(b) – the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. This is a qualified exception that is subject to the public interest test. This means that HSE has to balance the public interest factors favouring disclosure against those favouring non-disclosure. A full explanation of my decision is given in Annex 2 attached to this letter as well as the factors considered when deciding where the public interest lay.

Although HSE's investigation of the circumstances of this case is now closed, information contained within Part C of the investigation report includes inspector opinion regarding the cause of the incident, considerations used to determine if duties under the Health and Safety at Work Act 1974 and associated regulations had been breached and if so, what enforcement action should be taken. Part D of the report also details the approval officer's opinion and considerations following receipt of the inspector's conclusions.

As a regulatory body, it is vital that HSE are able to conduct investigations thoroughly, effectively and free from the public gaze. If our decision making process was made public, it could be used by unscrupulous duty holders to circumvent health and safety legislation thereby avoiding enforcement action. HSE has struck a reasoned balance between openness, accountability and the realities of effective health and safety legislation by disclosing Parts A & B of the investigation report to you. Parts C and D of the report has been withheld as it falls within the exception 12(5)(b).

If you have any further queries about this letter, please contact me. Please remember to quote the above reference number in any future communications.

If you are unhappy with the decisions made by HSE you may ask for an internal review within two calendar months of the date of this letter by writing to me.


If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

Tel: 01625 545700  
Fax: 01625 524510  
Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Website: <http://www.informationcommissioner.gov.uk>

Yours sincerely



 Kay Brookes  
HM Inspector of Health and Safety



## **Annex 1**

### **Exception in full**

#### **Environmental Information Regulations 12(5)(a)**

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

- (a) International relations, defence, national security or public safety"

#### **Factors for disclosure**

Promote transparency and build public confidence in HSE's investigative process;

It is in the public interest that the public are assured that situations involving public safety e.g. at upper tier COMAH chemical sites are being properly assessed and controlled according to accepted procedures. It is also in the public interest that HSE's involvement in the assessment of risks at upper tier COMAH chemical sites and liaison with the site operator are fully transparent and that the public can be assured that health and safety issues at sites such as this are of the utmost importance.

Secure the health and safety of employees and others.

Disclosure would show the public that safety systems and arrangements are in place to deal with on site incidents if needed. It would also promote greater transparency in HSE's procedures and assure the public that sites within their regulatory remit are required to operate to safe standards.

#### **Factors for withholding**

The efficiency and quality of the deliberation process is likely to suffer because of a lack of candour and frankness caused by the prospect of disclosure. The ongoing safety and security of sites of this nature is clearly paramount and very strongly in the public interest. It would not be prudent for information relating to upper tier COMAH chemical sites, site operators and associated infrastructure relating to an incident on site to be released into the public domain where it could be useful to terrorists or those with malicious intent to plan an attack resulting in an incident in excess of that indicated as the worst case scenario. This could significantly increase the difficulty of the emergency services when dealing with such a scenario and increase danger to the local community. Any such release would therefore adversely affect public safety, the environment and national security and it is never in the public interest to facilitate terrorist activity or compromise public safety in any way. Disclosure would also adversely affect HSE's ability to carry out its duties properly.

#### **Reasons why public interest favours withholding information**

Disclosure would prejudice the very strong public interest in ensuring public safety and national security, and protection to the environment. It would create an unacceptable risk to the health, safety and security of the public and site workforce. The overwhelming public interest therefore lies in non-disclosure.

## **Annex 2**

### **Exception in full**

#### **Environmental Information Regulations 12(5)(b)**

"The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature."

#### **Factors for disclosure**

Promote transparency and build public confidence in HSE's investigative process.

Secure the health and safety of employees and others

#### **Factors for withholding**

Inhibit HSE's ability to conduct further investigations effectively and secure justice because, for example, third parties may be less willing to volunteer information to HSE if information is disclosed inappropriately

Inhibit HSE's ability to conduct further investigations effectively and secure justice by providing detailed insight into the decision making process for enforcement and prosecution action.

#### **Reasons why public interest favours withholding information**

After careful consideration I conclude that the public interest in not disclosing the information outweighs the public interest in disclosing it. This is as a result of the adverse impact disclosure would have on the ability for HSE to conduct investigations and ensure justice by providing specifically detailed information on HSE's process of legal and enforcement consideration. Such information may be used by unscrupulous companies or individuals to circumvent health and safety legislation and thereby avoid enforcement action.