

Mr Tim Hill
Odd House
Oddfellows Road
Hathersage
Derbyshire
DE32 1DU

Date: 20th September 2017

Our Ref: 201709233 IB
Your Ref: Request-432799-
dc1f6493@whatdotheyknow.com

Field Operations Directorate

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Operations Admin Team Leader
Anita Fitter

Dear Mr Hill

Incident at Innovative Environmental Solutions UK Ltd, Oldbury on 7 August 2017

Your request was received on 18th September 2017 and I am dealing with it under the terms of the Freedom of Information Act 2000 (the Act).

At present, primacy for this investigation lies with West Midlands Police.

I can confirm that HSE holds information about this incident. However, the incident is currently under investigation and action arising from the investigation has not yet been completed.

The information is therefore exempt from disclosure under Section 30(1)(b) of the Act (investigations and proceedings conducted by public authorities) in that it is information held by HSE for the purposes of an investigation which may lead to a decision to institute criminal proceedings.

Public Interest Test

The exemption relied on is a qualified exemption that is subject to the public interest test. This means HSE has to balance the public interest factors favouring disclosure against those favouring non-disclosure. In this case, I have considered the following factors in favour of disclosure:

- Promote transparency and build public confidence in HSE's investigative process
- Secure the health and safety of employees and others

And the factors in favour of non-disclosure:

- Impede an ongoing investigation by hampering the gathering of information and evidence
- Inhibit HSE's ability to conduct further investigations effectively because, for example, third parties may be less willing to volunteer information to HSE if information is disclosed inappropriately
- Reduce the chances of a successful prosecution should the investigation conclude that this course of action is appropriate

- Unfair in cases where decisions may be taken not to proceed to prosecution

After careful consideration, I believe that the public interest in not disclosing the information outweighs the public interest in disclosing because of the adverse impact it would have on the ability of HSE to conduct investigations generally and this investigation in particular.

For your information, the Information Commissioner has considered, and supported, a previous refusal by HSE to disclose information in the course of an ongoing investigation in a Decision Notice dated 4th February 2010 (ICO reference FS50223414). Although necessarily based on the facts of the case in question and considered under the Environmental Information Regulations 2004 rather than the Act, the Decision acknowledged the prejudice that disclosure of information could cause to HSE's functions and recognised that very considerable weight should be given to the public interest in maintaining the exemption in such circumstances. Decision Notices are available on the website of the Information Commissioner's office (see below).

One consequence of the statutory time period in the Act for responding to requests is that HSE cannot allow your request to lie 'on file' until the investigation is completed. I would therefore suggest that, if you still require the information, you make a further application in 3 month's time.

All requests received following the completion of the investigation will be dealt with under the terms of the Act and any exemptions considered accordingly.

Should you have any further enquiries concerning this matter, please write or contact this office quoting the above reference number.

If you are unhappy with the decisions made by HSE regarding your request for information, 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

Website: <http://www.informationcommissioner.gov.uk>

Yours sincerely



Ivan Bromage
Disclosure Officer