

Contradiction between Parliamentary written answer and HSE's reasons for refusing to release HSE report of investigation:

Parliamentary written answer:

24 Apr 2013 : Column 952W

http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130424/text/130424w0002.htm#130424w0002.htm_wqn41

Cwmcarn School

Annette Brooke: To ask the Secretary of State for Education pursuant to the answer of 17 December 2012, *Official Report*, column 590W, what steps he plans to take following the publication of the Health and Safety Executive's report into asbestos at Cwmcarn high school in Wales. [144983]

Mr Laws [*holding answer 27 February 2013*]: The Health and Safety Executive (HSE) has recently concluded its investigation into the asbestos related incident at Cwmcarn High School in Wales and wrote to the school governors and local authority with its findings on 26 February.

The HSE investigation concluded that there are appropriate asbestos management arrangements in place at the school as required under the Control of Asbestos Regulations 2012 and that no enforcement action is required.

As part of the investigation, the HSE asked the Health and Safety Laboratory (HSL) to conduct asbestos testing at Cwmcarn High School. The main aim of the HSL sampling and analysis at the school was to measure

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the release and transfer of airborne asbestos fibres into the classrooms. The report by HSL has also been provided to the school governors and the local authority and states that the sampling and analytical analysis carried out by HSL showed that there is no evidence for a quantifiable transfer of asbestos fibres from the ceiling void into the classrooms.

The Department for Education has noted the outcome of the HSE investigation and HSL testing at Cwmcarn and has decided that no further action is required at this stage in response to this specific case.

The Department continues to take the issue of managing asbestos in our schools very seriously and is pro-active in promoting good asbestos management in schools. It has published on-line guidance on managing the risks of asbestos, has established the Asbestos in Schools Steering Group to promote and raise awareness of asbestos management requirements and has asked the Committee on Carcinogenicity to consider and report upon the relative vulnerability of children to asbestos compared with adults. Alongside this, the Department liaises as necessary with the HSE as it is the lead regulator and enforces the duty to manage asbestos in non-domestic premises such as schools.

HSE FOI refusal 7th May 2013



Awdurdod Gweithredol
Iechyd a Diogelwch

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Date 07 May 2013

Our Ref 2013040469
Your Ref

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Freedom of Information – Decision
Maker
S Bembridge

Dear Sir

ENVIRONMENTAL INFORMATION REGULATIONS REQUEST REFERENCE NO: 2013040469

Thank you for your request for:

- The HSE final report into their investigation
- Drafts of the report
- All minutes of meetings, e-mails, correspondence, logs and briefings related to the investigation, decisions and conclusions
- All documents related to HSE inspections of the school

Your request was received on 26 April 2013 and I am dealing with it under the terms of the Environmental Information Regulations (2004) and the Freedom of Information Act (2000).

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

The information is therefore exempt from disclosure under section 12 (5)(b) of the Regulations (the course of justice, the ability of a person to get a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature) 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 exception relied on is a qualified exception 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 following 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 a decision is 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 it, 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 4 February 2010 (ICO reference FS50223414). Although necessarily based on the facts of the case in question 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 Regulations for responding to requests is that HSE does not 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 **at least 3 (three) month's time**.

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

If you have any queries about this letter, please contact me. Please remember to quote the reference number above 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
Website: <http://www.informationcommissioner.gov.uk>

Yours faithfully

A handwritten signature in black ink, appearing to read 'Lynne Thomas', with a horizontal line drawn through it.

Lynne Thomas (Mrs)
Freedom of Information Officer