NCN: [2024] UKFTT 001112 (GRC)

Case Reference: EA-2023-0473

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Heard by Cloud Video Platform
Heard on: 20 November 2024
Decision given on: 12 December 2024

Before

JUDGE CHRIS HUGHES
JUDGE WATTON
MEMBER E YATES

Between

RHYS BLAKELY

Appellant

and
(1) THE INFORMATION COMMISSIONER
(2) HEALTH AND SAFETY EXECUTIVE

Respondents

Representation:
For the Appellant: Litigant in person
The First Respondent did not attend the hearing
For the Second Respondent: Matt Lewin, Counsel

Decision: The appeal is dismissed.

REASONS

1. This is an appeal against the Information Commissioner's decision IC-253248-S2C4, made on 18 October 2023.

2. Mr Blakely requested information from the Health and Safety Executive (HSE) about safety incidents at sites with containment level 4 (CL4) laboratories. HSE withheld the information, relying on regulation 12(5)(a) of the Environmental Information Regulations 2004 (EIR). This regulation permits withholding information to the

extent that its disclosure would adversely affect international relations, defence, national security or public safety, subject to a public interest test.

3. In its decision the Commissioner agreed that the information was excepted from disclosure under regulation 12(5)(a) EIR and that the public interest favoured maintaining the exception.

Background

4. The Appellant, Rhys Blakely, is a science correspondent at *The Times*. On 20 September 2021 Mr Blakely made a request for information to HSE in the following terms:

"Please could you supply details of all safety breaches or near misses, including all incidents that were notified to the Health and Safety Executive, during the past 8 years at these facilities, which are listed publicly by the UK government as having CL4 laboratories:

Public Health England – Porton Defence Science and Technology Laboratory (Dstl), Porton Down
Public Health England - Colindale
The Pirbright Institute
Animal and Plant Health Agency (APHA)
The Francis Crick Institute Containment 4 facility
Boehringer Ingelheim Animal Health UK Limited (formerly Merial Animal Health, Biological Laboratory)
National Institute for Biological Standards and Control
BSU (Biobest Secure Unit)

Please include:

- *All details included in Riddor reports to the HSE*
- *The date of the incident*
- *The matter that was investigated*
- *Name of duty holder*
- *A detailed summary of the incident including any executive summary that was prepared*
- *The biological agents or substances that were involved*
- *The outcome, including any enforcement action*

If this information is held in a structured database format, please provide a copy of the structured data that covers these cases. If also held in paper or PDF form, please also provide a copy of these forms, preferably in searchable PDF form if possible.

… I'd note that the UK has disclosed the locations of its CL4 laboratories under the terms of the Biological Weapons Convention.

https://bwc-ecbm.unog.ch/united-kingdom-great-britain-and-northern-ireland/bwccbm2021united-kingdom."

5. On 8 October 2021 HSE asked Mr Blakeley to clarify the request, which he did the same day.

6. On 18 September 2022 Mr Blakely made a further request for the same information over the period from 2019 to the date of that request.

7. HSE provided a response to both requests on 23 August 2023. HSE disclosed some information in a spreadsheet and informed Mr Blakely that it was withholding information under EIR Regulation 12(5)(a) and Regulation 13.

8. Mr Blakely did not request an internal review; he complained directly to the Commissioner. On 18 October 2024 the Commissioner issued its decision, agreeing that HSE is entitled to withhold the information under regulation 12(5)(a).

9. Mr Blakely filed this appeal against that decision in time, on 7 November 2023. He argued both that the exception in regulation 12(5)(a) was not engaged and that the public interest in disclosure outweighed the public interest in withholding the information.

Legal framework

10. EIR Regulation 5(1) requires a public authority that holds environmental information to make it available on request. It was not disputed that the information sought by Mr Blakely constituted environmental information as defined by Regulation 2.

11. A public authority may refuse to disclose environmental information if an exception under Regulation 12(4) or (5) applies **and** in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

12. In this appeal the relevant exception relied on by the Commissioner and HSE is EIR Regulation 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;"

13. Regulation 12(2) states there is a presumption in favour of disclosure.

Issues

14. The issues the Tribunal must decide are therefore:

a. Would disclosure of the information adversely affect international relations, defence, national security or public safety?

b. If yes, does the public interest in maintaining the exception outweigh the public interest in disclosing the information?

Evidence and proceedings

15. The Commissioner had confirmed in advance he would not be represented at the hearing, and the Tribunal considered that it was in the interests of justice to proceed in his absence.

16. The Tribunal had both an OPEN and CLOSED bundle. The CLOSED bundle consisted solely of the withheld material.

17. The Tribunal heard from two witnesses in OPEN proceedings:

a. Jane Cloherty, Disclosure Manager for HSE within the Information Governance Team; and

b. Paul Stanworth, Head of Microbiology and Biotechnology Unit within the Chemical, Explosives and Microbiological Hazards Division of HSE.

Evidence of Jane Cloherty

18. Ms Cloherty explained that HSE is the statutory body responsible for regulating and enforcing workplace health and safety regulations, established under the Health and Safety at Work Act 1974. Ms Cloherty also set out how other legislation is relevant to HSE's work.

19. The Control of Substances Hazardous to Health Regulations 2002 ("COSHH") places a duty on employers to control substances that may cause harm to human health. It is COSHH which designates the requirements for labs operating at different levels. CL4 is the highest level. COSHH also sets out hazard groups for biological agents. There are four levels, with Group 4 being the highest hazard level. Ms Cloherty explained that CL4 labs are the only labs permitted to process Group 4 agents, though may also process Group 3 agents within the same site, within the same or separate laboratories.

20. Ms Cloherty also stated that many, but not all, of the biological agents processed by CL4 labs are listed within Schedule 5 of the Anti-terrorism, Crime and Security Act 2001. Ms Cloherty summarised that those agents listed within Schedule 5 are so listed because they can be used purposefully as a weapon in bioterrorism or biological warfare.

21. Ms Cloherty explained that the duty for employers and certain other individuals to report certain injuries, diseases and dangerous occurrences to HSE originates in The Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 2013 ("RIDDOR"). The information Mr Blakely requested was RIDDOR data. Ms Cloherty explained that when reviewing the request HSE had determined that the facilities mentioned by Mr Blakeley operated both CL3 and CL4 laboratories. HSE disclosed all RIDDOR data relating to incidents at CL3 laboratories but withheld RIDDOR data relating to incidents at CL4 laboratories as it considered that it was exempt under EIR 12(5)(a). Ms Cloherty said the HSE's view was that the fact that Schedule 5 agents were specifically designated by the Secretary of State meant that disclosure would not serve the public interest.

22. Ms Cloherty accepted that there is public interest in transparency about CL4 labs and ensuring that these sites are acting safely.

23. In response to questions from Mr Lewin, Ms Cloherty accepted Mr Blakely's point that information concerning the facilities was available by a simple Google search or even by standing outside the building. Her answer was that the institutions have chosen to make that information available themselves, whereas they would have no control over information disclosed by HSE.

24. Ms Cloherty apologised to Mr Blakely for the delays in processing his requests.

25. Mr Blakely cross-examined Ms Cloherty. He asked her whether the disclosure of the CL3 lab information had had a chilling effect, and she responded that particular disclosure did serve the public interest.

26. Mr Blakely asked Ms Cloherty why CL3 lab information had been disclosed but not CL4 lab information. Ms Cloherty stated that CL4 labs deal with Schedule 5 agents considered by the Secretary of State to be capable of biological warfare. The decision was based not on the lab level but on the presence of Schedule 5 agents. Mr Blakely asked Ms Cloherty whether every request involving a CL4 lab involved a Schedule 5 agent, and she agreed it did. Later, when asked whether each RIDDOR report was considered on its own merits she confirmed it was but that all the biosites involved used Schedule 5 agents.

27. Mr Blakely then put a range of publicly available material involving the specified facilities to Ms Cloherty, including an article from the *Guardian*, an article from the BBC, the Pirbright Institute's website and the Frances Crick Institute's website. He put it to Ms Cloherty that it was not true that the facilities did not advertise their work. Ms Cloherty said that when she was researching she did not find anything herself. In respect of the media articles the media team at HSE had not disclosed that under freedom of information legislation and had since been trained on this.

28. Mr Blakely questioned Ms Cloherty on part of her witness statement where she had indicated it would be unfair and incorrect for a story to imply poor health and safety

management at the facilities. Mr Blakely asked Ms Cloherty whether that was because HSE did not want to be scrutinised, and whether the real concern was whether reporting may result in a perception different to that of HSE. Ms Cloherty said it was because it could result in public panic, and it would not be in the public interest for the information to be known because HSE believes the labs are operating effectively. Ms Cloherty also said there are channels for HSE to be challenged in the performance of its duties.

29. Ms Cloherty agreed with Mr Blakely's question that redaction was possible in respect of the description of a particular area but said that it was a multi-factor assessment driven by the fact a Schedule 5 agent was involved. She also said that HSE took the view that the necessary redactions would provide Mr Blakely with a lack of any substantial information.

30. Ms Cloherty agreed with Mr Blakely's question that incidents can occur because of a workplace culture or cavalier attitude, though she did not believe that was what had happened in the withheld reports. Mr Blakely put it to Ms Cloherty that her belief was the reason for there being a veil of secrecy around these incidents. Ms Cloherty said that she was an advocate for freedom of information and transparency. In her opinion there was no evidence to support there was a culture problem that would cause detriment to lab staff or the public.

Evidence of Paul Stanworth

31. Mr Stanworth gave evidence on the harm that could arise if the withheld material was disclosed. He said he believe it was right to exclude information relating to incidents involving Schedule 5 agents.

32. Mr Stanworth accepted that some sites do disclose that they are CL4 sites and two do disclose that they work with specific Schedule 5 agents. He said that most of the sites are relatively large but do not openly disclose which parts of the site are being used for work with specific agents or which feature CL4 labs. He contrasted this with some of the withheld information, which contains details of the location, agent and/or control measure which failed. He thought this would be of use to terrorists in targeted attacks on a facility.

33. Three of the incidents withheld from disclosure related to animal testing, and he believed the relevant facilities did not publicise their involvement in animal testing. He was of the view this could lead to threats and violence from animal rights extremists.

34. Mr Stanworth also said that five incidents on the lists do not involve Schedule 5 agents but did occur in CL4 labs which HSE knows handle agents listed as COSHH hazard Group 4, the similar provisions of Specified Animal Pathogens Order ("SAPO") Group 4, or sometimes Schedule 5 agents.

35. In answer to questions from Mr Lewin, Mr Stanworth said that he did not have any concerns about underreporting of incidents at CL3 or CL4 labs. He said he could not say that there was 100% reporting but he did not think there were significant problems.

36. Mr Stanworth gave evidence that the labs are designed not to allow the pathogens to escape. He said that if someone had malicious intent, they could damage the facility to allow the release of the pathogen. When Mr Lewin put it to him that someone could do that without the information, Mr Stanworth said that some of the sites are large, and the information would allow someone to narrow down the relevant area where a pathogen was being used.

37. Mr Stanworth also said that not all RIDDOR reports are because the facility has breached any regulations. He said that there was a range of potential outcomes following a RIDDOR report. The HSE could take no action, they could give advice, issue action/prohibition notices or start a prosecution. In the incidents here the action taken ranged from no action to verbal advice to improvement notices.

38. Mr Stanworth thought the HSE was regulating the CL4 labs properly. They were all visited at least once a year and the majority were visited 3 or 4 times a year.

39. In cross-examination Mr Blakely questioned Mr Stanworth about the range of seriousness in the incidents. Mr Stanworth explained that the more serious incidents resulted in improvement notices. He agreed with Mr Blakely that less serious incidents involved sharps injuries and spills. He said that the majority of incidents were not disclosed because of the agent involved and the remainder because they occur on a CL4 site.

40. When asked whether the information could be released in a sensibly redacted way, Mr Stanworth said that the location could be redacted but that the fact other information had been released could lead to identification of the locations of Schedule 5 agents. Mr Stanworth said that the HSE was working on a policy that it would not disclose information relating to Schedule 5 agents.

41. Mr Blakely posited that the sites were high security anyway, so what difference would disclosure make. Mr Stanworth accepted that the sites were high security but did not feel it was for him to weigh up whether they would be adequately protected if the information was released. He accepted that openness and performance review was necessary but maintained that the schedule 5 agents could be used in an act of terrorism, as designated by the Secretary of State, so that tempered the public interest.

42. In response to questions from the Tribunal Mr Stanworth said that advice given to duty holders is not public, but there is a public register of notices issued. If a prosecution is instituted, then a press release would normally be produced. He considered that the information currently within the public domain about the individual labs was insufficient for someone with malicious intent to find what they

needed. However, he felt that the additional level of detail in the RIDDOR reports could be of use to such a person.

43. In the CLOSED part of the hearing Mr Stanworth gave additional evidence. He confirmed that designation as a CL4 facility does not necessarily reveal whether a facility is working with Schedule 5 agents, as some Schedule 5 agents are classified as hazard Group 3.

44. Mr Lewin asked Mr Stanworth about five specific incidents included in the withheld information. In each of these incidents Mr Lewin identified that there was more information publicly available than that stated in the withheld information. For example, an incident report from the Pirbright Institute in 2014 contained information on control measures and the name of a specific area within the facility where a Schedule 5 agent was being worked with. Mr Stanworth accepted it was public knowledge that the Pirbright Institute worked with this particular agent because it is listed on the Institute's website.

45. Mr Stanworth acknowledged that he was not impartial but said it was his belief that the regulatory system was helping to limit accidents and that reporting bodies were complying with their duties. However, he could not be complacent because the regulator's concern was high-consequence, low frequency events. He was not aware of any evidence that reporting bodies had reduced their incident reporting rates.

46. Mr Lewin read Mr Blakely a 'gist' of the CLOSED proceedings when the OPEN proceedings resumed.

Mr Blakely's submissions

47. Mr Blakely said he had responded to the main points raised by the HSE. He said that he was not asking for specific locations and thought that information could be redacted. He also said that the prospect of a 'chilling effect' on reporting had been discounted in oral evidence. He also said there was a Parliamentary report indicating over 250,000 people work with dangerous pathogens, meaning many people already know much of the withheld information.

48. Mr Blakely referred to material that was already in the public domain, including BBC and *Guardian* articles, as well as the websites of some of the companies running CL4 labs. He said even if there was no story in the withheld information that it was important that the press had access to it, otherwise the public interest in disclosure is ignored.

49. Mr Blakely argued that there is a clear public interest in knowing that the CL4 facilities are being managed safely. He contextualised his argument with reference to the 2007 outbreak of Foot and Mouth Disease in the UK, which originated in a lab. He also referred to a Chinese lab being a possible source of the Covid-19 pandemic.

50. Mr Blakely also speculated that a potential terrorist or other malicious person who wanted to use dangerous pathogens would not limit themselves to CL4 high security labs but might target 'soft' facilities such as university laboratories.

51. Mr Blakely argued that the EIR were not meant to be applied like this and there should not be a blanket approach. He thought the information ought to be capable of redaction. He said it was unclear why human error incidents should not be made public, as a terrorist would not expect the labs to be infallible. Human error can be a result of institutional culture issues or inadequate training.

52. Mr Blakely said that the information in one of the cases Mr Lewin relied on, *Boswarva v Information Commissioner and Environment Agency* [2024] UKFTT 00260 (GRC)**,** was fundamentally different in character to the request he had made. He said in *Boswarva* the data was how a maximum flood outline for a large reservoir could be calculated, but his request was more akin to asking whether a reservoir had burst its banks.

HSE's submissions

53. For the HSE, Mr Lewin argued that the exception was engaged, and that the public interest balancing exercise favoured withholding the information.

54. Mr Lewin submitted that all the law requires for the exception to be engaged is that disclosure would on the balance of probabilities create the *risk* of a terrorist attack. He submitted that 3 of the 4 interests are relevant (defence, national security and public safety) and referred us to paragraph 25 of the HSE's response to the appeal for his submission as to what those concepts mean.

55. Mr Lewin referred us to *Kalman v Information Commissioner and Department for Transport* EA/2009/0111 and *Boswarva*. Mr Lewin was careful to point out that the exemption engaged in *Kalman* (s24 Freedom of information Act 2000) is similar but not identical to the one before us. Mr Lewin's point was that the Tribunal considered its task was not to decide whether an attack was more likely than not, but that it was sufficient to engage the exemption that information could be exploited by terrorists because it would make it easier for them to plan and execute an attack. A similar approach was taken by the Tribunal in *Boswarva*, where it was held that disclosure of flood risk information could be used as the basis for a terrorist attack.

56. Mr Lewin highlighted the danger of small amounts of information creating a mosaic effect. He also made the point that even if the information was not a complete picture, it would allow a terrorist to target resources at a narrower range of options.

57. Mr Lewin submitted that where the consequences of disclosing information are of enormous seriousness there is a very powerful public interest in withholding the information even where the probability of the harm occurring is low, commending

to us the approach of the Tribunal in *Kalman* at [47]. He pointed out that we had heard evidence that there was sufficient scrutiny of the sector.

The Commissioner's position

58. The Commissioner filed a written response to the grounds of appeal. The Commissioner submitted that under the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction there is no requirement for states to make public details of incidents at secure facilities involving controlled substances, especially where to do so may risk the security of such facilities.

59. The Commissioner argued that Mr Blakely's reliance on the 2014 *Guardian* article was misplaced, as it was not clear that the incidents referred to in the article concerned CL4 labs, rather than CL3.

60. The Commissioner did not disagree with Mr Blakely that transparency can improve poor practices by public bodies but argued that this did not in itself outweigh the public interest in maintaining the security of those facilities.

Conclusions

Would disclosure of the information adversely affect international relations, defence, national security or public safety?

61. We consider that disclosure of the information would adversely affect defence, national security and/or public safety.

62. We respectfully disagree with Mr Blakely's submission that the information already disclosed in the press and on the websites of various CL4 lab providers reduces the risk of adverse effects on one of the specified interests. This ignores the danger of further information contributing to the creation of a 'mosaic' of information. The withheld information, together with the information in the public domain provides an opportunity for information regarding processes, staff and facilities at the site to be deduced, collated and used by a person with malign intent.

63. Disclosure of the withheld material increases both the risk and the likelihood of the risk materialising. For example, if the location of the lab working on a particular pathogen became known then it is possible that the lab could be damaged to allow the escape of the pathogen, a risk identified by Mr Stanworth in his evidence.

64. The institution itself disclosing the information is also a very different situation from a third party such as HSE disclosing reported incidents. When providing information itself the institution knows what current activities are taking place and what security measures it has. It can weigh up exactly how much information to release so as not

to create a risk of attack or other interference with its work. Neither the HSE, the Commissioner nor the Tribunal would be in a position to do this in respect of the withheld information here.

65. Mr Blakely referred to the lack of reported instances of attacks on these sites as evidence that there were few, if any, people who would wish to attack the labs.

66. First, none of the parties to the appeal, nor indeed the Tribunal, would be aware of any unsuccessful *attempt* to use the information. Second, we accept Mr Stanworth's evidence that in this context a low frequency event could nevertheless have critically serious consequences.

67. Most significantly, Parliament has specifically given the Secretary of State the power to designate specific pathogens and toxins for inclusion in Schedule 5.

68. Section 58(3) of the 2001 Act states in relation to Schedule 5:

(3)The Secretary of State may not add any pathogen or toxin to that Schedule unless he is satisfied that the pathogen or toxin could be used in an act of terrorism to endanger life or cause serious harm to human health.

69. Additions to the list of pathogens and toxins are made using the affirmative resolution procedure, meaning that Parliament has to approve their inclusion.

70. The Tribunal must give considerable weight to the view of the Secretary of State as to the danger presented by a particular pathogen or toxin. The Secretary of State is well-placed to determine which agents could be used in an act of terrorism. That is a power entrusted to the Secretary of State by Parliament, and each time the Secretary of State exercises that power by amending the Schedule it is confirmed by Parliament. Mr Blakely did not question the designation of any of the pathogens or toxins.

71. Having regard to the danger presented by the Schedule 5 agents, and the danger of creating a 'mosaic' of information with even small disclosures, we are satisfied on the balance of probabilities that disclosure of the withheld material would lead to an adverse effect on defence, national security and/or public safety, such as by a terrorist attack. We agree with Mr Lewin that this is the test we should apply and we were not taken to any authority to the contrary.

72. The position in respect of disclosure of the incidents concerning animal testing was less straightforward in parts of the hearing. Mr Stanworth suggested that the reason for not disclosing this was that the sites may attract violent protests. Indeed, the CLOSED material indicates that undisclosed animal testing was the reason for withholding details of three incidents.

73. In cross-examination, at first Ms Cloherty seemed to agree that every request involving a CL4 lab involved a Schedule 5 agent, but later clarified it was the *site*

involved having Schedule 5 agents present that meant the information should be withheld. It is evident from the CLOSED material that is the case.

74. We conclude that disclosure of the three incidents concerning animal testing would adversely affect defence, national security and/or public safety. This is because those sites deal with Schedule 5 agents, specifically designated by the Secretary of State. Disclosure of information concerning work on those sites could lead to the specified adverse effect even when the report does not mention a Schedule 5 agent. For example, with information that animal testing was taking place at a facility with a non-Schedule 5 agent, a terrorist could deduce which of the buildings on a site was suitable for keeping animals and thus identify where Schedule 5 agents were stored by a process of elimination.

75. We are not satisfied that there is sufficient evidence to conclude that disclosure of animal testing facilities would lead to violent protests, or that those potential protests would adversely affect international relations, defence, national security or public safety.

Does the public interest in maintaining the exception outweigh the public interest in disclosing the information?

The public interest in disclosure

76. We agree with many of the factors raised by Mr Blakely in favour of disclosure. The public interest in transparency is high. Those labs trusted to work with the most dangerous pathogens and toxins are performing an important public duty and the public are entitled to hold them account.

77. The public interest is particularly important in this case because the press has an important role as a watchdog for the state's performance of its functions. This is even the case where there is 'no story' in the specific information sought. We agree that for the press to perform its role effectively then there is a public interest in the disclosure of even mundane information, and where the incident was caused by simple human error or equipment failure.

78. The public interest in disclosure is also relevant to public safety in this case, because the public should know about hazardous or dangerous substances and practices, particularly when a lab is close to or within a residential area. We also agree with Mr Blakely's point that this is particularly acute with reference to the recent Covid-19 pandemic and various theories about its origin.

79. Mr Blakely also argued that the provisions of the 1972 Convention supported the public interest in disclosure. The Commissioner disagreed, and we were not taken to any specific provision of the Convention which would require disclosure of the information. International conventions are not part of domestic law unless incorporated into it by legislation: *R (Miller) v Secretary of State for Exiting the European*

Union [2017] UKSC 5. Even if the Convention imposes the obligation Mr Blakely argues for on the *UK* in international law, we were not shown any domestic provision imposing the obligation on the *HSE* in domestic law.

The public interest in maintaining the exception

80. The prospect of a 'chilling effect' on reporting health and safety incidents was raised. However, in oral evidence both Ms Cloherty and Mr Stanworth said they did not think there was evidence to show there was underreporting in these industries. We do not have sufficient evidence of any such potential chilling effect and we therefore do not consider this as a factor in favour of the public interest in maintaining the exemption.

81. We agree with the HSE that there is a very strong public interest in withholding the information. These labs are dealing with the most dangerous substances in the country, and Schedule 5 agents are specifically designated by the Secretary of State as capable of being used in an act of terrorism. We also accept Mr Stanworth's evidence as to the level of harm that could be caused by an attack on one of these facilities. The pathogens and toxins could lead to serious illness or death in a large number of people.

82. We accept Mr Stanworth's evidence that the level of additional detail provided by the RIDDOR reports could be of use to a terrorist. Though Mr Blakely submitted that a potential terrorist would be more likely to target 'soft' targets instead, such as university labs, that is speculation. We do not have any evidence on the capability or ambition of any potential malicious person. The question is not what information a terrorist would be more likely to use, but what they *could* use.

Weight

83. We start from the presumption in favour of disclosure. We find that the public interest in disclosure for accountability and public safety is reduced by the very fact that HSE is regularly inspecting these sites to ensure their safety. HSE is specifically tasked to perform this function by Parliament and we accept Mr Stanworth's evidence as to the knowledge and performance of his team.

84. As to the accountability of HSE itself, it is held to account in the other ways in which it provides information. It posts improvement and prohibition notices on its website. Its prosecutions are a matter of public record.

85. Though we are not bound by the decision in *Kalman*, we agree with Mr Lewin that where the potential consequences of disclosure are very serious there is a very powerful public interest in withholding the information. In this case, that is not outweighed by any of the factors raised in favour of disclosure. Though some information concerning these facilities is already in the public domain, that in fact

increases the risk that the release of further information would create a mosaic of small pieces of information, which in combination are useful to a potential terrorist.

86. Mr Blakely described the decision to withhold the information as a 'veil of secrecy'. That is not what has happened here. Parliament has approved the test to be applied when determining whether to release the information. Information was in fact disclosed in response to the request, other information was withheld. This is not a case where HSE took a blanket approach, which would be inappropriate. In the CLOSED material, each incident was given an individual reason for non-disclosure. We agree with that decision in respect of each incident.

87. Mr Blakely did make a very compelling case for the public interest in disclosure. However, we are satisfied that transparency can be, and is, achieved in other ways in respect of this information. Moreover, the potential impact of disclosing the information is extremely serious such as to outweigh the presumption and public interest in favour of disclosure.

Decision

88. The exception in regulation 12(5)(a) is engaged; disclosure of the information would adversely affect defence, national security and public safety. Though there is a presumption in favour of disclosure, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

89. The appeal is dismissed.

90. This OPEN decision includes all points material to our decision. We therefore do not consider it necessary to produce a CLOSED decision.

Signed Judge Watton Date: 10 December 2024

Promulgated Date: 12 December 2024