

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2016

Public Authority: London Fire Brigade
Address: 169 Union Street
London
SE1 0LL

Decision (including any steps ordered)

1. The complainant has requested details about fire officers who attended an address as a result of a 999 call. Following clarification, London Fire Brigade ("LFB") refused to provide its officer's details on the basis that to do so would breach section 40(2)(personal information) of the FOIA. However, during the course of the Commissioner's investigation, LFB determined that it had no recorded information by which to identify the relevant officers and did not therefore hold the requested information. The Commissioner's decision is that, on the balance of probabilities, no information is held. However, he does find procedural breaches regarding the handling of the request. No steps are required.

Background

2. LFB has advised as follows regarding the incident in question:

"The ranks of the relevant officers to incident [number removed] on 9 June 2015 [address removed] were as follows ...

Fire Rescue Unit – 1 x Crew Manager, 3 x Firefighters

Pump Ladder – 1 x Watch Manager, 5 x Firefighters

Command Unit – 2 x Watch Manager

Pump Ladder – 1 x Watch Manager, 1 x Crew Manager, 4 x Firefighters

Operational Support Unit – 2 x Firefighters

Senior Officers – 1 x Group Manager, 2 x Station Manager

The reason for the large attendance (23 personnel) was because the incident was mobilised as it involved potential hazardous materials (hazmat); the range of resources (appliances and officers attending) reflect what would be necessary to deal with that type of incident. The incident was confirmed as a false alarm. The type of incident would be determined by our 999 control based on the information provided by the caller (in this case the police)".

Request and response

3. On 10 June 2015 the complainant emailed LFB under the subject heading "complaint and request for identification of 3 FB officers":

"Dear Sir/Madam, on 09.06.2015 at about 11:46 p.m I called police on 999 about strong chemical smell over our block of flats and anti-social behaviour [sic]. I specifically said that I do not want FB officers to attend. Strangely enough, 3 FB officers arrived, absolutely unhelpful jeering, smiling and saying: "we know you", although I do not remember any of them.

It looks like these police officers are involved by police into what our residents complain about. Please see attached complaints, which so far have been largely ignored by housing and police officers, which we believe are involved into continuing harassment and intimidation of elderly resident of our estate.

May I request full identification of the officers(full names, positions and ID numbers) attended my call to police with explanation of the reason why they did attend against my request.

Whatever the reason, may I ask you never more send your officers to my calls to 999 police, as they are absolutely unhelpful. I look forward to your investigation and addressing of my complaint".

4. On the same day LFB wrote to the complainant. It advised him:

"Your email below has been passed to me to try and help address your concerns. In order for me to do this however I need a location so I can identify where we can start to look into this matter".

5. On 20 July 2015 the complainant again emailed LFB. On this occasion he specified that he was making a request for information under the FOIA. He stated:

"As, until now I did not get any reply to below email, may I request the following information:

1. *Why I did not get any reply to my email in breach of LFB regulations, who is personally responsible for this breach (full name, I.D. number and position) and cover up for further complaints if necessary;*
 2. *Full names, positions, I.D. numbers of the officers attended my call?*
 3. *What FB station they belong to?*
 4. *Full name, position, I.D. number and direct email address of the CEO of that FB station.*
- I look forward to your instant acknowledgement, ref. number and earliest reply”.*

6. Following intervention from the Commissioner, and the complainant’s provision of the relevant address on 17 September 2015, LFB responded to the request on 18 September 2015. In respect of part (1) it explained as follows:

“When we received your information request on 20 July, I associated it with a recent complaint you had made (10/06) where you required similar information to be released. The complaint was being handled by our complaints manager, [name removed], who had been in correspondence with you. When I discussed your request with [name removed] we were unable to identify which call your complaint might refer to as you provided very little detail about where the incident took place (no address or town reference). This being the case, [name removed] wrote to you on 10 June asking for your address details. At the time I spoke to [name removed] he was still awaiting your reply.

Without a location identifier I was unable to find any information relevant to your request. I therefore decided that your case was best dealt with by [name removed] through our complaints process. In hindsight I should have replied to your information request setting out that position. I am sorry that I did not do that”.

7. In respect of the remaining parts of the request, most of this information was provided. However, LFB refused to provide the names of staff as it considered they were not sufficiently senior and it found that to do so would breach the Data Protection Act (the “DPA”).
8. Following further correspondence the complainant was advised by the Commissioner that he needed to request an internal review. There was then some further confusion with the complainant eventually requesting an internal review on 17 December 2015. The Commissioner chased a response to this on 11 February 2016; to date no internal review has been provided.

9. The Commissioner will use his discretion on this occasion and consider the complaint without an internal review.
10. At a late stage of the Commissioner's investigation it became apparent that the incident concerned had involved the attendance of 23 personnel from LFB whereas the complainant only refers to three. From the recorded information held by LFB it advised that it was not possible to ascertain which three officers the complainant means, so it revised its position from section 40 to instead stating that the information requested was not held.

Scope of the case

11. The Commissioner has considered whether or not LFB holds any recorded information, as well as the handling of the request. He has done so without reverting to the complainant in order to prevent any further delays in dealing with his complaint.

Reasons for decision

Handling of the request

Section 10 – time for compliance

12. The initial request made on 10 June 2015 was clearly marked by the complainant as a "*complaint and request for identification of 3 FB officers*". On the same day, LFB asked the complainant for more details as no location of the incident had been included and it could not trace the incident from the information provided.
13. The Commissioner considers that LFB treated this initial request outside the FOIA, under "*business as usual*". The Commissioner considers this to have been a reasonable approach based on its wording and the title of the email stating that it was a "*complaint*" rather than any sort of information request. In any event, a response was sent by LFB requiring more details and, had this been provided by the complainant, matters would probably have progressed differently as the correspondence would have been dealt with as a service complaint.
14. The complainant made a follow up request on 20 July 2015 which clearly stated that it was a request being made under the FOIA. LFB has advised the Commissioner that it did not respond at this time as the complainant had again not provided a location in respect of its earlier request for him to do so.

15. The Commissioner has clarified with LFB that the original 999 call was made to the police, ie LFB did not receive the call directly from the complainant himself. As such, the call was recorded on LFB systems as being passed to it by the police rather than naming the complainant personally. As a consequence, when the complainant wrote to LFB asking for details, it was unable to assist as it had not received his original 999 call and the call had not been logged under his name. Therefore, LFB needed the address of the incident it attended in order to locate any further information.
16. Whilst he accepts the explanation provided, it is the Commissioner's view that LFB should not have ignored this latter request which clearly states that it is a request under the FOIA and is therefore separate to the "complaint" sent on 10 June 2015. It is his view that LFB should have sought clarification from the complainant under the terms of the FOIA explaining what was needed and why.
17. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
18. The request was made on 20 July 2015. Whilst the request did not provide enough details for LFB to locate the requested information, it failed to ask for the proper clarification until after the Commissioner's intervention. This meant a response was not provided until 18 September 2015.
19. The Commissioner therefore finds that LFB has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Section 17 – refusal notice

20. Section 17(7)(a) of the FOIA obliges the public authority to provide details of any review procedure which the applicant can enter into on receipt of the refusal notice, and section 17(7)(b) obliges the public authority to provide details of the complainant's right to complain to the Commissioner.
21. On this occasion, LFB failed to notify the complainant of its review procedure, in breach of section 17(7)(a), and it also failed to notify the complainant of his right to approach the Commissioner, in breach of section 17(7)(b).

Section 1 – general right of access

22. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
23. The Commissioner is mindful that when a public authority has stated that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
24. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, LFB holds any recorded information within the scope of the request. Accordingly he asked LFB to explain its position. In response to these enquiries he was provided with the following details:

"It is not part of any of our processes that crews attending incidents record the name(s) of those members of the public they meet, or take notes of conversation they have. So, for this incident, there will be no notes of any conversation between [the complainant] and the attending crew members. In fact, until [the complainant] approached us last September [sic], we had no record as part of the data for this incident, that he was the householder of [address removed] when we attended on 9 June 2015. His name is not recorded in any of the systems ...

Unlike the Police, we have no need to know who are the people we are dealing with. The priority for the attending crew members will be the safety of individuals but not their identity, unless they are hurt in some way. The emphasis is on resolution of the incident, and if there is nothing for crews to do when they attend, they will return to station so they are available for mobilising to further incidents. Generally speaking, the emphasis is on recording the outcomes of incident attendance including any actions taken by the crews to resolve the incident. This is largely statistical information; we collect more information about fires we attend, than for special services (like Hazchem incidents) and even less information for false alarms (like this incident turned out to be). For your information, the only names (and personal details) we record are those of people who suffer an injury in a fire or a fatality in a fire.

Just to add, we do have a policy about keeping records of decisions taken at incidents, but the focus of that is for incident commanders to provide their rationale for why certain actions were either taken

or not taken. This may be of particular importance if the actions carried out deviated from the Brigade's standard operational procedures or at incidents where a public inquiry/inquest is anticipated. They are not designed to record conversations with members of the public. Decision logs are not maintained for all incidents and there is no decision log for the incident on 9 June 2015".

25. LFB also confirmed that it had checked its relevant IT systems and was thereby able to identify the 23 officers who attended the incident, as well as other details about it. However, as there was no record of the complainant on its systems, it advised that it held no information from which it could identify the three officers specified in his request.
26. Based on the explanation provided the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. He is therefore satisfied that LFB has complied with the requirements of section 1 of the FOIA in this case.

Other matters

Further assistance

27. By way of further assistance, LFB has confirmed that the complainant is still entitled to raise a service complaint about the incident. When doing so he should write to it providing details of the date and location of the incident, along with the incident number (which will be provided to the complainant separately to this notice) and his grounds of complaint. LFB will then make further enquiries as appropriate and speak to the officers concerned if this is necessary. It has advised that a complaint can be made via its website.
28. Although it does not form part of this notice the Commissioner also wishes to highlight the following matter of concern.

Internal review

29. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the

complaint. As he has previously made clear¹, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

30. The Commissioner does not consider this case to be 'exceptional', and is concerned that LFB has failed to undertake an internal review despite his intervention.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Carolyn Howes
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