

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 July 2017

**Public Authority:** East Sussex Fire & Rescue Service  
**Address:** Headquarters  
Church Lane  
Lewes  
East Sussex  
BN7 2DZ

#### Decision (including any steps ordered)

---

1. The complainant requested information from East Sussex Fire & Rescue Service (ESFRS), namely a copy of the Sussex Control Centre's incident log for a specified incident.
2. ESFRS denied holding the requested information. The complainant disputed that ESFRS did not hold the incident log.
3. The Commissioner has found that the requested information is not held by ESFRS for the purposes of the FOIA by virtue of section 3(2)(a).
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

#### Background

---

5. The West Sussex Fire & Rescue Service (WSFRS) is a department within West Sussex County Council<sup>1</sup>.
- 

<sup>1</sup> <https://www.westsussex.gov.uk/fire-emergencies-and-crime/west-sussex-fire-rescue-service/>

6. The joint Sussex Control Centre for East and West Sussex Fire & Rescue Services provides all the respective mobilising and communications functions for both Services<sup>2</sup>.

## Request and response

---

7. On 11 October 2016, the complainant wrote to ESFRS using the 'whatdotheyknow' website and requested information in the following terms<sup>3</sup>:

*"I wish to understand how the Sussex Control Centre managed mobilising for the fire at the Selsey Academy on 21 August 2016. To assist me, would you please provide a full copy of the Sussex Control Centre's incident log for this incident.*

*I realise that you may need to redact personal data, in accordance with the FOIA, and that may take a little time. To minimise that time, I will be content if only the first three hours of the log is provided".*

8. Using 'whatdotheyknow', ESFRS forwarded the request, on the same day, to West Sussex County Council. ESFRS told the complainant:

*"Whilst East Sussex deal with the day to day running of the Sussex Control Centre, West Sussex are responsible for the information relating to their area. I have forwarded the request on to the Freedom of Information team for their action".*

9. The complainant objected to that approach and confirmed that his request was made to ESFRS and that he wished ESFRS to respond.
10. ESFRS responded on 9 November 2016. It denied holding the requested information.
11. Following an internal review, ESFRS wrote to the complainant on 12 January 2017, upholding its original position. However, *"in an attempt to*

---

<sup>2</sup> <http://www.esfrs.org/about-us/boroughs-community-fire-stations/sussex-control-centre/>

<sup>3</sup> [https://www.whatdotheyknow.com/request/details\\_of\\_how\\_the\\_sussex\\_fire\\_c#incoming-892926](https://www.whatdotheyknow.com/request/details_of_how_the_sussex_fire_c#incoming-892926)

*make progress*" with the request and having contacted WSFRS, it disclosed a redacted copy of the incident log.

## Scope of the case

---

12. The complainant contacted the Commissioner on 28 February 2017 to complain about the way his request for information had been handled.

13. He acknowledged receipt of the disclosed information but remained concerned that ESFRS had not met their obligations under the FOIA.

14. Regarding the disclosure of the requested information the complainant told the Commissioner:

*"The fact that West Sussex agreed to East Sussex releasing the information further confirms that East Sussex Fire & Rescue Service do have full control of the information".*

15. He told the Commissioner:

*"I believe that the issue turns on who is responsible under the Act".*

16. While recognising the complainant's concerns at the way in which his request for information was handled, the Commissioner is mindful that he has been provided with the requested information.

17. The Commissioner has addressed the matter of the provision of the requested information in 'Other matters', below.

18. The analysis below considers whether ESFRS held information – namely a copy of the incident log - for the purposes of the FOIA and therefore whether it complied with its duty under section 1 of the FOIA.

## Reasons for decision

---

### *Section 1 general right of access*

### *Section 3(2) – information held by a public authority*

19. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.

20. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

*"For the purposes of this Act, information is held by a public authority if—*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority."*

21. In this case, there is clearly some dispute between the public authority and the complainant about who may hold the requested information.

*Is the information held by ESFRS for the purposes of the FOIA?*

22. The Commissioner's guidance "*Information held by a public authority for the purposes of the FOIA*"<sup>4</sup> explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA.

*The complainant's view*

23. The complainant considered that it was the legal duty of ESFRS to provide the information without seeking approval from anyone else.

24. With respect to its explanation as to why it did not hold the requested information, the complainant told ESFRS:

*"The fact that the information sits on another organisation's servers is not, I understand, an exemption under the Act".*

25. In support of his position that the information is held by ESFRS, the complainant explained to the Commissioner why he considered that all obligations related to the operation of the Sussex Control Centre, such as health and safety and employment, must fall on ESFRS. He told the Commissioner:

*"Obligations under the Freedom of Information Act must surely be no different".*

---

<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

*ESFRS's view*

26. Explaining that the requested information was held by WSFRS, not ESFRS, ESFRS told the complainant:

*"West Sussex calls are received via the West Sussex legacy system and the information gathered is held and maintained by West Sussex on their servers. The information relating to the call is therefore held by West Sussex Fire & Rescue Service...."*

27. Responding to his request for a review of its handling of his request for information, and with reference to the Commissioner's guidance 'Information held by a public authority for the purposes of the Freedom of Information Act', ESFRS confirmed that the requested information is not held for the purposes of the FOIA.

28. Explaining its view, ESFRS told the complainant:

*"East Sussex Fire & Rescue Service does enter information received from calls onto West Sussex Fire & Rescue Service's legacy system. None of the information recorded is used for any other purpose other than to record information coming in to enable West Sussex to meet its statutory obligations. East Sussex does not control access to the information, does not decide what information is retained, altered or deleted nor does it deal with enquiries relating to WSFRS information. ..."*

29. In light of the complainant's concerns, during the course of her investigation the Commissioner asked ESFRS to clarify the relationship, if any, between it and WSFRS. ESFRS explained that the two services – ESFRS and WSFRS - are completely separate legal entities, but undertake some work collaboratively. ESFRS told the Commissioner:

*"One of those collaborative projects was the creation of a shared mobilising centre which is positioned in West Sussex, but operated by East Sussex Fire & Rescue Service"*

30. With respect to the systems operated at the centre, ESFRS confirmed that there are two systems:

*"Staff that transferred from West Sussex mobilising centre operate the West Sussex legacy system as East Sussex staff operate the East Sussex systems, there is no cross over or integration"*

*The Commissioner's view*

31. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person.

32. Her guidance explains that there are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA and that the weight attached to each factor will vary from case to case.
33. From the evidence she has seen, the Commissioner is satisfied that the requested information in this case was not held by ESFRS for the purposes of the FOIA. It follows that ESFRS complied with its duty to confirm or deny under section 1 of the FOIA.

## Other matters

---

34. In a situation where a public authority does not hold the requested information, the Commissioner advises<sup>5</sup>:

*"If you don't have the information the requester has asked for, you can comply with the request by telling them this, in writing. If you know that the information is held by another public authority, you could transfer the request to them or advise the requester to redirect their request. Part III of the section 45 code of practice provides advice on good practice in transferring requests for information".*

35. The relevant paragraphs of Part III state<sup>6</sup>:

*"The following paragraphs apply in any case in which a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested, and proposes, in accordance with section 1(1)(a), to confirm that it does not hold that information.*

*If the authority has reason to believe that some or all of the information requested, but which it does not hold, is held by another public authority, the authority should consider what would*

---

<sup>5</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

<sup>6</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

*be the most helpful way of assisting the applicant with his or her request.*

*In most cases this is likely to involve:*

- contacting the applicant and informing him or her that the information requested may be held by another public authority;*
- suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and*
- providing him or her with contact details for that authority”.*

36. In this case, ESFRS appears to have considered that, in light of his objection to the request being transferred to another public authority, the most helpful way to assist the applicant was to respond on its own behalf and to consult with WSFRS and provide him with the information.
37. From the evidence she has seen, the Commissioner considers that ESFRS facilitated the disclosure of the information in accordance with the code of practice.

*Internal review*

38. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
39. The Commissioner expects ESFRS to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

## Right of appeal

---

40. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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 .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**