

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 May 2019

**Public Authority:** Devon and Somerset Fire and Rescue Service  
**Headquarters**

**Address:** The Knowle  
Clyst St George  
Exeter  
EX3 0NW

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a contract for new fire engines. Devon and Somerset Fire and Rescue Service provided some information and withheld the remainder under sections 43(1) and (2) (Commercial interests) and 40(2) (Personal information) of the Freedom of Information Act 2000 (FOIA). Devon and Somerset Fire and Rescue Service also confirmed that it did not hold some of the requested information.
2. The Commissioner's decision is that Devon and Somerset Fire and Rescue Service has appropriately applied section 43(2) to some of the withheld information ie technical drawings. However, she does not consider that section 43(2) is engaged in relation to final evaluation scores. She also considers that DSFRS has applied section 40(2) appropriately to the personal data. The Commissioner also considers that Devon and Somerset Fire and Rescue Service is correct to state that it does not hold some of the requested information.
3. However, the Commissioner considers that Devon and Somerset Fire and Rescue Service has not dealt with question 4 of the request appropriately. She also considers that Devon and Somerset Fire and Rescue Service breached sections 10 (Time for compliance) and 17 (Refusal of a request) of the FOIA.
4. The Commissioner requires Devon and Somerset Fire and Rescue Service to take the following steps to ensure compliance with the legislation.

- Provide the complainant with a complete response to question 4 of his request.
  - Disclose the final evaluation scores.
5. Devon and Somerset Fire and Rescue Service must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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6. On 29 March 2018 the complainant wrote to Devon and Somerset Fire and Rescue Service (DSFRS) and requested information in the following terms:

*"Would you please provide copies of all original documents (reports, risk assessments, trials, studies etc.) held by the Devon & Somerset Fire & Rescue Authority, or Devon & Somerset Fire & Rescue Service, that contain information on the following topics:*

- 1. The justification, rationale, benefits and risks regarding the introduction of Light Rescue Pumps.*
- 2. The justification, rationale, benefits and risks regarding the introduction of Rapid Intervention Vehicles.*
- 3. The justification, rationale, benefits and risks regarding the introduction of Incident Support Units.*
- 4. The risks related to the replacement of full size, conventional pumping appliances with Light Rescue Pumps or Rapid Intervention Vehicles.*
- 5. The intended locations of Light Rescue Pumps and Rapid Intervention Vehicles (including draft documents, if these have yet to be finalised).*
- 6. The impact of the above changes on Retained Duty System crewing at fire stations.*

*I have searched your website, but been unable to find any such documents. However, if any of them are there, then a link to their location will be acceptable in place of the document copy."*

7. DSFRS responded on 26 April 2018. It explained that it needed further time to consider the public interest regarding confidentiality and commercial sensitivity.
8. On 24 May 2018 DSFRS provided its full response as follows.

Questions 1-4: it disclosed some information and withheld some under sections 40 (personal information) and 43 (commercial interests) of the FOIA.

Question 5: it provided the locations it had and confirmed that no other locations had been agreed yet. It cited section 22 (information intended for further publication) of the FOIA in relation to the locations it had not yet agreed on.

Question 6: it answered the question and also provided a link to information that it considered the complainant might find interesting.

9. In his request for an internal review of 3 June 2018, the complainant explained that he did not agree with DSFRS's initial response. He also explained that he had requested: *"copies of all original documents (reports, risk assessments, trials, studies etc"* which included *"the risks related to the replacement of full size, conventional pumping appliances with Light Rescue Pumps or Rapid Intervention Vehicles"*.
10. Following an internal review DSFRS wrote to the complainant on 19 July 2018. It apologised for the delay, disclosed further information and confirmed that it was upholding its application of the cited exemptions. DSFRS also explained that it had not responded to *"copies of all original documents (reports, risk assessments, trials, studies etc"* which included *"the risks related to the replacement of full size, conventional pumping appliances with Light Rescue Pumps or Rapid Intervention Vehicles"* as part of the internal review, as it had not been included in his original request.

## Scope of the case

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11. The complainant contacted the Commissioner on 31 August 2018 to complain about the way his request for information had been handled. He explained that he did not agree with the redactions made or the exemptions cited. He also explained that DSFRS were still referring to its assessment of risk in relation to the vehicles in question and that risk assessments were part of the original request, but had not been provided.
12. In addition, the complainant provided the Commissioner with a link to a press release<sup>1</sup>. He explained that this was the latest reference by DSFRS

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<sup>1</sup> [press release dated 27/09/2018](#)

in which it stated: "the locations are decided based on the risks in that area". The Commissioner notes that the press release occurred approximately six months after the complainant's request for information. She can only take the circumstances at the time of the request into account.

13. The complainant also explained that, at the time of his request, DSFRS had ordered fifteen Rapid Intervention Vehicles and had confirmed the intended locations for four of them. He argued that this meant that there must have been at least four, if not fifteen, risk assessments related to locations, as well as health and safety risk assessments in relation to the new vehicles.
14. During the Commissioner's investigation, DSFRS explained that it was no longer relying on section 22 in relation to question 5. It clarified that it did not hold the requested information in relation to this question.
15. The Commissioner will consider whether DSFRS has applied sections 43(1) and (2) and 40(2) appropriately. She will also consider how it deal with question 4 of the request and whether, on the balance of probabilities, it is correct to state that it does not hold information in relation to question 5.

## **Reasons for decision**

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### **Section 43 – Commercial interests**

16. Section 43(1) of the FOIA provides that:

*"(1) Information is exempt information if it constitutes a trade secret."*

17. The term "trade secret" is not defined in the FOIA. However, in her guidance on section 43 (the guidance)<sup>2</sup> the Commissioner explains that the concept of a trade secret has developed through common law and has a fairly wide meaning. It is information which is not only confidential but also confers a competitive advantage to the owner and therefore requires more protection.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

18. The Commissioner also explains that a trade secret is information which has not been widely disseminated and is not generally known. It is information which a rival could not easily recreate or discover themselves. In this context, disclosure of the information should also be liable to cause real (or significant) harm to the owner or be advantageous to any rivals. It is information which therefore should be accorded a high level of secrecy.
19. A trade secret can be thought of as the property of an organisation. Clauses in employment contracts will often prevent an ex-employee from disclosing a trade secret.
20. A trade secret may be a technical secret or a business secret. A technical secret might be:
  - an invention;
  - a manufacturing process;
  - engineering and design drawings; or
  - a craft/recipe (common in food, pharmaceutical and cosmetic industries);
21. A business secret might be:
  - costs information, such as how much money an organisation spends on product development;
  - pricing information, such as how much a company plans to charge for a product it sells;
  - supplier lists and contact details; or
  - plans for the development of new products / the discontinuance of old products.
22. The Commissioner also considers that even if information falls into one of the above categories, it does not necessarily mean that it will be a trade secret. A business secret in particular is less likely than a technical secret to be considered as a trade secret.
23. Section 43(1) is a class-based qualified exemption which means that if information is a trade secret, there is no consideration of harm or prejudice. However, it is subject to the public interest test.
24. DSFRS explained that it considered that some of the requested information, in this instance technical drawings, constituted a trade secret. It confirmed that it had consulted the winning bidder who had explained that its market sector was especially competitive at the moment. It also explained that it was suffering from plagiarism of its designs and intellectual property rights at the present.

25. In addition, DSFRS explained that the technical drawings were unique designs and not of standard manufacture and were therefore of commercial value to the winning bidder.
26. In her guidance, the Commissioner explains that a trade secret implies that the information is more restricted than information which is commercially sensitive; it involves something technical, unique and achieved with a great deal of difficulty and investment. Although DSFRS has explained that it considers the drawings are unique, it has not explained whether the technical drawings in question were achieved with a great deal of difficulty and investment. The Commissioner is not convinced that the withheld information merits the highest level of protection which the term 'trade secret' would appear to require. Therefore, she is not satisfied that section 43(1) would apply to the withheld information. However, she does consider that the information would be commercially sensitive and therefore she will consider it under section 43(2) of the FOIA.
27. DSFRS has applied section 43(2) to some information:
  - Evaluation scores (which are the final scorings of the bidding process).
28. As explained above, the Commissioner will also be considering the technical drawings under section 43(2).
29. Section 43(2) provides that

*"Information is exempt information of its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."*
30. Section 43 is a prejudice-based exemption. In order to be engaged, the following criteria must be met:
  - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
31. In her guidance the Commissioner explains that "would...prejudice" means that prejudice is more probable than not, ie that there is a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so. "Would be likely to prejudice" is a lower threshold. It means that there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.
  32. As section 43(2) is a qualified exemption, it is subject to public interest considerations.
  33. The term 'commercial interests' is not defined in the FOIA. However, the Commissioner has considered what this means in her guidance: *"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or Service"*.
  34. The withheld information consists of detailed technical drawings of the vehicles in question and evaluation scores of each company who bid for the contract.
  35. The relevant applicable interest cited in this exemption is the prejudice to commercial interests. The Commissioner accepts that the arguments made by DSFRS set out below address the prejudice at section 43(2).
  36. When considering the second point, the Commissioner must be satisfied that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
  37. DSFRS confirmed that it had contacted the winning bidder about disclosure of the requested information. The winning bidder explained that it did not want its documentation to be disclosed as its market sector was especially competitive at the moment and it was suffering from plagiarism of its designs and intellectual property at present. DSFRS provided the Commissioner with a copy of that email exchange. However, the Commissioner notes that the winning bidder was not asked whether it objected to disclosure of DSFRS' final evaluation scores in relation to its bid.



38. DSFRS also confirmed that it had contacted the unsuccessful bidders regarding the present request and their evaluation scores. It explained that these bidders had been informed that their details would be kept in confidence unless they were the successful bidder. However, DSFRS did not provide the Commissioner with any arguments regarding confidentiality. It also explained that these bidders would not want the market to know what they had bid for unsuccessfully. DSFRS argued that disclosure could harm the unsuccessful bidders' commercial reputation and provide bias when bidding for similar work with other organisations.
39. In her guidance, the Commissioner explains that a public authority can withhold information that has been provided by a third party on the basis of prejudice to the commercial interests of that party. However, it must have evidence that its arguments represent the concerns of that third party. It is not sufficient for the public authority to speculate on the prejudice which may be caused to the third party by the disclosure.
40. DSFRS explained to the Commissioner that it had not received responses from all of the bidders concerned. Taking the above into account, the Commissioner does not consider that the second criteria has been met in relation to both the successful and unsuccessful bidders' final evaluation scores.
41. The Commercial therefore considers that section 43(2) is not engaged and will not go on to consider the public interest arguments in relation to the final evaluation scores.
42. With regard to the third point, DSFRS explained that disclosure of the withheld information would harm the commercial interests of the companies dealing with it. The Commissioner considers that this equates to "would prejudice" the commercial interests of the companies dealing with it.
43. The Commissioner notes that, although DSFRS has explained that it considers that disclosure of the winning bidder's technical drawings would prejudice its commercial interests, it has not provided the Commissioner with arguments which demonstrate that disclosure 'would' prejudice the winning bidder's commercial interests.



44. In her guidance on prejudice,<sup>3</sup> the Commissioner explains that cases may arise where an authority claims that prejudice would occur, but she does not accept that this has been demonstrated. In these cases, if the Commissioner considers that the exemption is only engaged on the basis that the prejudice 'would be likely to' occur, she will proceed on that basis.
45. The Commissioner notes that the winning bidder has explained to DSFRS that its market sector was especially competitive at the moment. She also notes that it has confirmed that it was suffering from plagiarism of its designs and intellectual property rights at present.
46. Taking everything into account, the Commissioner is satisfied that the disclosure of the technical drawings would be likely to prejudice the winning bidder's commercial interests. Having accepted that the exemption is engaged in relation to the technical drawings, she will go on to consider the public interest arguments.

### **The public interest test**

47. Section 43(2) is a qualified exemption and is therefore subject to the public interest test; ie whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information with regard to the winning bidder.

### **Public interest arguments in favour of maintaining the exemption**

48. DSFRS argued that the public interest in maintaining section 43(2) outweighed the public interest in disclosure. It explained that although it had disclosed who the winning bidder was and why they had won the bid, it considered that it was not in the public interest to disclose the technical drawings, as they were commercially confidential.
49. DSFRS also explained that the winning bidder had highlighted that there was a significant risk to their ability to compete in the market place should the information be disclosed.
50. Additionally, DSFRS argued that it has been open and transparent. It explained that it has published information about the vehicles on its website. It also pointed out that it had provided public debate at fire

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<sup>3</sup>[https://ico.org.uk/media/for-organisations/documents/1214/the\\_prejudice\\_test.pdf](https://ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf)

authority meetings, had set up social media groups to discuss the vehicles and had a public open day for members of the public to view the vehicles.

51. Additionally, DSFRS explained that it was only withholding information requested by the winning bidder.

### **Public interest arguments in favour of disclosure**

52. DSFRS acknowledged that it was in the public interest to disclose information about the winning bidder.
53. The complainant provided the Commissioner with an exchange of emails he had with the winning bidder. He acknowledged that it concerned a contract with a different public authority but he considered that it was relevant to the present case.
54. The complainant argued that the email exchange confirmed that the winning bidder does not object to contract details being publicly disclosed. He also explained that, although this exchange was in relation to details of a contract with a different public authority, it was quite clear from the email exchange that the winning bidder leaves it to the customer to decide on the extent of public disclosure. He argued that this meant that in the present case, the redactions were not to protect the commercial interest of the supplier, but to help DSFRS to conceal information from public scrutiny.
55. The complainant also argued that the claim that specific measurements, dimensions and technical drawings were a trade secret was nonsense. He explained that such information was regularly made available by these companies as part of their marketing. He provided links to the winning bidder's page, which showed detailed data sheets for each product and the data sheet for the chassis supplied.
56. Furthermore, the complainant argued that the reasons given by DSFRS for the redactions were based on speculation, which were not supported by evidence of potential commercial harm. He explained that proper transparency in relation to dealings between public bodies and commercial organisations is a fundamental measure to help prevent fraud, corruption and other practices that are not in the public interest.
57. The complainant also explained that DSFRS had already published some details in its promotional illustration about the Rapid Intervention Vehicle.

### **Balance of public interest arguments**

58. The Commissioner has considered the public interest arguments from both parties, including the public interest in transparency.
59. She considers that there is a public interest in knowing that fire vehicles are safe and operational.
60. The Commissioner notes the complainant's point regarding the winning bidder's explanation that it is up to its clients to decide how much information they publish. She has considered the email exchange in question and notes that the winning bidder confirmed that it does not publish the detailed nature or composition of its contracts, as it deems them all to be in "commercial confidence".
61. In addition, the Commissioner notes that in the present case, when contacted by DSFRS, the winning bidder considered that its documentation should not be published because of a competitive market and problems with plagiarism of its ideas and intellectual property rights.
62. The Commissioner considers that it is clear that the winning bidder does recognise that some of its information would be commercially sensitive.
63. Furthermore, the Commissioner notes that there is a lot of information already in the public domain, both on DSFRS' and the winning bidder's websites. She considers that this goes some way to satisfying the public interest.
64. The Commissioner also notes the complainant's comments regarding the prevention of fraud, corruption and other practices that would not be in the public interest. However, apart from making these comments, the complainant has not provided the Commissioner with any evidence to suggest that there have been any real concerns about these issues.
65. The Commissioner also gives some weight to the fact that DSFRS has confirmed that it has held public debates at fire authority meetings, set up social media groups to discuss the vehicles and had a public open day for members of the public to view them. She considers that these activities go some way to satisfying the public interest.
66. Taking all of the above into account, the Commissioner is satisfied that section 43(2) has been applied appropriately to the technical drawings in this case and that the public interest is maintaining the exemption outweighs the public interest in disclosure.

## **Section 40 – Personal information**

67. At the time of DSFRS' initial response of 24 May 2018, the relevant legislation regarding personal data was the Data Protection Act 1998 (DPA 1998). The Commissioner will therefore consider DSFRS' application of section 40(2) in relation to the DPA 1998.
68. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and its disclosure would breach any of the data protection principles or section 10 of the DPA 1998.
69. DSFRS has applied section 40(2) to details of junior members of its staff.

### **Is the information personal data?**

70. The definition of personal data is set out in section 1 of the DPA 1998:

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

71. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

### **Would disclosure breach one of the data protection principles?**

72. DSFRS explained to the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

### **Would disclosure contravene the first data protection principle?**

73. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

74. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA 1998 Schedule 2. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

### **Would it be fair to disclose the requested information?**

75. When considering whether disclosure of personal information is fair, the Commissioner takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information:
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

76. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject's rights and freedoms against the legitimate interest in disclosure to the public.

77. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

### **Have the data subjects consented to the disclosure?**

78. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the requested information by any party concerned.

**Have the data subjects actively put some or all of the requested information into the public domain?**

79. Where data subjects have put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
80. In this case the Commissioner has not seen any evidence that any of the data subjects have actively put some or all of the requested information into the public domain.

**Reasonable expectations**

81. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.
82. The requested information, if disclosed, would reveal information about members of staff of the DSFRS. DSFRS explained that the staff in question were not the decision makers and were junior members of staff. It also explained that they would not expect to have their personal details put into the public domain. Additionally, DSFRS explained that these staff were not featured as public contacts and were not part of the public debate.
83. The Commissioner does not accept that disclosing this information would be fair. She also considers that it would be very likely to cause distress to the individuals involved or have an unfair impact on them.

**Consequences of disclosure**

84. In looking at the consequences of disclosure on the data subjects, the Commissioner has considered what they might be.
85. DSFRS explained that it considered that disclosure of the information would have a significant impact on others involved. It explained that it withheld information regarding junior members of staff, as it believed that there may be inappropriate contact and naming of these individuals in the media, due to the way in which its responses had been used in the past. Disclosure of the information about these third parties could clearly have very detrimental consequences.
86. DSFRS also pointed out that it has already disclosed details of the senior members of staff involved in the decision-making process, into the public domain.

87. The Commissioner considers that there is some legitimate public interest in the disclosure of the requested information, especially as it concerns decisions regarding the purchasing of new fire vehicles. However, the Commissioner notes that the DSFRS has disclosed details of the senior staff who were part of the decision making process; she considers this goes some way to satisfying the public interest.
88. The Commissioner also considers that the legitimate public interest is not pressing in terms of knowing the details of junior members of staff who were not involved in that decision-making process.
89. The Commissioner therefore considers that it would clearly be unfair to the individuals concerned to disclose the withheld information related to them. She considers that disclosure would contravene the first principle.
90. The Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA 1998 conditions is met.
91. The Commissioner therefore considers that the section 40(2) exemption is engaged.

#### **Point 4 of the request**

92. The Commissioner notes that DSFRS explained to the complainant that it had not considered the following as part of the internal review as it had not formed part of his initial request for information:

*"copies of all original documents (reports, risk assessments, trials, studies etc.)" which included: "the risks related to the replacement of full size, conventional pumping appliances with Light Rescue Pumps or Rapid Intervention Vehicles."*

93. The Commissioner has considered the wording of the request. She notes that at point 4 of the request, the complainant has requested the information in question. The Commissioner asked DSFRS about this. DSFRS explained that it considered that it had disclosed information to the complainant regarding associated risks, in its initial response.
94. It is not clear whether DSFRS has disclosed relevant risk assessments or not. The Commissioner also notes that DSFRS has stated that the complainant had not requested the information originally; however, as explained above, she considers that the complainant requested risk assessments. She therefore considers that DSFRS will need to reconsider part 4 of the request and provide him with a fresh response to it.
95. DSFRS also confirmed to the Commissioner that it does not hold any information in relation question 5: *"The intended locations of Light*



*Rescue Pumps and Rapid Intervention Vehicles (including draft documents, if these have yet to be finalised)”.*

## **Section 1 – information held/not held**

96. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
97. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments.
98. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
99. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
100. The Commissioner asked DSFRS what searches it had carried out. DSFRS explained information was requested from officers involved in the Rapid Intervention Vehicles project. It confirmed that the information would have been stored in its electronic folders relating to the project and searches undertaken would have identified any relevant documents contained within them.
101. The Commissioner also asked DSFRS if its searches had included electronic data, to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. It explained that no searches were carried out because the locations had not yet been determined.
102. The Commissioner also asked if information was held, would it be held as manual or electronic records. DSFRS explained that the information would have been held in as electronic records.
103. Additionally, the Commissioner asked whether any recorded information ever held relevant to the scope of the complainant’s request had ever been deleted or destroyed. DSFRS confirmed that nothing had been deleted or destroyed.
104. The Commissioner also asked what DSFRS’ formal records management policy says about the retention and deletion of records of this type; if there was no relevant policy, could DSFRS describe the way in which it has handled comparable records of a similar age. DSFRS explained that

it does not hold a records management policy as such. It explained that it has a guidance document which it refers to.

105. The Commissioner also asked DSFRS whether there was a business purpose for which the requested information should be held and if so what that purpose was. DSFRS reiterated that the information was not held because the project was at an early stage.
106. Furthermore, the Commissioner asked whether there was any statutory requirements upon DSFRS to retain the requested information. DSFRS confirmed that there were no statutory requirements for it to hold the requested information.
107. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the DSFRS holds any recorded information in relation to question 5 of the request.
108. The Commissioner is therefore satisfied that, on the balance of probabilities, DSFRS does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

### **Procedural issues**

109. The complainant submitted his request on 29 March 2018. DSFRS did not clarify which exemptions it was relying on until its refusal notice of 24 May 2018. In addition, DSFRS initially relied on section 22 in relation to question 5; however, during the Commissioner's investigation it confirmed that it did not hold the information in question.

### **Section 10 – Time for compliance**

110. Section 10(1) provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
111. The Commissioner considers that DSFRS has breached section 10(1) as it took longer than 20 working days to confirm that it did not hold the requested information in relation to question 5.

### **Section 17 – Refusal of a request**

112. Section 17(1) provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).

113. The Commissioner considers that DSFRS has breached regulation 17(1) as it took longer than 20 working days to clarify which exemptions it was relying on.

### **Other matters**

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114. The complainant requested an internal review on 3 June 2018. DSFRS responded on 19 July 2018.

115. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.

116. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review should normally be within 20 working days of receipt 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.

117. The Commissioner notes that DSFRS did not provide her with any reasons regarding exceptional circumstances. She is concerned that it took approximately 2½ months for it to complete the internal review.

## Right of appeal

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118. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

119. 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.

120. 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**