

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2023

Public Authority: Staffordshire Fire and Rescue Service
Address: Pirehill
Stone
Staffordshire
ST15 0BS

Decision (including any steps ordered)

1. The complainant requested a specified report from Staffordshire Fire and Rescue Service ('SFRS') following the death of a named firefighter. SFRS refused to provide the requested report citing a number of FOIA exemptions, namely section 14(1) (vexatious request), section 22 (information intended for future publication), section 40(2) (personal information) and section 41 (information provided in confidence).
2. The Commissioner's decision is that SFRS correctly applied section 14(1) of FOIA. As he has found section 14(1) to apply, he has not found it necessary to consider the other cited exemptions.
3. The Commissioner requires no steps to be taken as a result of this decision.

Background

4. The complainant made an earlier request to SFRS for the same information (the report) on 22 August 2022 via WhatDoTheyKnow.com. That request was refused under section 31(1) of FOIA (law enforcement) as SFRS said that while the requested report had been concluded, its release at that time could affect the ongoing process. It also said that the report would be released at "an appropriate time".
5. The Commissioner understands that both SFRS and the FBU (Fire Brigades Union) undertook investigations into and made reports about

the death of the named firefighter. The Commissioner notes that the completed FBU report is dated November 2022.

6. SFRS has told the Commissioner that its report has been issued to the widow of the deceased firefighter and that it now needs time to consider the recommendations raised by the FBU in its report and to respond accordingly. SFRS explained that the recent industrial action has had a bearing on its ability to do so.

Request and response

7. On 8 December 2022, the complainant wrote to SFRS, again via WhatDoTheyKnow.com, and requested information in the following terms (the Commissioner notes that the URL provided to the FBU report [see footnote below] which he has previously been able to access seems currently unavailable):

“Following the publication¹ of the FBU SAI [Serious Accident Investigation] report into the death of [a named firefighter] from Covid19, I am asking you again to provide me with a copy of SFRSs [sic] own investigation report into this incident and general Covid policies and safety in the workplaces of Staffordshire Fire and Rescue Service. I note that you previously refused to release your report whilst the FBU report was ongoing and not concluded, now that is no longer the case I expect you to now release your own report in its entirety.”

8. SFRS responded on 9 January 2023. It refused to provide the requested report, citing the following exemptions:
 - Section 14(1) - Vexatious or repeated requests
 - Section 22 - Information intended for future publication
 - Section 40(2) - Personal data
 - Section 41 - Information provided in confidence
9. That same day, the complainant requested an internal review.

¹ https://1drv.ms/w/s!Aswz-Sg_ECmrgS3Tf0E3izBvsb3H?e=5HFfs4

Scope of the case

10. The complainant initially contacted the Commissioner on 5 December 2022 to complain about the way his request for information of 22 August 2022 had been handled.
11. On reviewing the case correspondence, the Commissioner noted that the follow-up request of 8 December 2022 had since been made by the complainant and that SFRS had also revised its position. He, therefore, contacted the complainant to agree the way forward and subsequently also spoke to SFRS.
12. It was agreed between all the parties that the Commissioner's investigation would focus on the later request of 8 December 2022. SFRS was not required to complete the requested internal review given that it had advised the Commissioner it did not intend to amend its stance. Additionally, SFRS had cited section 14(1) of FOIA in its refusal notice and warned that a further response would not be provided in accordance with sections 17(5) and (6) of FOIA.
13. The Commissioner has first considered whether SFRS was entitled to refuse the request of 8 December 2022 on the grounds that it was vexatious.

Reasons for decision

Section 14(1) – vexatious requests

14. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
15. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance² on section 14(1) states, it is established that this exemption is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

16. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
17. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
18. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal ('UT') in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield*³ [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield").
19. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
20. The Dransfield case established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
21. The four broad themes considered by the UT in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
22. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated that "all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

³ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

The complainant's view

23. The complainant has explained that he was the former FBU Secretary and is also an ex-employee of FBU. He stated he has reason to believe that SFRS is a "corrupt" organisation.
24. He wanted it noting that he only submitted the later follow-up request of 8 December 2022 because of SFRS' response to his earlier request of 22 August 2022.
25. The complainant strongly objects to section 14(1) being cited. He highlighted that there is a legal time limit for the surviving partner of the deceased firefighter to take action should she intend to. However, the Commissioner is mindful that SFRS has now provided the withheld report to the firefighter's widow.

SFRS' view

26. In its submission to the Commissioner, SFRS set out that in corresponding with the complainant:

"In the past 13 months, 20 FOI requests or clarifications (not including refinements) and nine requests for internal reviews have been received, many of which are a variation on a theme, but we have responded to those taking our responsibilities seriously."

27. SFRS provided the Commissioner with a history of the complainant's FOI requests including the dates, subject matter and how it had handled those requests. SFRS has explained that it is a small, mainly rural based, emergency service which does not have the resources that other larger organisations have. It has one member of staff who mainly oversees FOIA and Data Protection Act ('DPA') requests, and usually receives approximately ten requests a month, mostly being for statistical data.
28. The Commissioner notes that in addition to the 20 FOIA requests made by the complainant from 19 October 2021 to the current request of 8 December 2022, that the complainant has also submitted nine requests for internal reviews and nine right of access requests under the Data Protection Act ('DPA') 2018. Although the DPA requests cannot be counted for FOIA purposes, the Commissioner has included SFRS' reference to them here to demonstrate the overall picture of the complainant's request-making history.
29. SFRS said that the complainant's requests' disproportionately require a significant amount of its available resource, place a burden upon the organisation, and makes its ability to respond to other requests more

difficult. It said that the complainant's requests are also causing significant distress, feelings of harassment and a feeling of being "worn down" by the actions of the complainant.

30. SFRS said it has expended considerable time and effort into responding to the recurring and repetitive themes of the complainant's requests relating to the issues raised. Given this, SFRS maintains that the complainant's requests are disproportionate and not a fair use of process under the legislation.
31. SFRS explained that the information already provided to the complainant has not always been used in the way intended by FOIA, including him releasing individuals' personal data adversely affecting their rights and freedoms. SFRS gave an example of the complainant having released the personal data of former senior staff where he had repurposed anonymised data, appended their personal identifiable information to it and released the same on social media to a Facebook group of over 7500 people. SFRS stated that this has caused distress to those individuals, which has been communicated to it through the national Fire Leaders' Association and through direct contact. SFRS told the Commissioner that this is not an isolated act.
32. SFRS maintained that the complainant is unreasonably persistent, attempting to re-open issues which it has already addressed, and which the complainant has then raised with other individuals. It said that this is demonstrated by the complainant's use of social media messaging and platforms and him undertaking personal character attacks on employees of SFRS causing feelings of harassment and distress.
33. SFRS maintain that many of the requests overlap, are simply repeats of previous requests or relate to similar issues that have already been addressed. SFRS said that, in some cases, the complainant has also made the same requests to the Police Fire and Crime Commissioner ('PFCC') but that as SFRS is the respondent for the Fire and Rescue Authority, the requests are referred to it to respond to. It explained that, despite the complainant having been informed that he should redirect his request to SFRS, he has continued to refine and ask further questions to the PFCC.
34. SFRS also submitted some additional supporting arguments in confidence as to why it considers that section 14(1) applies. The Commissioner will not reproduce those arguments here but has taken them into consideration in reaching his decision in this case.

The Commissioner's view

35. In cases where a public authority is relying on section 14(1), it is for that public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
36. In accordance with his guidance, the Commissioner has taken a holistic and broad approach in this case. He has considered the history of the complainant's dealings with SFRS and his persistence in making requests on similar themes in a short period of time to what is essentially a very small team with limited resources. He has also taken the complainant's actions regarding the release of some of the information on his social media platforms into account, together with the arguments submitted in confidence by SFRS.
37. With respect to the value and purpose of this particular request, the complainant's concern seems to be around enabling the widow of the deceased firefighter the opportunity to take legal action before the deadline. However, if she wished to do so this aspect has already been facilitated by the release of the requested report to her by SFRS (presumably, she could also share this with the requester if she wished to have his assistance). The Commissioner is aware of the complainant's view that SFRS is corrupt but also notes that SFRS has previously provided the complainant with the majority of the information he has requested.
38. The Commissioner recognises the sensitivity of the current issue, but has taken into account SFRS' commitment to transparency as evidenced by its intention to publish the requested report once it has been able to properly consider and respond to the FBU recommendations.
39. It is also noted that public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

Conclusion

40. In reaching a decision in this case, the Commissioner has taken into account that section 14(1) of FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
41. The Commissioner is not aware that complying with the request, in isolation, would cause a disproportionate or unjustified level of disruption. In this case, the ongoing burden placed on SFRS and issues

of harassment and distress to members of staff, are the significant factors which make the request vexatious.

42. On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner is satisfied that the request was a manifestly unjustified and improper use of FOIA such as to be vexatious.
43. Accordingly, he is satisfied that SFRS was entitled to apply section 14(1) of FOIA.
44. As he has found that section 14(1) has been properly relied on, the Commissioner has not deemed it necessary to consider the other FOIA exemptions cited by SFRS.

Right of appeal

45. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

46. 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.
47. 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

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