

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about fire inspections and copies of fire inspection reports from East Sussex Fire & Rescue Service ("ESFRS"). ESFRS provided some information about fire inspections but refused to provide any fire inspection reports. It did not cite any exemptions.
2. The Commissioner's decision is that, in failing to properly address the request, ESFRS has breached section 17(1) of FOIA. He requires ESFRS to take the following steps to ensure compliance with the legislation:
 - either disclose the fire inspection reports or issue a refusal notice, which complies with section 17 of FOIA, clearly explaining why they are exempt from disclosure.
3. ESFRS 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

4. On 10 April 2023, the complainant wrote to ESFRS and requested the following information:

“1. I would like to know a rough number of properties that are covered by the requirements for East Sussex Fire & Rescue service to carry out a Fire Inspections [sic] e.g. businesses, NHS, local government, shops, cafes etc in Brighton and Hove.

2. The number of Fire Inspections carried out in Brighton and Hove for the period of the 1 January 2023 to the 31 March 2023.

3. Copies of fire inspection reports for Brighton and Hove covering the period of the 1 January 2023 to the 31 March 2023”.

5. On 10 May 2023, ESFRS responded. In respect of part (1) it provided some information. It also advised the complainant:

“We know that our database is not 100% accurate, that is why we are about to upgrade to a better populate [sic] database that is fed from the ‘blue light gazetteer’. This is the same data that is used by our control room. This upgrade is due to take place in June this year, so not far away. At that point we will have a more accurate database to inform our interactions.”

6. In respect of part (2), it provided numbers.

7. In respect of part (3), it advised:

“We do not usually provide copies of informal notices as these are between the enforcement authority and the responsible person and promote trust between both bodies. Any serious failings will be dealt with by issuing a formal notice a day [sic] these can be found on our public register of notices ...

We are always willing to consider requests for the release of informal notices on a case by case basis”.

8. The complainant requested an internal review on 5 June 2023. When doing so, he made various comments in respect of each part of his request.

9. In respect of part (1), he commented that the data was “far from accurate” and added that he hoped to receive a new and up-to-date copy of the premises in Brighton and Hove when the data was available.

10. In respect of part (2), he commented that there was a broken link on the website and that there were issues because the information provided differed from the website Enforcement Notices. He said: "Provide me with an updated listing and explain why there are differences between the information supplied and what is on the website?"
11. In respect of part (3), he asked to have the information provided as he considered this would be in the public interest.
12. ESFRS provided an internal review on 14 June 2023. It said it had reviewed all the information it had disclosed and was satisfied that it had met its obligations under FOIA. It added that the points which the complainant had raised in his more recent communication required explanations, rather than being requests for recorded information.

Scope of the case

13. The complainant contacted the Commissioner on 21 July 2023, to complain about the way his request for information had been handled. He referred only to the Fire Inspection reports at part (3) of his request, saying that he did not agree with ESFRS' position regarding their disclosure. He said:

"I do not see why this should be on a case-by-case basis if you consider a fire inspection report

1. There were no issues so why should the public not be aware that an inspection has been carried out and no issues found, this will provide the public with reassurance that the premise is safe.
2. Minor issues found again the public should be aware of these issues and they can then decide if they wish to visit the premises.
3. Major issues then an enforcement notice will be issued and that is on the web site for the public to see.

So could I please ask you to provide the requested information".

14. The Commissioner will therefore consider EFRS' response to part (3) of the request below.
15. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held

by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

16. The Commissioner has viewed the withheld information.

Reasons for decision

Application of exemptions

17. At the start of his investigation, the Commissioner had a meeting with ESFRS to consider this request. When doing so, he requested copies of the withheld information for his consideration, which were duly provided. He also commented that ESFRS had not actually applied any exemption to the withheld reports, having only told the complainant that they would not be disclosed.
18. In its subsequent response to him, ESFRS advised as follows:

"Audit activity carried out by the Fire and Rescue Service is one that treads a fine line between advisory and enforcement activity. The audits work on a principle that the audit is confidential and any information given by the Responsible Person [RP] will be used by the FRS to enable us to provide accurate advice and to ensure the safety or [sic] relevant persons. Should this information be at risk of being released to the public via a FOI request, we would need to make this clear to the RP before the audit starts. This is likely to result in the RP being less forthcoming with information. This will place people at greater risk than is the case now.

There is also the risk that information gained from these audits could be used for commercial purposes or to gain commercial advantage by competitors. It is for this reason that the FRS feel the exemption within the FOI regarding commercially sensitive information is valid.

The FRS have powers to issue formal notices when the level of risk within a premises is significant enough. When this happens in a public building or publicly accessible building, we are obliged under the 'Environment and Safety Information Act 1988', to publish these formal notices on a public register. We are not required to issue informal notices under this Act as it is deemed to not be of significant risk to the public and it is not proportionate to release it. Therefore it is our view that this legislation already provides a degree of proportionality in releasing information to the public.

Finally, the release of information may impact the ability for the FRs to carry out its prosecution activities. It is suggested that the exemption within the FOIA regarding legal cases is appropriate when the FRS are minded or are in the process of carrying out legal investigations into a premises or an RP”.

19. Whilst this response alludes to a number of exemptions within the FOIA legislation, none have been clearly cited and a full explanation has not been provided.
20. It is not for the Commissioner to speculate or ‘fill in the gaps’ for inadequate submissions and it is not the Commissioner’s role to go through the withheld information in this case to consider whether or not any of the suggested exemptions may apply to the individual reports. Accordingly, the Commissioner’s decision is that ESFRS has not demonstrated which, if any, exemption(s) may be properly engaged with regard to the inspection reports.
21. ESFRS is required to take the step in paragraph (2) above.
22. It may assist ESFRS to consider the Commissioner’s guidance relating to sections 36¹, 43² and 30³ of FOIA as these have been alluded to its response.

Procedural matters

23. Whilst ESFRS provided the complainant with some information in response to his request, it failed to issue a valid refusal notice in relation to part (3) of the request. It did not cite any exemptions and it failed to convey any public interest arguments. As a result, the Commissioner has found breaches of sections 17(1)(a), (b) and (c) of FOIA.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

³ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

24. These breaches will be logged for monitoring purposes.
25. The Commissioner recommends that ESFRS refers to his guidance on compliance with section 17⁴ when taking the steps in paragraph (2).

⁴ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-17-refusing-a-request-writing-a-refusal-notice/>

Right of appeal

26. 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

27. 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.
28. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF