

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2018

Public Authority: London Fire Brigade

Address: infoaccess@london-fire.gov.uk

Decision (including any steps ordered)

1. The complainant requested from London Fire Brigade (LFB) information relating to the Grenfell Tower fire. LFB refused the request under the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) of the FOIA.
2. The Commissioner's decision is that LFB cited section 31(1)(a) correctly so it was not obliged to disclose the requested information.

Request and response

3. On 20 June 2017 the complainant wrote to LFB and requested information in the following terms:
"1. A list of all attendance by LFB units or personnel at Grenfell Tower, W11 between June 14th and June 17th 2017. Where possible this should include (but not be limited to):
 - a. Incident type*
 - b. Appliance description*
 - c. Time mobilised/returned*
 - d. Number of LFB personnel involved*
 - e. All other information recorded in relation to the event which does not contravene Data Protection requirements*

2. *A list of all calls received by the LFB in relation to or in the vicinity of Grenfell Tower, W11 between June 14th and June 17th 2017. This should include:*
- a. Date and time of call*
 - b. Response time*
 - c. All other information as recorded by the LFB Control Room which does not contravene Data Protection requirements".*
4. LFB responded on 17 July 2017. It refused the request and cited the exemptions provided by the following sections of the FOIA:
- 31(1)(a) (prejudice to the prevention or detection of crime)
 - 31(1)(b) (prejudice to the apprehension or prosecution of offenders)
 - 31(1)(c) (prejudice to the administration of justice)
5. The complainant responded on 27 October 2017 and requested an internal review. LFB responded on 22 November 2017 with the outcome of the review, which was that the refusal of the request under the exemptions cited previously was upheld.
6. LFB also referred in the internal review response to a possibility that some of the requested information may have been available on bbc.co.uk/news and stated that *"to this extent, section 21 is engaged"*.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2017 to complain about the refusal of his information request. The complainant argued that the exemptions cited by LFB had not been applied correctly and that the information he had requested should be disclosed.
8. In relation to its mention of section 21 (information accessible to the applicant by other means) of the FOIA, when in correspondence with the Commissioner LFB identified the information falling within the scope of the request that was available in the public domain¹. This is a small excerpt of the whole and the view of the Commissioner is that this does
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¹ <http://www.bbc.co.uk/news/uk-40535417>

not have any significance on the reasoning for citing section 31, as covered below. LFB should be aware, however, that when citing section 21 it should specify to the requester about what information is available in the public domain, and where.

9. In this case the Commissioner has not viewed the withheld information. LFB described practical difficulties in supplying to the Commissioner a copy of the withheld information. Whilst the Commissioner could have compelled LFB to supply it, her view was that the arguments in this case concerned the overall nature of the withheld information and the circumstances to which it relates and, therefore, it was possible to properly assess the factors for and against disclosure without having sight of the withheld information.
10. On 13 October 2017 the complainant made another information request to LFB, that was near identical to the request above. Whilst the scope of this notice does not cover the request of 13 October 2017, the Commissioner's view is that it is very likely that the outcome of this decision notice would be unchanged had it covered that later request.
11. LFB confirmed to the Commissioner that it held information falling within the scope of each part of the request. The following analysis covers the entirety of that information.

Reasons for decision

Section 31

12. LFB cited sections 31(1)(a), (b) and (c) of the FOIA. Section 31(1)(a) provides an exemption for information the disclosure of which would, or would be likely to, prejudice the prevention or detection of crime. Section 31(1)(b) provides a similar exemption in relation to the apprehension or prosecution of offenders and section 31(1)(c) in relation to the administration of justice.
13. These exemptions are qualified by the public interest, which means that considering them involves two stages; first the exemption must be engaged as prejudice relevant to the exemption would be at least likely to result. Secondly the balance of the public interests must be considered. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
14. Covering first whether the exemptions are engaged, for the Commissioner to accept that prejudice would be likely to result, there must be a real and significant likelihood of that outcome occurring,

rather than it being a remote possibility. The Commissioner has focussed on section 31(1)(a), meaning that the issue here is whether disclosure of the withheld information would result in a real and significant risk of prejudice to the prevention or detection of crime.

15. The reasoning of LFB concerned prejudice to the work of the police and of the Grenfell Tower Inquiry. The Commissioner has concentrated here on what the outcome of disclosure would be to the work of the police. In summary, the reasoning of LFB was that disclosure of the requested information would be likely to prejudice the criminal investigation being carried out by the police into the Grenfell Tower fire.
16. The Commissioner notes first that this reasoning is relevant to section 31(1)(a). The next step is to consider whether this prejudice is a likely outcome from disclosure of the information requested by the complainant.
17. LFB's reasoning concerned the preservation of a space for the police investigation to be carried out. The Commissioner accepts this argument in principle; it is the case that disclosing into the public domain hitherto confidential information relating to an ongoing police investigation could be prejudicial to that investigation. The issue here is whether disclosure of the specific information in question would create a real and significant likelihood of harm to the police investigation into the Grenfell Tower fire.
18. The relevance of the information held by LFB to the police investigation would be its possible use as evidence in that investigation. LFB acknowledged that at the time of the request it was not aware of precisely what information the police would use as evidence. The Commissioner's view is that there is clear potential for any of the information falling within the scope of the complainant's requests to be used as evidence in the Grenfell Tower fire investigation and it is also reasonable to expect that this information, which records the actions of LFB in relation to that event, will form key evidence in the investigation.
19. There is clear potential for disclosure into the public domain of evidence relevant to an ongoing investigation to cause prejudice to that investigation. Most notably, persons of interest to that investigation would be able to access the information, with the possibility that they may as a result seek to take steps to evade the investigation. Action of that kind that would make the job of the police more difficult could constitute prejudice to the prevention or detection of crime.
20. Disclosure of evidence, particularly in relation to an investigation of such high profile as in this case, may result in the police being placed under pressure to investigate in a particular manner, such as by pursuing particular lines of enquiry, by third parties including the media. This is

relevant to the point made in the Commissioner's guidance on section 31² and referred to by LFB in its correspondence with the Commissioner that investigators need a private space for their work. The erosion of that space by disclosing a potentially large amount of key evidence into the public domain could result in prejudice relevant to section 31(1)(a).

21. In recognition of the very high profile of the police investigation into the Grenfell Tower fire and the likely key nature and significant volume of evidence that the withheld information consists of, the Commissioner's view is that disclosure of this information would result in a real and significant likelihood of prejudice to that investigation. The exemption provided by section 31(1)(a) is, therefore, engaged.
22. Having found section 31(1)(a) engaged, the next step is to consider the balance of the public interests. In forming a conclusion here the Commissioner has taken into account the general public interest in the openness of LFB, as well as specific factors that apply in this case.
23. Covering first factors in favour of disclosure, the Grenfell Tower fire and the police investigation relating to it are clearly matters of legitimate and very strong public interest. As well as resulting in the deaths of 72 people and in injury and loss of homes for many more, the Grenfell Tower fire raised serious concerns about the safety of numerous other high-rise blocks of flats, and about responsibility for the severity of the fire. The information in question here, which records the actions of LFB in relation to the fire, is in particular directly applicable to the latter point; responsibility for the severity of the fire and its impact.
24. The Commissioner's view is that there is a very strong public interest in favour of disclosing the information in question. LFB was clearly one of the key actors in the events of the Grenfell Tower fire. The requested information, which amounts to all information held by LFB relating to the fire, forms one of the key records of that event. Disclosure of that record would add very substantially to public knowledge and understanding of that event. The subject matter of this information means that there is public interest in favour of its disclosure of very significant weight.
25. Turning to factors in favour of maintenance of the exemption, the subject matter of the information is also highly relevant here. Section 31(1)(a) exists in order to protect criminal investigations from prejudice.

² <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

In finding that the exemption was engaged, the Commissioner accepted that prejudice to a criminal investigation would be a likely outcome from disclosure of the requested information. The issue here is how much weight the avoidance of that prejudice should carry as a public interest factor.

26. The Commissioner considers it clear that there is an extremely weighty public interest in avoiding prejudice to the investigation of the Grenfell Tower fire. The Commissioner has noted above the significance and impact of that event, and the importance the withheld information has as a record of that event. That the police investigation into the Grenfell Tower fire is able to accurately identify any associated criminal responsibility is of utmost public interest. That investigation was in its earliest stages at the time of the request and at the date of this notice remains ongoing and is expected to continue for some time. Having noted above the key record of events relating to the Grenfell Tower fire that the withheld information would form, it must also be recognised that this information, or at least parts of it, is also likely to be key to the police investigation. The public interest in avoiding prejudice to the police investigation into the Grenfell Tower fire is a factor in favour of maintenance of the exemption of very great weight.
27. In conclusion, the Commissioner has recognised very weighty factors on both sides of the balance. She views this as a case where the factors for and against disclosure are finely balanced. In correspondence with the Commissioner, LFB referred to the Grenfell Tower Inquiry and how its proceedings and its findings will be made public. The terms of reference of that Inquiry include "*the response of the London Fire Brigade to the fire*". Whilst the Commissioner did not have sufficient evidence to make a finding that the requested information was exempt by virtue of section 22 (information intended for future publication) of the FOIA, she has taken into account that much and possibly all of that which can be learned from the withheld information will be made public at some future date by the Inquiry.
28. A decision in this notice to withhold the information now will not necessarily mean that this information will be permanently withheld. A decision in favour of disclosure, however, may result in prejudice to the ongoing police investigation that would be irreparable.
29. As a result, the Commissioner's view is that the public interest in avoiding prejudice to the ongoing police investigation into the Grenfell Tower fire tips the balance in favour of maintenance of the exemption. Her conclusion is, therefore, that the public interest in maintenance of the exemption outweighs the public interest in disclosure and so LFB was not obliged to comply with the complainant's request.

30. In view of this finding on section 31(1)(a), it has not been necessary to go on to also consider sections 31(1)(b) and (c) of the FOIA.

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: <http://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

Ben Tomes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF