

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 February 2019

**Public Authority:** London Fire Brigade  
**Address:** 169 Union Street  
London  
SE1 0LL

#### Decision (including any steps ordered)

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1. The complainant has requested information about a specific fire risk assessment. London Fire Brigade explained that it does not hold the requested information.
2. The Commissioner's decision is that London Fire Brigade is correct to state that it does not hold the requested information. However, the Commissioner considers that London Fire Brigade has breached sections 10 (Time for compliance) and 17 (Refusal of a request) of the FOIA.
3. The Commissioner does not require London Fire Brigade to take any further steps as a result of this decision.

#### Background

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4. London Fire Brigade (LFB) explained to the Commissioner that it does not carry out fire risk assessments at any property; its role is to enforce fire safety laws. Where it believes that there are shortcomings in fire safety provisions within a building, it can work with the 'responsible person' (in this case a charitable housing association called Look Ahead) to ensure that they are put right; it can also take enforcement action to make changes happen.
5. LFB also explained that it would only audit whether or not a building was compliant with the law. Additionally, it explained that it has limited resources and it may not go to every building in London. It plans its audit visits on the basis of perceived risk, which may include where it

has had interactions with, for example: tenants, occupants, managers, or landlords.

6. Additionally, LFB explained that the lack of clarity on what safety information should be accessible is one of the issues being investigated by the Grenfell Tower Inquiry and in reviews being carried out by the government.

## **Request and response**

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7. This request is linked to other related requests made by the complainant to LFB.
8. On 17 January 2018, the complainant wrote to LFB and requested information in the following terms:

“Can you tell me if [name redacted] carried out a Fire Risk Assessment of my property, or an inspecting officer’s report?”
9. LFB responded on 6 February 2018. It explained that, following a complaint received directly from Paddington fire station in January 2016, a fire safety audit had been carried out at which resulted in a notification of (fire safety) deficiencies (NOD) being issued to the responsible persons. LFB explained that it had attached a copy of this.
10. In his request for an internal review of 7 February 2018, the complainant complained about LFB’s response to him and also submitted additional questions.
11. Following an internal review LFB wrote to the complainant on 7 March 2018. It appeared to treat the additional questions as clarification of the original request of 17 January 2018 and answered them. It also explained that in relation to audit forms, in this case the inspector’s report, it was withholding the report under section 30 (Investigations and proceedings) of the FOIA.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 22 August 2018 to complain about the way his request for information had been handled.

13. During the Commissioner's investigation, LFB explained that it should have cited section 31 (Law enforcement) of the FOIA rather than section 30 in relation to the second part of the request.
14. The Commissioner asked LFB whether it held the requested fire risk assessment. LFB confirmed that it did not hold the requested fire risk assessment but did have a copy of the inspector's report which it subsequently disclosed to the complainant.
15. The Commissioner will therefore consider: whether LFB is correct to state that it does not hold the requested fire risk assessment; and the time taken to deal with the request.

## **Reasons for decision**

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

16. 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.
17. 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.
18. 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.
19. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
20. The Commissioner asked LFB what searches it had carried out. LFB explained that it only held electronic fire safety files which included documents from 2011 when the e-fire safety files (Sharepoint) solution was introduced. It also explained that case officers are required to save documents to relevant files, which are property based. LFB confirmed that the relevant file in this case contained nine documents and that most of these documents were emails with no file or email attachments containing a fire risk assessment carried out by (or on behalf of) Look Ahead. LFB also explained that there was a file with the same file number on its fire safety system (Faynor) which contained audit forms completed by inspecting officers; it confirmed that it did not contain any fire risk assessment completed by (or on behalf of) Look Ahead. It also confirmed that there was no requirement for it to obtain or hold a copy of a fire risk assessment on the property in question.

21. The Commissioner also asked LFB 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. LFB explained that its search consisted of a manual viewing of the e-fire safety file and the relevant file on its Faynor system.
22. Additionally, the Commissioner asked LFB if the information were held, would it have been held as manual or electronic records. LFB reiterated that it only held electronic files.
23. The Commissioner also asked LFB whether any information ever held that was relevant to the scope of the request had been deleted or destroyed. LFB explained that no records held electronically had been destroyed since the systems were established. It confirmed that there were ongoing discussions about retention periods, particularly in light of the Dame Judith Hackett Review (after the Grenfell Tower fire) on the maintenance of a premises file for the life of a building.
24. The Commissioner asked LFB what its formal records management policy said about the retention and deletion of records of this type. LFB explained that its management policy and retention schedules (LFB policy 879) specifies a six year retention period of papers in an electronic fire safety file. It also reiterated that no electronic files have been destroyed since the systems were established and, as explained above, there is an ongoing review of retention periods.
25. Furthermore, the Commissioner asked whether there was a business purpose for which the requested information should be held. LFB explained that there is a business purpose for it to maintain proper records of its work in implementing fire safety law. It also reiterated that all paperwork in relation to the request is held electronically in the systems described above.
26. The Commissioner also asked whether there was a statutory requirement for it to retain the requested information. LFB confirmed that there is no specific statutory requirement placed upon it regarding the retention of records. It explained that generally, it follows records management best practice regarding retention periods and has relied on a document produced in 2003 by the Local Government Group of the Records Management Society of Great Britain called "Retention guidelines for local authorities" which includes fire related records. It explained that this provides a two year retention for 'enforcement' notices and seven year retention for papers related to compliance inspections.
27. Taking everything into account, the Commissioner does not consider that there is any evidence that show that LFB holds the requested fire risk assessment.

28. The Commissioner is therefore satisfied that, on the balance of probabilities, LFB does not hold the requested fire risk assessment. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

### **Procedural issues**

29. The complainant submitted his request on 17 January 2018. LFB did not confirm that it did not hold the requested information until during the Commissioner's investigation.

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

30. Section 10(1) of the FOIA 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.
31. The Commissioner considers that LFB has breached section 10(1) as it took longer than 20 working days to confirm that it did not hold the requested fire risk assessment.
32. In relation to part 2 of the request, the Commissioner notes that LFB initially relied on section 30 but explained to her that it should have cited section 31.

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

29. 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).
30. The Commissioner considers that LFB has breached regulation 17(1) as it took longer than 20 working days to inform the complainant that it was relying on an exemption and did not cite the correct exemption until the Commissioner's investigation.

### **Right of appeal**

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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,

Reference: FS50767007



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)

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 .....**

**Jon Manners  
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