

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 December 2022

Public Authority: Merseyside Fire and Rescue Authority

Address: Fire Brigade Headquarters

Bridle Road

Bootle

L30 4YD

Decision (including any steps ordered)

1. The complainant requested from the Merseyside Fire and Rescue Service ("the MFRS"), information relating to a fire at an Energy Storage Site (BESS) on Carnegie Road, Liverpool. The MFRS disclosed some of the requested information, applied section 43 of the FOIA (commercial interests) to withhold some correspondence, and clarified that other information is not held by it. During the Commissioner's investigation it changed its view and applied Regulation 12(4)(a) (information not held) and Regulation 12(4)(d) (information still in the course of completion) of the EIR.
2. The Commissioner's decision is that the MFRS has disclosed the requested reports, that it was correct to apply Regulation 12(4)(a) to the request for a Fire Management Plan which it does not hold, and that it was correct to apply Regulation 12(4)(d) to withhold copies of correspondence relating to the reports.
3. The Commissioner does not require the MFRS to take any steps.

Request and response

4. On 13 January 2021 the complainant made the following request for information:

"Please can you tell me when the report will be available on the BESS fire at Carnegie Road Liverpool in Sept 2020,"

5. The MFRS informed him that the investigation into the incident was ongoing, and that it would contact him when this was completed.

6. Having still not received a copy of the report, the complainant followed this up with a request for it to be provided on 26 November 2021. He also asked for:

"My request is that Merseyside Fire and Rescue Service now provide me with all of the correspondence under the FOI since September 2020 to Nov 2021 between your office and that of Orsted and if need be with the Chair of the NFCC with a covering report from yourself as the Chief Fire Officer."

7. He made a further request on 29 December 2021 for:

"Please include with the documents you send under the FOI the fire management plan agreed by Orsted and MFRS at the time of commissioning and advise me please if since the fire in September 2020 has the battery installation remained closed....

...I expect to receive on that day;

The complaint investigation report

The MFRS report on the BESS fire

All correspondence requested under the FOI"

8. The MFRS said that the reports it was producing had not yet been completed, but would be published once they had. It subsequently disclosed a copy of the Significant Incident Report and the Fire Investigation Report to the complainant in March 2022. It withheld the relevant correspondence on the basis section 43 of FOIA applies (commercial interests).
9. It also said that no information was held falling within the complainant's request for the fire management plan, and confirmed to the Commissioner that no covering report from the Chief Fire Officer exists.

10. The complainant followed up the disclosure of the reports by making a further request, on or around 11 July 2022. This was for a copy of the initial version of one of the Fire Investigation Reports. He had been informed that this had been finalised in 2021, however the disclosed version was dated February 2022.
11. During the course of the Commissioner's investigation, the Commissioner highlighted to the MFRS that the information was likely to be environmental information, and that it should have been considered under the EIR, rather than under FOIA. The MFRS agreed, and therefore applied Regulation 12(4)(a) to the request for a copy of the Fire Chief Officer's report and the Fire Management Plan, and Regulation 12(4)(d) to withhold the information previously withheld under section 43.

Reasons for decision

Background to the request

12. The request relates to the actions and reports produced by the MFRS regarding a fire at an electrical unit at Carnegie Road Liverpool on 15 September 2020¹. The site is owned by Orsted.
13. The MFRS stated that no fire management plan, and no covering report by the Chief Officer is held. This is considered under the analysis of Regulation 12(4)(a), below.
14. The complainant requested a copy of the correspondence between Orsted and the MFRS, and a copy of the initial version of the Fire Investigation Report. The MFRS applied Regulation 12(4)(d) to withhold this information. The Commissioner has considered this in his analysis of Regulation 12(4)(d), below.

Is the information environmental information

15. The following section of this decision analyses why the requested information is environmental information for the purposes of the EIR.
16. Regulation 2(1)² provides the definition of environmental information for the purposes of the EIR.

¹ <https://www.liverpoolecho.co.uk/news/liverpool-news/live-updates-fire-rips-through-18934842>

17. The withheld information relates to the reports, which detail a fire at an energy storage plant, and includes details of the causes, the damage caused by the fire and details of the emissions from the fire.
18. The Commissioner is therefore satisfied that the report falls within the definition of environmental information for the purposes of the EIR under Regulation 2(1)(a), 2(1)(b) and Regulation 2(1)(f).

Regulation 12(4)(a) – information not held

19. The following section analyses whether a copy of the Fire Management Plan or a covering report from the Chief Fire Officer is held by the MFRS.
20. The MFRS stated that it does not hold a Fire Management Plan as there is no requirement for it to hold such a document. It said that:

“A Fire Management Plan is a document produced by the premises which details the arrangements for fire safety implementation and how they will be maintained. The premises (or the person in control of the premises – the Responsible Person) are legally responsible for the Fire Management Plan.”

21. It clarified that the Fire and Rescue Service would not routinely request copies, and that there is no duty on the Responsible Person to provide them.
22. It said that it had nevertheless conducted searches to determine whether this information was held, however it had not located a copy of this document.
23. It said that it had carried out searches of its Protection (the team that deals with legislative fire safety) CFRMIS (Community Fire Safety Management Information System) records, its SOPTLOGIC legacy system and its networked folders. Searches had also been carried out by staff members.
24. It said that it was confident that no relevant paper records are held as older records have been scanned and added onto its electronic network systems.
25. It confirmed that no fire management plan for this site is held on those systems, and the above searches would have located this if it had.

² <https://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

26. It noted that other information was located, but this information is not a Fire Management Plan, and it falls outside the scope of the complainant's request for information.
27. The MFRS also did not locate a covering report from the Chief Fire Officer.

The Commissioner's conclusion

28. The Commissioner has considered the MFRS' position, in conjunction with the request.
29. The MFRS has confirmed to the Commissioner that it has no requirement to hold the information, and that it would not generally expect to hold information of this sort. Nevertheless, it has also clarified the searches which it carried out in order to determine whether a copy of the plan is held. It confirmed its position is that it does not hold copy of a relevant Fire Management Plan or the Chief Fire Officer's covering report.
30. There is no contradictory evidence available to the Commissioner that indicates the MFRS position is wrong.
31. On this basis, the Commissioner has concluded that on the balance of probabilities, the requested information is not held.

Regulation 12(4)(d) - unfinished documents

32. The following analyses whether the MFRS was correct to withhold correspondence with Orsted under Regulation 12(4)(d).
33. At the time that the initial request was received, the MRFS said that it had not completed a copy of the report and that it would contact the complainant once it was completed. It subsequently provided a copy of the report which is dated February 2022. The complainant had been told that the report had been completed prior to this, and he therefore requested a copy of the initial version, together with the correspondence between the parties.
34. The MFRS confirmed to the Commissioner that there was a draft version of the report. It considers that the draft copy of the report falls within the scope of Regulation 12(4)(d), and that the correspondence between it and Orsted also falls within the scope of the exception because it relates to the unfinished report; the requested information therefore relates to material which was still in the course of completion/a draft document.
35. In essence a draft version of the report was completed and provided to Orsted for comment. Orsted wrote to the MFRS detailing a number of

inaccuracies which it considered the report contained. The MFRS considered Orsted's arguments and subsequently made amendments to some sections of the report before completing it.

36. Having considered the information, the Commissioner is satisfied that, at the time of the initial request the information was still in the course of completion, and that the correspondence does relate to the unfinished report. The complainant's request of 11 July 2022 was for the initial version of the report.
37. The Commissioner is therefore satisfied that the exception in Regulation 12(4)(d) is engaged by both the report and the correspondence.
38. The Commissioner has therefore gone on to consider the public interest test required by Regulation 12(2).

The public interest test

The public interest in the information being disclosed

39. The complainant considers that there is a strong public interest in the information being disclosed as it relates to the safety of sites such as the one concerned. He argues that there is growing list of incidents relating to such sites, and that it is therefore important that the information is disclosed in order that this can be analysed, and the overall safety of such sites considered from a fully informed position.
40. There is a public interest in the correspondence being disclosed in order to create transparency on how fire services work in order to protect the communities they serve. A disclosure would demonstrate how the Fire Service approaches issues such as major industrial fires, and how they liaise with site owners over public safety.

The public interest in the exception being maintained

41. When considering the public interest in disclosure, the MFRS confirmed that there were inaccuracies in the first draft of the report which Orsted highlighted to it within the correspondence. Orsted expressed concerns that if the report was disclosed with these inaccuracies included, it would suffer reputational damage and would be commercially disadvantaged against its competitors. The inaccuracies are highlighted within the withheld correspondence.
42. The MFRS accepted that some of Orsted's points were valid, and as a result, changes were made to the final copy of the report.

43. The withheld correspondence includes details of the discussions surrounding the accuracy issues, and clarifies Orsted's concerns that a disclosure of this information would be detrimental to its reputation if left within the final report. The Commissioner notes that following its discussions with Orsted, the MFRS did make changes to the report relating to some of the inaccuracies highlighted to it, the draft copy of the report does therefore contain some inaccuracies identified by Orsted.
44. The MFRS argues, that with the disclosure of the final reports, there is no public interest in disclosing the drafts or the correspondence, which contain the inaccuracies which had been highlighted to it, when the final, accurate report has now been disclosed.

The Commissioner's analysis

45. The Commissioner recognises a strong public interest in the disclosure of information which would clarify and inform on the causes of incidents such as major fires on industrial sites, and any information on the issues which were involved in this.
46. He also considers that there is a public interest in creating greater transparency over the correspondence which the MFRS had with Orsted. This would shed light on how the MFRS carries out its work, and how it works with site owners and managers to determine the cause of fires and any steps which might be taken to create a safer environment in the future.
47. However, the Commissioner recognises that a disclosure of the final reports drafted by the MFRS largely meets the public interest in knowing the causes and issues involved in the fire. The identification of lessons to be learnt is the primary function of such reports, and these final reports have now been made public. The Commissioner therefore recognises that the public interest in the requested information being disclosed is weakened because of this.
48. During the process of creating the report a safe space was required in order for the MFRS and Orsted to discuss issues with the report and to share information in order to facilitate the creation of an accurate and informed report which established the causes of the fire and the MFRS response, together with the lessons learnt from its investigation. The MFRS required the safe space in order to be able to work with Orsted in an open and frank way about the issues it had identified. A disclosure of the information during that period would undermine that safe space, and potentially make it more difficult for the MFRS to establish the facts with Orsted, particularly if it had concerns that its representations would be disclosed into the public domain.

49. The draft report contains the issues which Orsted sought to resolve with the MFRS prior to the report being published. A disclosure of the draft initially provided to it, and of its correspondence with the MFRS in seeking to inform the MFRS of the inaccuracies, would create a chilling effect on future such discussions, generally. Companies would become more defensive in their responses, and in highlighting their processes, in order to ensure that any sensitive information is excluded from correspondence which might subsequently be disclosed.
50. The creation of a chilling effect upon such situations would lead to less informed reports being issued, heightening the possibility that reports would become less useful, and some lessons which might otherwise be learnt may not be identified.

Conclusions

51. The Commissioner considers that a key factor in assessing the weight of public interest arguments is the extent to which the information itself would inform public debate on the issue concerned. Where information may be within the scope of a request, but nevertheless shed little light on the issue itself, the weight of the argument for disclosure may be less than it otherwise would be.
52. The reason for producing the MFRS report, and in its correspondence with Orsted, is to identify the facts, and to establish what lessons can be learnt from the fire. There is a strong public interest in this sort of information being disclosed, which in this case has already been met by the disclosure of the final reports.
53. The withheld correspondence between the Chief Fire Officer and Orsted relates to the identification of, and discussion around the inaccuracies in the report, and how to address that. There is only a very weak public interest in releasing information which would reiterate the inaccuracies which were identified, but provide no further information on the main issues involved.
54. A disclosure of the information would not add to the public's understanding of the causes of the fire, nor to the overall issues surrounding how it was dealt with. These central issues have already been disclosed within the final reports.
55. On the counter side, a disclosure of the information would make it harder for fire services to be able to discuss issues with site owners in a free and frank way, as noted above. The Commissioner also accepts that a safe space is required to consider and discuss the issues involved prior to the final report being completed.

56. For the reasons outlined above, the Commissioner is satisfied that, in this instance, the public interest rests in the exception being maintained.
57. The Commissioner has therefore decided that the MFRS was correct to apply Regulation 12(4)(d) to withhold both the correspondence and the draft copy of the report.

Right of appeal

58. 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

59. 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.
60. 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

Ian Walley
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