

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2019

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

Decision (including any steps ordered)

1. The complainant has requested from London Fire Brigade, a copy of its report of a fire at his property. London Fire Brigade refused the request, on the grounds that provision of the report constituted a chargeable service under the Fire and Rescue Services Act 2004, and therefore that the information was exempt from disclosure under section 21 (information accessible to applicant by other means) of the FOIA.
2. The Commissioner's decision is that London Fire Brigade was entitled to refuse the request under section 21 of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision notice.

Background

4. London Fire Brigade (LFB) has published its policy on charging for information on its website¹. The policy explains that LFB is entitled by the Fire and Rescue Services Act 2004 to charge for certain services, including for the provision of reports on the incidents that it attends.
 5. The policy states that:
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¹ <https://www.london-fire.gov.uk/media/1989/london-fire-birgade-pn874.pdf>

"The report of a fire involving 'property' is available in either paper or electronic format and includes basic details about the fire incident attended by LFB such as where the fire took place, the time LFB were called and the time the fire was under control. The report also provides information about what LFB believes is the most likely cause of the fire."

6. The policy states that a basic Confirmation of Attendance report can be provided free of charge, whereas a more comprehensive Report of a Fire Attended ("the full fire report") will be provided on payment of a fee (for 2019/20, this fee is £100).
7. Due to the confidential nature of some of the information which would be contained in a report, there are limitations on who is entitled to receive it. The policy states:

"Reports are issued only to those who have an interest in the property involved in the fire. Ownership, residency or insurable interest would be examples of legitimate entitlement. Reports may be disclosed to other parties who cannot prove their entitlement if such release of would be in the public interest."
8. The policy provides clear details of how to go about requesting a copy of the full fire report.

Request and response

9. On 4 June 2019, the complainant had a telephone conversation with London Fire Brigade (LFB) in which he verbally requested a copy of the full fire report relating to a fire at his property. LFB responded in writing the same day. It provided the complainant with a basic Confirmation of Attendance report, but explained that full fire reports are not accessible under the FOIA, as they are considered a chargeable service and subject to a fee of £100. It said that, as such, they are exempt from disclosure under the FOIA by section 21 (information accessible to applicant by other means).
10. Following an exchange of correspondence on the matter, on 30 June 2019, the complainant wrote to LFB as follows:

"[LFB employee name redacted] from the information department has informed me about your policy to charge 100GBP for the report related to the reference of incident as indicated in the title of this email.

[LFB employee name redacted] informed me that the charges are based on the section 21 under Freedom of Information Act (2000).

Based on the content of the referred section there is no reason for the Fire Brigade report that I have requested to be charged.

...

Pieces of evidence that I already hold demonstrate that the report regarding the incident is ready, it can be emailed and therefore none of the agents will be required to commit to any extra work to retrieve the information that appears to be automatically retrievable by the computer where the file of the full report is restored.

Please let me know of what you think and how you link your charges in specific to the Freedom of Information Act (2000)."

11. LFB responded to the request on 2 July 2019, explaining that it was satisfied that its decision to refuse the request under the FOIA was correct. It noted that charging for full fire reports is common practice among fire and rescue services.
12. The complainant wrote to LFB on 9 July 2019, challenging its decision and asking it to "*investigate ... whether there has been any unclarity [sic].*"
13. LFB responded to the complainant on 22 July 2019, maintaining its position that the full fire report was exempt from disclosure under the FOIA and that it was entitled by section 18A of the Fire and Rescue Services Act 2004 to levy the stated charge for the information.

Scope of the case

14. The complainant contacted the Commissioner on 15 July 2019 to complain about the way his request for information had been handled. He considered that the charge LFB intended to levy for providing the information was disproportionate to the amount it cost to compile and produce the report, and that it should therefore be made available to him under the FOIA.
15. The Commissioner has considered whether the complainant submitted a valid request for information under the FOIA, and, having concluded that he did, she has considered whether LFB was entitled to apply section 21 of the FOIA to refuse the request.

Reasons for decision

Section 8 – request for information

16. The right to complain to the Commissioner about the handling of a request for information is set out under section 50(1) of the FOIA.
17. Section 8(1) of the FOIA provides a definition of the term “*request for information*”:

“In this Act any reference to a “request for information” is a reference to such a request which –

 - (a) is in writing,*
 - (b) states the name of the applicant and an address for correspondence, and*
 - (c) describes the information requested”.*
18. The initial interaction between the complainant and LFB, during which the complainant first requested the information, was verbal. As set out in section 8(1)(a) of the FOIA, above, requests for information under the FOIA must be made in writing. Therefore, his initial verbal request was not, on its own, a valid request for information under section 8(1) of the FOIA.
19. However, the parties then proceeded to correspond in writing about the verbal request, with LFB setting out its view that the information was exempt from disclosure under section 21 of the FOIA, and the complainant repeatedly disputing this.
20. The Commissioner notes that the complainant’s email to LFB of 30 June 2019 refers to the conversation in which he initially requested the report, and to LFB’s refusal to disclose it under section 21 of the FOIA, and he asks LFB to reconsider its position. The Commissioner has therefore considered whether this email describes the information being sought, as required by section 8(1)(c) of the FOIA.
21. The Commissioner’s guidance on receiving requests for information² states that there is a low threshold for meeting the requirement to

² <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

describe the information being requested. A description will be valid if it contains sufficient detail for the requested information to be distinguished from other information held by the public authority.

22. The Commissioner has concluded that the complainant's email of 30 June 2019 meets the requirement for describing the information being sought, in that it contains sufficient detail for the requested information to be distinguished from other information held by LFB. Since the email also contains the complainant's name and address, it satisfies each of the subsections of section 8(1) and thus it was a valid request for information under the FOIA.

Section 21 – information accessible to the applicant by other means

23. Section 21(1) of the FOIA provides that a public authority is not obliged to disclose information under section 1 of the FOIA if that information is reasonably accessible to the complainant by other means. The purpose of the exemption is to ensure that there is no right of access to information via the FOIA, if it is properly available to the applicant by another route.
24. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the requested information outside of the FOIA.
25. It is also pertinent to note that section 21(2)(a) of the FOIA states that information may be regarded as being reasonably accessible to the applicant "*even though it is accessible only on payment*".
26. Furthermore, the information need only be reasonably accessible to the person requesting it, rather than to the general public. This means that section 21 may apply where the information requested is available via other legislation, but only to a particular set of people. As set out in paragraph 7, above, in this case, fire reports are only available to people who can demonstrate a legitimate interest in an affected property. This will not prevent section 21 of the FOIA from being engaged.
27. In considering LFB's application of section 21 of the FOIA, the Commissioner has had regard to the particular wording of the section, her published guidance on section 21³ and the submissions put forward by both the complainant and LFB. She has also considered the ICO's *Definition Document for Joint Authorities and Boards in Part II of*

³ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

Schedule I of the Freedom of Information Act⁴, which says the following about access to fire reports:

"Fire Service Reports on major incidents

While we would expect fire service authorities to publish some information about major incidents which have generated public interest, we would not expect the full contents of fire damage and accident reports to be made available as a matter of routine. In view of the nature of these reports, they will inevitably contain personal and other confidential material. The full report will need to be prepared for the internal procedures of the Fire Service and for fire monitoring generally and fire service authorities may wish to make them available on request with the deletion of material that should not be made public.

...

This would not in any way interfere with the opportunity of the Fire Service to make a full copy of the report available to those who request it at a commercial charge, where the identity of the requestor is taken into account, taking it outside the provisions of the FOIA, subject to safeguards about the personal and sensitive material."

28. The Commissioner notes that LFB has made a basic copy of the fire report available to the complainant, free of charge, in the form of the Confirmation of Attendance report. It is his access to the full fire report, for which LFB maintains it has a right to charge, which is at the centre of this complaint.
29. With regard to section 21(2)(a) of the FOIA, the Commissioner's guidance states that there are two main areas where information will be considered "*reasonably accessible*" even though payment is required – information that is available by means of other legislation which also permits a charge to be made, and information that is made available via a public authority's publication scheme.
30. LFB's position is that the former applies – the information is available to the applicant via other legislation which permits the charging of a fee.
31. The complainant has asked to know where LFB's power to charge for the information is derived from. LFB has explained that it is permitted to

⁴ <https://ico.org.uk/media/for-organisations/documents/1226/definition-document-joint-authorities-and-boards.pdf>

charge for providing information by section 18A(1) of the Fire and Rescue Services Act 2004:

"18A Charging by authorities

(1) A fire and rescue authority may charge a person for any action taken by the authority—

(a) in the United Kingdom or at sea or under the sea, and

(b) otherwise than for a commercial purpose,

but this is subject to the provisions of this section and section 18B."

32. Section 18A(1) of the Fire and Rescue Services Act 2004 therefore establishes the right of fire and rescue authorities to "*charge a person for any action*" they take. The right is fettered by the restrictions set out in section 18(B) of that Act.
33. The Commissioner has considered section 18(B) of the Fire and Rescue Services Act 2004 and notes that it places limits on what may be charged for. However, information relating to a full fire report is not among the actions for which charging is prohibited by section 18(B), and so the Commissioner must conclude that LFB is entitled by section 18(A)(1) of the Fire and Rescue Services Act 2004 to charge for this information.
34. The Commissioner is sympathetic to the complainant's argument that in order to access the requested information he would be required to pay a fee of £100, which he considers to be a significant amount. However, she notes that in setting the amount to be charged, LFB is limited by section 18A(5) of the Fire and Rescue Services Act 2004, which says:

"In setting the amount of a charge under subsection (1), a fire and rescue authority must secure that, taking one financial year with another, the authority's income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed."
35. Section 18A(5) operates in such a manner that the fairness of the charge amount is calculated by reference to the average cost of providing all the fire reports across the previous twelve months. As such, a yearly fee is determined by reference to the previous year's costs, and this is reviewed each April.
36. LFB provided the Commissioner with information which showed that its income from charges for 2018/19 (on which the charge for 2019/2020 had been calculated) was less than the costs to it of resourcing the service. The Commissioner therefore has no reason to believe that the

charge is not in accordance with section 18(A)(5) of the Fire and Rescue Services Act 2004 or that it is otherwise unreasonable.

37. Furthermore, the Commissioner would refer again to section 21(2)(a) of the FOIA which states that information may be regarded as reasonably accessible to the applicant *"even though it is accessible only on payment"*. In addition, the Commissioner's guidance on the application of section 21 states that *"In such cases, information is generally reasonably accessible even though the payment may exceed that which would be payable via FOIA"*.
38. Finally, information will be considered to be *"reasonably accessible to the applicant"* if the public authority is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
39. In this case, LFB has informed the complainant how to go about requesting a copy of the full fire report from it, on payment of a fee of £100, several times. There are also clear instructions in the charging policy, to which the complainant has been referred. The Commissioner is therefore satisfied that the complainant fully understands how to obtain a copy of the report.
40. Having considered the above, and in the absence of any conflicting evidence, the Commissioner has concluded that the withheld information is reasonably accessible to the complainant otherwise than under section 1 of the FOIA, and therefore that LFB was entitled to apply section 21 to refuse to provide the information under the FOIA.
41. Section 21 of the FOIA is an absolute exemption, meaning that it is not subject to the public interest test.

Right of appeal

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

43. 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.
44. 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

Samantha Bracegirdle
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