

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 August 2024

**Public Authority:** Kent Fire and Rescue Service  
**Address:** The Godlands  
Straw Mill Hill  
Tovil  
Maidstone  
ME15 6XB

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to fire safety audits from Kent Fire and Rescue Service ('KFRS'). KFRS disclosed some information, but it withheld the majority, citing sections 30(1)(a)(i) and (b) (Investigations and proceedings conducted by public authorities) of FOIA.
2. The Commissioner's decision is that KFRS was entitled to rely on section 30(1)(b) to withhold the information.
3. The Commissioner does not require any steps as a result of this decision.

#### Request and response

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4. On 24 January 2024, the complainant wrote to KFRS and requested information in the following terms:  
"Please provide copy correspondence and results of all fire safety audits conducted by KFRS on [address redacted] between 2005 and 2022."
5. KFRS responded on 20 February 2024. It refused the request on the grounds that compliance would exceed the appropriate costs limit

established under section 12(1) of FOIA. By way of assistance, it disclosed documents detailing its two most recent fire audits, although these post-dated the time period specified in the request.

6. Following an internal review, KFRS maintained that section 12(1) was correctly applied to refuse the request.

## Scope of the case

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7. The complainant contacted the Commissioner on 29 February 2024 to complain about the way her request for information had been handled. She disagreed with the application of section 12(1) to the request.
8. During the Commissioner's investigation, KFRS revised its position regarding the request. It withdrew reliance on section 12(1) and disclosed a further 22 documents, including schedules, follow ups and enforcement notices, for the property specified in the request. Names and contact details had been redacted under section 40(2) (Personal information) of FOIA; the complainant does not wish to challenge the application of section 40(2) to that information.
9. However, the complainant was dissatisfied with the scope of the response, noting that the request specified a time range of 2005 - 2022, whereas the oldest information disclosed was for 2017. She questioned whether KFRS held information predating 2017 and, if it did, why it could not be disclosed.
10. On the complainant's first point, KFRS said it holds several hundred pages of written documents, emails, photographs, statements and records of interview. As regards her second point, it cited section 30(1)(a)(i) and (b) (Investigations and proceedings conducted by public authorities) of FOIA to withhold this information.
11. The Commissioner queried with KFRS whether it had considered the application of section 31 (Law enforcement) to the information. In response, KFRS asserted that its particular regulatory circumstances meant that sections 30(1)(a) and (b) were engaged.
12. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
13. The analysis below considers KFRS's application of section 30(1)(a) and (b) to withhold the remaining information.

14. Due to the volume of withheld information, the Commissioner has been provided with a representative cross sample of 52 items of information.

### **Reasons for decision**

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15. Section 30(1) provides that information held by a public authority is exempt information if it has, at any time, been held by the authority for the purposes of:
  - “(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
    - (i) whether a person should be charged with an offence
    - ...
    - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct...”
16. The Commissioner considers that the phrase “at any time” means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
17. Section 30(1) is a class-based exemption. There is no requirement to demonstrate that disclosure of the information might be harmful in order for section 30(1)(a) or (b) to be engaged. However, as section 30 is a qualified exemption, it is subject to the public interest test.

### **Is the exemption engaged?**

18. The first step is to address whether the requested information falls within the class specified in section 30(1) of FOIA. The Commissioner has firstly considered the application of section 30(1)(b).
19. Section 30(1)(b) applies to investigations which a public authority has the power to conduct. The public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.
20. KFRS explained that it has powers to investigate potential offences under the Regulatory Reform (Fire Safety) Order 2005. Its building fire safety inspectors are warranted, and they conduct interviews in accordance with PACE [Police and Criminal Evidence Act 1984] codes of practice. KFRS has formal enforcement powers, including the power to prosecute:

“Article 26 of the Regulatory Reform (Fire Safety) Order 2005 imposes a duty on fire and rescue authorities to impose the Order. Enforcing the Order entails the investigation of potential failures to comply with the provisions set out in article 32 of the Order.

If the investigation establishes that an offence has occurred and that the Code for Crown Prosecutors is satisfied, the offender can be charged, which is done by laying information and serving summonses to attend a magistrates’ court”.

21. It confirmed that all the withheld information in this case is held for the purpose of an investigation into the property named in the request, using its powers under the Regulatory Reform (Fire Safety) Order 2005. All the information held was either acquired or generated with a view to investigating and deciding whether to institute criminal proceedings against any party.
22. Taking into account the nature of KFRS’s work, its powers under the Regulatory Reform (Fire Safety) Order 2005 and that the information requested in this case relates to a particular investigation, the Commissioner is satisfied that the withheld information falls within the class described in section 30(1)(b) of FOIA. Therefore, the exemption is engaged.

### **Public interest test**

23. As section 30 is a qualified exemption, the Commissioner must determine whether the public interest in disclosing the information is stronger than the public interest in maintaining the exemption at section 30(1)(b).

### **Public interest arguments in favour of disclosing the information**

24. The complainant has explained to the Commissioner:

“The building is 60 years' old and through the passage of time, along with the transient nature of the building's residents there is an absence of building knowledge which I am trying to rectify, especially in terms of fire safety. This is particularly important for two reasons. Firstly, there was a fire in [location redacted] in 2001 killing one and injuring dozens. KFRS attended and publicly referenced [location redacted] in an evidence session of [inquiry name redacted]. Secondly, [location redacted] is considered a higher risk high rise under the Building Safety Act 2022. Fire safety measures in high rise residential blocks are fundamental to the Building Safety Act.”

25. KFRS did not cite arguments in favour of disclosing the information.

## **Public interest arguments in favour of maintaining the exemption**

26. KFRS presented multiple public interest arguments in favour of maintaining the exemption, including:
- There is an inherent public interest in KFRS being able to undertake its statutory functions under the Regulatory Reform (Fire Safety) Order 2005. Underpinning this is the need to keep people safe from fire by having an effective mechanism and framework to ensure that buildings comply with fire safety legislation. The public interest in preventing prejudice to that process outweighs the public interest in releasing the information.
  - It is essential that KFRS is able to carry out its public safety duties in a planned, objective and balanced manner, carefully collecting and considering evidence. It must be able to retain control over any and all material that forms part of any investigation it undertakes. The potentially damaging effect to its investigations of not being able to retain control over that material seriously undermines the public interest principles of fair and balanced decision-making by public bodies, due to the potentially adverse effects to parties of the disclosure of evidence they have provided, or which otherwise relates to them.
  - Co-operation between those being regulated and KFRS as the regulator is important, and a 'safe space' is needed to consider the information obtained, particularly where such information may have been volunteered. Investigations take less time when those under investigation co-operate. This can be true even where a regulator has the power to compel a party to supply information, as reliance on such powers can involve bureaucratic procedures which can cause delays. There is clearly a public interest in not deterring the voluntary supply of information due to concerns about onward disclosure.
  - The timescales between the start and conclusion of an investigation mean that were any information to be released to the world at large in response to an FOIA request, prior to the conclusion of an investigation, it may be used by third parties in their own civil actions, which would then undermine any investigation or prosecution being undertaken by KFRS. In the worst case, this could result in KFRS not being able to take forward a prosecution. In addition, this may result in its own evidence being taken forward by other non-enforcing bodies outside of its control.

- Where, at the time of investigation, no fire safety concern has been identified that merits either formal or informal action, this information should be protected from publication to preserve the safe space for good regulation principles. That is because such information could still be used later as part of formal enforcement action or prosecution.

27. KFRS concluded:

"We are of the reasonably held view that disclosure would cause the prejudice set out above (more probable than not, defined as a more than fifty percent chance)...Separately and collectively, these factors all undermine, and exert a prejudicial effect upon, our ability to undertake our statutory functions related to fire safety. The corollary of this is that it undermines the safety of the public and in doing so has the potential to cause harm. There is a clear public interest in avoiding this.

In considering public interest in the issue and public interest in the information, we are of the view that the former is served by the press coverage relating to this property. In relation to the latter, this would be satisfied by release of copies of all schedules, follow ups, and enforcement notices we hold for this property. This will also address a public interest consideration around presenting a 'full picture'."

**The balance of the public interest arguments**

28. The Commissioner acknowledges that there is a legitimate argument in favour of openness and transparency surrounding KFRS's regulatory role and any issues affecting the fire safety of the property in question. However, he considers that disclosure of the two most recent fire audit reports, and the 22 other documents, have gone some considerable way towards meeting the public interest in scrutiny of these matters.
29. KFRS has given greater weight to the argument against disclosure due to the adverse effect that it believes disclosure of detailed investigation material, which includes evidence gathered and volunteered, would be likely to have on its effectiveness as a regulator, and the prejudice to public safety that would occur should its effectiveness be compromised. The Commissioner considers KFRS has the requisite knowledge of the regulatory process to understand the adverse effect that disclosure of this material would have on cooperation, and the supply of information to it. The Commissioner also acknowledges that disclosure could prejudice a future prosecution. Concerns about public disclosure could also discourage individuals from making complaints about any fire safety concerns they may have.

30. Taking all the above into account, the Commissioner is satisfied that, in this case, the public interest in protecting KFRS's role as a robust and efficient regulator of fire safety, by withholding the requested information, is stronger than the public interest in disclosure. KFRS was, therefore entitled to rely on section 30(1)(b) of FOIA to withhold the information.
  
31. In view of this decision, it is not necessary to consider whether section 30(1)(a)(i) of FOIA also applies to the same information. However, as Article 26 of the Regulatory Reform (Fire Safety) Order 2005 imposes a duty on KFRS to enforce it, and this includes a duty to conduct criminal investigations, the Commissioner finds it highly likely, for similar reasons to those set out above, that section 30(1)(a)(i) of FOIA is also engaged and that the public interest would fall in favour of maintaining the exemption.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Samantha Bracegirdle**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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