

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 September 2024

**Public Authority:** Cleveland Fire Brigade  
**Address:** Endeavour House  
Queens Meadow Business Park  
Hartlepool  
TS25 5TH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Cleveland Fire Brigade ('CFB') about its business relationship with Cleveland Fire Brigade Risk Management ('CFBRM'). CFB disclosed some information, but it withheld information about some financial arrangements, citing section 43(2) (Commercial interests) of FOIA.
2. The Commissioner's decision is that CFB has not demonstrated that section 43(2) of FOIA is engaged.
3. The Commissioner requires CFB to take the following steps to ensure compliance with the legislation.
  - Disclose to the complainant the information requested at points (1), (3), (4) and (18) of the request, which was withheld under section 43(2).
4. CFB must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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5. CFB has provided the following information about CFBRM:

"The Company was formed in 2011 and has had Directors drawn from the senior management of the Fire Authority. More recently there has been appointments, in a non-executive capacity from individuals from the private sector with a commercial background. As a Community Interest Company, 65% of the Company's net profits goes towards supporting local communities, this has included a volunteering scheme, road safety prevention and youth engagement initiatives. The detail can be found in documentation provided to Companies House.

The registered activities of the Company include providing an enhanced risk management service to local and national high hazard companies and those non-statutory services to the local community to complement the statutory services provided by the Cleveland Fire Authority and its Brigade. The commercial sector in which the Company operates is highly competitive."

## Request and response

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6. On 1 January 2024, the complainant submitted a nineteen part request for information to CFB, the full text of which can be viewed in the annex at the end of this decision notice.
7. This decision notice is concerned with CFB's response to the following four parts of the request (numbering added, for clarity):
- "1) How much money does Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for the use of Billingham Fire Station?  
...
  - 3) Do Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for the use of the training facilities, if so what is the cost charged?
  - 4) How much money does Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for vehicle maintenance and repairs as a part of a contract, or if ad hoc, how much have they paid since 2020?  
...

- 18) Have Cleveland Fire Brigade supported Cleveland Fire Brigade Risk Management financially in any way, if so when and what were the reasons and monetary value of each occasion?"
8. CFB responded on 17 January 2024. It replied to each part of the request, except points (1), (3) and (4), for which it said:
- "The appropriate commercial charges are made; the detailed information is exempt from disclosure due to FOIA Section 43(2) Commercial Interests".
9. For point (18), it said:
- "Any loans are charged at market rates and approved by Cleveland Fire Authority".
10. The complainant contacted CFB on 17 January 2024, asking for a more detailed explanation of its application of section 43(2). He also queried its response to points (18) and (19) and asked further questions about the response provided.
11. CFB responded on 16 February 2024. It provided more information in respect of question (19). It cited section 43(2) to withhold the information requested at point (18). It provided some information in respect of the further questions asked, but it did not elaborate on its reasons for applying section 43(2).
12. On 16 February 2024, the complainant submitted further queries about the response. He specifically asked why the information requested in questions (1) and (18) was exempt under section 43(2).
13. CFB responded on 28 February 2024. It maintained that section 43(2) had been correctly applied to withhold the information but it did not expand on why the exemption applied.

## Scope of the case

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14. The complainant contacted the Commissioner on 24 April 2024 to complain about the way his request for information had been handled. He disagreed with the application of section 43(2) to refuse parts (1), (3), (4) and (18). He also questioned whether the internal review had been carried out correctly, as he believed it had been conducted by someone who had a conflict of interest.

The analysis below considers the application of section 43(2) to points (1), (3), (4) and (18) of the request. The Commissioner has considered

the conduct of the internal review in the "Other matters" section at the end of this decision notice.

## Reasons for decision

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15. CFB has applied section 43(2) of FOIA to withhold information about particular financial arrangements it has with CFBRM.
16. Section 43(2) of FOIA allows a public authority to withhold information whose disclosure could harm its own commercial interests or those of another party.
17. In order for section 43(2) to be engaged, three criteria must be met:
  - the harm which the public authority envisages must relate to someone's commercial interests;
  - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to someone's commercial interests. Furthermore, the resultant prejudice must be real, actual or of substance; and
  - the level of likelihood of prejudice being relied upon by the public authority must be met (ie it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
18. To establish whether the three criteria were met in this case, the Commissioner asked CFB to provide a detailed explanation to support its position that disclosing the withheld information would, or would be likely to, prejudice a party's commercial interests. CFB was asked to:
  - provide evidence which demonstrated a clear link between disclosure and any prejudice to its own commercial interests or those of CFBRM;
  - clarify the basis on which it had established that prejudice to CFBRM's commercial interests may occur and provide copies of any correspondence it had had with CFBRM regarding the request; and
  - confirm which threshold of likelihood it was relying on (i.e. the lower threshold that disclosure 'would be likely' to have a prejudicial effect on commercial interests or the higher threshold that disclosure 'would' have a prejudicial effect). It was asked to give reasons for its position.
19. The Commissioner also asked CFB to let him have a copy of all the withheld information.

20. In response, CFB provided the withheld information for points (1), (3) and (4) of the request. It did not provide the withheld information for point (18), instead referring the Commissioner to what it had told the complainant and information it said was on its website.
21. It provided the following submission regarding its application of section 43(2), which it said was engaged on the basis of harm to CFBRM's commercial interests:

"It is noted that Section 43 engages a 'prejudiced based exemption'. It is considered that the release of information to the complainant would undermine the Company's [i.e. CFBRM's] ability to participate in a competitive tendering environment. The Company provides a range of services, including training that is not dis-similar to that found to be services of a commercial activity found by a Tribunal under case reference EA/2009/0034 (8 December 2009). Further, the release of such financial information, relating as it does to the use and payment for training and other facilities (Question 18 is a 'catch all' in this regard) would clearly harm the commercial and other interests of the Company, particularly if this information was to be disseminated in other ways. There is accounting and other information available through Companies House in relation to the Company, which the Company has openly and transparently provided as well as the ability to inspect and challenge the Authority's statement of accounts."

22. The Commissioner has also referred to CFB's internal review response, in which it told the complainant:

"CFBRM have expressed that they object to the release of this information on the grounds that it would be of advantage to their direct competitors, thereby negating their ability to develop a commercial advantage when tendering for future contracts".

23. In order to apply the exemption, a public authority must be able to show a clear causal link between disclosure and the harm it considers may occur. In the Commissioner's view, CFB has failed to demonstrate why CFBRM's commercial interests would be harmed by disclosure.
24. From the information provided in paragraph 5, the Commissioner accepts that CFBRM operates in a competitive marketplace and that the withheld information may not be known to others operating in the same marketplace. However, in order to demonstrate commercial harm, the CFB must show not only that its competitors do not currently have access to the information, but if they did have access to it, how they could exploit it to CFBRM's detriment.

25. The Commissioner has viewed the withheld information in respect of points (1), (3) and (4) of the request. CFB has not explained how this information would be used by CFBRM's competitors, or any other party, to the detriment of CFBRM's commercial interests. The information pertains to money paid by CFBRM for services provided to it by CFB, rather than to any pricing/costing plan used by CFBRM when charging for its own services or tendering for contracts. The Commissioner further notes that CFB has not sought to argue that disclosure would prejudice its own commercial interests.
26. Furthermore, although asked to, CFB did not provide the withheld information in respect of point (18) of the request for the Commissioner to view. Instead, it said:

"The Authority's Section 151 officer previously responded to the complainant to the effect that 'any loans are charged at market rates approved by Cleveland Fire Authority'. Such matters are covered in the Authority's accounts which can be accessed on the Authority's website [www.clevelandfire.gov.uk](http://www.clevelandfire.gov.uk)".
27. As the Commissioner has not had sight of this withheld information, does not know what it contains and CFB has not clearly explained how or why its disclosure would harm CFBRM's commercial interests, the Commissioner accords no weight to CFB's submissions on point (18) of the request.
28. The Commissioner considers that although he was very clear with CFB about the information it needed to provide to him to demonstrate the engagement of section 43(2), CFB has not demonstrated that section 43(2) of FOIA is engaged in respect of any of the withheld information. He would clarify that it is not for the Commissioner to provide a public authority with arguments in support of withholding information.
29. As he has found that section 43(2) of FOIA is not engaged in relation to any of the information, the Commissioner does not need to go on to consider the balance of the public interest.
30. CFB must now take the steps set out in paragraph 3.

## **Other matters**

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### **Section 45 - Internal review**

31. There is no obligation under FOIA for a public authority to provide an internal review. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under

section 45<sup>1</sup> of FOIA sets out, in general terms, the procedure that should be followed.

32. Noting that the member of CFB staff who conducted the internal review was also a director of CFBRM, the complainant argued that he likely had a conflict of interest, and therefore that the internal review had not been properly conducted.
33. As regards who should conduct the internal review, the code says only the following:

“5.9 It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant”.

34. CFB provided the following information about its conduct of the internal review:

“As the Authority’s Legal Adviser and statutory Monitoring Officer since 2004, I have ostensibly been the ‘reviewing officer’ in connection with the Freedom of Information Act, 2000, from its inception in 2005. There are no other legally qualified personnel employed by the Fire Authority.

I had no prior participation in the request made by the complainant...My only involvement was in the consideration of his request for a review and this subsequent ICO inquiry.

The position of Director of the Company is through my status as a senior Authority employee. It is recognised, that public authority officers can hold positions such as that relating to my own situation. Where a conflict of interest occurs, there is provision in the Company’s governance arrangements to make an open declaration and a determination as to whether I or a fellow Director can continue their participation in the matter at hand. Similarly, this position holds if I have a conflict (or the potential thereof) in my role as Legal Adviser and Monitoring Officer. As I hadn’t been involved in the initial

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

responses to the complainant and the review concerned consideration of Section 43, I reasoned that I was not so conflicted.”

35. The Commissioner recognises that CFB is a small public authority and, as such, there are a limited number of staff who are in a position to conduct internal reviews. Whilst it might have been desirable that an internal review be carried out by someone not connected with CFBRM, this was by no means an express requirement of the code.
36. For the reasons set out above, the Commissioner does not agree with CFB's decision to apply section 43(2) of FOIA, but he has seen nothing which suggests that the decision reached at internal review, to uphold that position, was reached as a result of any conflict of interest. He further notes that the reviewer was not involved in the initial decision (something which is a recommendation of the code).
37. The Commissioner therefore finds no failure to act in accordance with the section 45 code in this regard.



## **Right of appeal**

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38. 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)

39. 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.
40. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex – request for information dated 1 January 2024**

"I would like to request some information on the below points if possible under the Freedom of Information Act 2000:

- How much money does Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for the use of Billingham Fire Station?
- Do Cleveland Fire Brigade offer any services to Cleveland Fire Brigade Risk Management without cost?
- Do Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for the use of the training facilities, if so what is the cost charged?
- How much money does Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for vehicle maintenance and repairs as a part of a contract, or if ad hoc, how much have they paid since 2020?
- Have Cleveland Fire Brigade donated any items to Cleveland Fire Brigade Risk Management, if so what items and why?
- Have Cleveland Fire Brigade sold any items to Cleveland Fire Brigade Risk Management, if so what items?
- Do Cleveland Fire Brigade Risk Management pay Cleveland Fire Brigade for the use of diesel?
- Are Cleveland Fire Brigade aware of Cleveland Fire Brigade Risk Management using PPE which does not comply with British Standard 8617?
- Are Cleveland Fire Brigade aware of Cleveland Fire Brigade Risk Management breaching the European Working Time Directive?
- Are Cleveland Fire Brigade aware of Cleveland Fire Brigade Risk Management's recent BA safety events which should be RIDDOR Reportable?
- Have Cleveland Fire Brigade donated, gifted or sold foam stocks to Cleveland Fire Brigade, and if so are they free from PFAS Chemicals?
- Is it true that wholetime and retained courses have been postponed or cancelled to accommodate Cleveland Fire Brigade Risk Management's use of the training areas?
- Are Cleveland Fire Brigade aware of Cleveland Fire Brigade Risk Management using persons not deemed competent or qualified to fulfil roles

(people without confined space qualifications covering confined space entry's at MGT etc)?

- Are Cleveland Fire Brigade aware of Cleveland Fire Brigade Risk Management sharing some PPE?
- How do Cleveland Fire Brigade manage their reputation with regards their CIC (Community Interest Company) namely Cleveland Fire Brigade Risk Management, and are they aware of any issues with the CIC?
- Do any members of Cleveland Fire Brigade take an income via regular payment, bonus etc from Cleveland Fire Brigade Risk Management?
- Given Cleveland Fire Brigade Risk Management use your wholetime and retained crews to prop up their staffing levels, what does Cleveland Fire Brigade do to ensure working hours are not exceeded, and your employees are being deployed into roles they are competent for when they work for Cleveland Fire Brigade Risk Management?
- Have Cleveland Fire Brigade supported Cleveland Fire Brigade Risk Management financially in any way, if so when and what were the reasons and monetary value of each occasion?
- Finally, how much money has been injected into Cleveland Fire Brigade from Cleveland Fire Brigade Risk Management?"