

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2025

Public Authority: North Yorkshire Fire & Rescue Service
Address: NYFRS Headquarters
Alverton Court
Crosby Road
Northallerton
North Yorkshire
DL6 1FE

Decision (including any steps ordered)

1. The complainant has requested Fire Safety Reports and related information regarding a specific site. North Yorkshire Fire and Rescue Service (NYFRS) provided some information but withheld other information, applying sections 40(2) FOIA – personal information, 38(1)(a) FOIA – health and safety, 31(1)(a) – law enforcement and section 43(2) FOIA – commercial interests.
2. The Commissioner's decision is that some information was correctly withheld under sections 31 and 38 and that the public interest favours non-disclosure. Other information does not engage sections 38, and 31, though it does engage section 43(2) where the public interest favours disclosure. The Commissioner has also decided that the information withheld under section 40(2) has been correctly withheld.
3. The Commissioner requires NYFRS to take the following steps to ensure compliance with the legislation.
 - Disclose all the information that has been withheld, apart from the information on p.14 (repeated on p.15) which was withheld under sections 31 and 38 and the information withheld under section 40(2).

4. The public authority 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.

Request and response

5. On 31 August 2024, the complainant wrote to NYFRS concerning a named location and requested information in the following terms:
 - “1. Copies of any Fire Safety Reports following visits by your officers to the site in the last 5 years. These to include routine or specific inspections of individual buildings, licensing applications, fire drills and follow up visits.
 2. Copies of any requirements or recommendations made in respect of operational visits following visits by your officers in the last 5 years. These to include access arrangements, evacuation procedures and fire risks.
 3. Any recommendations or requirements made at planning stage in respect of any buildings on site made by your service in the last 5 years. These to include recommendations or requirements made to architects, building control or owners.
 4. Notes in respect of any significant verbal observations made to the owners in the last 5 years.”
6. NYFRS responded on 18 September 2024 and refused to provide the requested information citing sections 38(1)(a) FOIA – health and safety and section 31 FOIA – law enforcement.
7. On the same date, the complainant asked for an internal review based on the public interest in this matter.
8. NYFRS provided an internal review on 22 November 2024. NYFRS partly upheld its previous position but provided some information relating to parts one to three of the request in a redacted form. Some of this was withheld under sections 31 and section 38. It additionally cited section 40(2) FOIA and section 43(2) FOIA. Regarding part four of the request, NYFRS explained “any notes from observations are made on the safety reports and were not held separately”.

Scope of the case

9. The complainant contacted the Commissioner on 9 December 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to decide whether NYFRS is entitled to rely on sections 31, 38(1)(a), 43(2), and 40(2) FOIA as a basis for refusing to provide the withheld information.

Reasons for decision

Section 38 health and safety

11. NYFRS has applied section 38(1)(a) FOIA to all the information it has withheld that is not personal information.
12. The Commissioner's guidance [Section 38 - Health and safety](#) explains that section 38(1)(a) focuses on endangerment to any individual's physical or mental health.
13. NYFRS's argument is that -

"FOI responses are released into the public, to release information about fire safety assessments into the public domain would provide intelligence to those with criminal intent who can use the data to target vulnerable premises and therefore placing the safety of individuals resident at those premises at risk of harm."
14. The Commissioner does not accept that the exemption is engaged for most of the withheld information which he has decided would not cause endangerment to any individual and, in fact, might contribute to their safety. Although NYFRS's argument is fairly generic and overlaps its section 31 arguments, the Commissioner accepts that a small amount of the withheld information engages the exemption at the lower level of endangerment to the physical health of any individual/s.
15. Therefore, the Commissioner has gone on to consider the public interest in releasing or continuing to withhold this information.

Public interest factors in favour of not disclosing the requested information

16. NYFRS argued that "releasing such information into the public domain would release intelligence about any vulnerable factors regarding the fire safety of the building". Using this intelligence, individuals could

target the building and this would endanger the safety of the public at risk of harm.

Public interest factors in favour of disclosing the requested information

17. NYFRS's view is that "There is legitimate public interest in knowing the work the fire service does in terms of fire safety. The information relates to fire safety and recommendations on a building widely used by the public." However, it does not accept that this outweighs the reasons for non-disclosure.

18. The complainant argues that -

"There are several reasons why hotel fire safety defects should be available in the public arena:

Public Safety: Fire safety defects pose a serious threat to the lives of guests and staff. Making this information public allows potential guests to make informed decisions about where they stay.

Accountability: Transparency regarding fire safety defects holds hotels accountable for maintaining safe conditions. It encourages them to address issues promptly and prioritize guest safety.

Regulatory Pressure: Public awareness of fire safety defects can put pressure on regulatory bodies to enforce stricter standards and hold hotels accountable for non-compliance.

Consumer Protection: Access to information about fire safety defects empowers consumers to make informed choices and avoid potentially dangerous establishments.

Emergency Response: Fire departments and other emergency services can use this information to plan and respond effectively to emergencies at hotels with known fire safety issues.

Industry Improvement: Sharing information about fire safety defects can help the hotel industry as a whole improve its safety standards and practices.

Preventing Future Incidents: By making information about fire safety defects public, it can help prevent similar incidents from happening in the future.

While some might argue that making this information public could

harm the hotel industry, the potential benefits to public safety far outweigh any potential negative consequences.”

The balance of the public interest

19. The Commissioner agrees with the complainant regarding the information he has already decided does not engage the exemption. However, for a small amount of information he accepts that it is not in the public interest to release this information as it has the potential to endanger an individual’s physical health and it would not be in the public interest to release it.

Section 31 – law enforcement

20. NYFRS has applied section 31(1)(a) FOIA to all the information it has withheld that is not personal information.
21. Section 31(1)(a) of FOIA states that: “Information...is exempt information if its disclosure under this Act would, or would be likely to, prejudice - (a) the prevention or detection of crime...”
22. The Commissioner's guidance [Sections 31\(1\)\(a\) - \(f\): criminal and civil law](#) says the following:

“Section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies, as well as information about specific investigations. For example, it could apply to the police’s procedures for collecting forensic evidence or to HM Revenue and Customs’ procedures for investigating tax evasion.”
23. Public authorities don’t need to have responsibilities to investigate crime themselves to rely on this part of the exemption. It could be used to withhold copies of information provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including itself, more vulnerable to crime. The guidance gives the example of disclosing its own security procedures, such as alarm codes.
24. NYFRS (without questioning the motives of the complainant) noted that release under FOIA is release to the public and contends that “releasing any information in relation to a buildings specific fire safety assessment would allow criminals to note any vulnerable points within the building”. This intelligence can then be used -

“to target the hotel and individuals within it. This includes locations of supplies that would be required in emergencies, as if highlighted these could be tampered with to prevent services being able to use

them”.

NYFRS’s view is that this “would place the public at a greater risk of harm and a fear of crime”. Any such increase “puts a strain on police resources and fire resources”.

25. If NYFRS was to release information about “vulnerable buildings via Fire Safety assessments under FOI [it] would undermine an efficient fire consultation service and a duty of care of safeguarding to all members of the public”. NYFRS “would not wish to reveal information that would prejudice law enforcement by revealing vulnerable premises within the area”.
26. NYFRS argued in its refusal notice that releasing this information “could provide intelligence when read in conjunction with other data in the public domain to choose to target certain areas of the building. This information could then be used by criminals and allow them to target specific events happening within the building”. This would adversely affect public safety by undermining the advice given by the fire services “and have a negative impact on both national security and law enforcement”.
27. Again, the Commissioner accepts that a small amount of the withheld information engages this exemption at the lower level of prejudice. A limited amount of the withheld information could provide intelligence to criminals and enable them to target certain areas of the building resulting in unknown consequences. However, he does not accept that the exemption is engaged for the majority of the withheld information.
28. The Commissioner has gone on to consider the public interest in releasing or continuing to withhold the information that engages the exemption.

Public interest factors in favour of disclosure

29. NYFRS states that if information was released “relating to the consultation process” it -

“would provide an insight into the input the fire service has during this process and enable the public to have a better understanding of the effectiveness of the Fire Service.” Disclosure “would ensure transparency and accountability and enable the public to see how fire safety is instilled within the consultation period”.
30. See paragraph 18 for the complainant’s arguments in favour of disclosure.

Public interest factors in favour of not disclosing the requested information

31. NYFRS states that, "It has been recorded that FOIA releases are monitored by criminals and terrorists and so releasing information held relating to potential fire safety discussion would undermine and compromise law enforcement due to the potential of increased criminal opportunities".

32. It further argues that -

"there are significant risks associated with providing information in relation to any aspects that can assist criminal planning and that any nation's security arrangements, by releasing the information, may reveal the relative vulnerability of what we may be trying to protect. The fire service would not wish to reveal information that would undermine the law enforcement and put a strain on police resources, or fire resources, as more crime could be committed..."

This "would place the public at a greater risk and a fear of crime would be realised, especially for more vulnerable areas".

33. NYFRS believes that the balance falls on the side of non-disclosure because,

"The security of the public and the country is of paramount importance and the Fire service will not publicly divulge correspondence information that would place the safety of individuals at risk and impact on the Police service".

If NYFRS provided "freely available (single point) information under such requests" this would "undermine National Security or compromise law enforcement". Its view is that although there is public interest in the transparency of fire safety "there is a very strong public interest in safeguarding the integrity of police resources and members of the public".

Balance of the public interest

34. The Commissioner agrees with the complainant regarding the information he has already decided does not engage the exemption. However, for a small amount of information he accepts that it is not in the public interest to release the information as it could provide information that could pose a security risk and potentially assist criminal planning which is not in the public interest.

Section 43 – commercial interests

35. NYFRS has applied section 43(2) FOIA to most of the information it has withheld.
36. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
37. The Commissioner has defined the meaning of the term "commercial interests" in [Section 43 - commercial interests](#) as follows: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."
38. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
39. The Commissioner's guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.
40. For section 43(2) to be engaged, the Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would or would be likely to, occur if the withheld information was disclosed must relate to commercial interests;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice to those commercial interests; and,
 - Thirdly, it is necessary to establish whether the alleged prejudice would, or would be likely to, occur.
41. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a real and significant risk of the prejudice to commercial interests occurring for it to be successfully engaged.
42. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.
43. In its internal review NYFRS had argued that releasing the withheld information,

"would prejudice the commercial interests as it could negatively impact the company or business. This could affect their reputation and therefore impact their revenue, due to lack of business confidence by the public".

44. It argued a need for fairness, whilst acknowledging the interest in fire safety issues. NYFRS stressed in its submission to the Commissioner that -

"there also is a need to consider the affects that releasing the information would have on a business. The safety reports highlight that if action is not taken then any enforcement notices will be published. These are placed within the public domain at the following link - [Enforcement Register - NFCC](#)."

45. Its view is that there is "a formal process in place for notifying the public of any safety issues and enforcement action". If detail is released prior to that point, "without the business having the opportunity to act on the recommendations" it "could prejudice those businesses and affect their competitive advantage against other similar venues, due to concerns of safety and lack of public confidence".
46. The Commissioner notes that the third party does not seem to have been consulted about the release of this information. He does not consider it acceptable for a public authority to provide speculative arguments on behalf of a third party. However, he accepts that the information is commercial as it relates to the effect of its release on a business (potentially reduced revenue). This may be prejudicial at the lower level of prejudice to its competitiveness with other businesses where similar information may not be in the public domain.
47. Therefore the Commissioner has found that section 43(2) is engaged and has gone on to consider the public interest in this matter.

Public interest factors in favour of disclosing the requested information

48. NYFRS stated that releasing the information would provide the public with the knowledge about what concerns have been raised.
49. The complainant's arguments are in paragraph 18.

Public interest factors in favour of not disclosing the requested information

50. NYFRS's view is that, "Disclosing the information would impact on the business reputation and therefore could result in any loss of revenue". It points to the procedure that is in place "for raising businesses who are

not complying with fire regulations and, if an enforcement notice is issued then they are published". NYFRS argues that releasing this information before businesses are able to take action on its recommendations "would affect their competitive advantage due to potential lack of public confidence".

Balance of the public interest

51. The Commissioner accepts that there is public interest in not causing commercial detriment to a particular business when similar information may not be available for its competitors. He also accepts that there is a procedure that NYFRS follows where enforcement information is later placed in the public domain should a business not be compliant.
52. Nevertheless, the Commissioner is persuaded by the complainant's arguments that access to information about fire safety defects empowers consumers to make informed choices about where they stay and encourages businesses to act swiftly to prioritise guest safety. Consequently, he has decided that the information should be released.

Section 40 - personal information

53. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
54. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
55. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
56. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

57. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".

58. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
59. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
60. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
61. NYFRS has withheld some individual names, direct phone numbers, email addresses and a signature.
62. The Commissioner notes that one telephone number seems to have been withheld under this exemption that is not linked to an individual and is therefore not personal information and must be disclosed. NYFRS indicated in its submission to the Commissioner that it intends to release this information because it is in the public domain and he expects NYFRS to do so.
63. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subject(s). The names of the data subjects quite obviously is information that directly identifies those concerned and the other information is clearly linked to them.
64. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
65. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
66. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

67. Article 5(1)(a) of the UK GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
68. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

69. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

70. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”¹.

71. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

72. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

73. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
74. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
75. The Commissioner accepts that the complainant has an interest in accountability which could be aided by the disclosure of the personal

information. He also acknowledges the general interest in transparency for its own sake.

Is disclosure necessary?

76. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
77. NYFRS argued that there is no legitimate interest in disclosure and that the personal data has been redacted in order that it does not enter the public domain. It contends that officers move or leave or telephone numbers are changed which would mean that the details would not be available. NYFRS states that there is a general enquiries contact email address and telephone number in the public domain should information be sought.
78. NYFRS has provided a limited argument but the complainant has not provided argument regarding the redactions made under section 40(2). In this instance the Commissioner does not consider that the names, contact details and signature of one individual acting on behalf of NYFRS are necessary to satisfy the complainant's interest in the fire safety of the named location.
79. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore NYFRS was entitled to rely on section 40(2) of FOIA to withhold the information.

Other matters

80. The [section 45 Code of Practice](#) recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from receipt.
81. In this case NYFRS provided an internal review beyond the maximum recommended timeframe.

Right of appeal

82. 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

83. 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.
84. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF