ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: **4 June 2019**

Public Authority: **Greater Manchester Fire and Rescue Service**
Address: **146 Bolton Road**
Swinton
Manchester
M27 8US

Decision (including any steps ordered)

1. The complainant requested a copy of a report about cladding used for a specified building construction. Greater Manchester Fire and Rescue Service ('GMFRS') responded with some details it held about the external wall build up but did not provide a report. At the internal review stage, GMFRS said that no further information was held other than had already been provided.

2. The Commissioner's decision is that, on the balance of probabilities, GMRFS does not hold the requested report. However, she considers that the request should have been considered under the EIR. By failing to carry out its internal review within the statutory 40 working days' limit, GMFRS breached regulation 11(4) of the EIR.

3. The Commissioner does not require GMFRS to take any steps as a result of this notice.

Request and response

4. On 11 September 2018, the complainant wrote to GMFRS and requested information about the Adelphi Wharf construction in the following terms:

> *"GMFRS previously kindly supplied information about private blocks in Salford with fire safety concerns.*
>
> *The above block is under construction and I would be most grateful if you could provide a copy of the report on the cladding please? I understand from the Council that GMFRS is involved."*

5. GMFRS responded on 26 September 2018. It provided some details about the external wall build up, but did not provide or reference any report.

6. On 26 September 2019, the complainant requested an internal review. He reiterated that he required a copy of the report and clarified that this was for Phase One.

7. The complainant contacted GMFRS on 29 October 2018 to ask about the internal review. GMFRS replied on 30 October 2018, apologising for the lack of contact. It explained that it had sent the internal review request to its "High Rise" team and that a response was expected imminently. It also said it would provide regular updates.

8. On 5 and 15 December 2018, the complainant chased GMFRS for its outstanding review response. On 18 December 2018 GMFRS again apologised, this time for the lack of updates, and advised it did not hold any further information on its premises other than that already released in its initial response. It said that any further information would be held by the Approved Inspectors as they are required to ensure the building meets the functional requirements of the Building Regulations 2010 and that GMFRS would source contact details.

9. GMFRS did not provide an internal review at this stage.

Scope of the case

10. The complainant initially contacted the Commissioner on 18 December 2018 to complain about the way his request for information had been handled; however, he did not provide copies of all the requisite correspondence until 17 January 2019. He complained about the lack of an internal review and submitted the following initial grounds of complaint:

> *"I have learned today that, despite the tone of previous correspondence, GMFRS now says it has no information about cladding materials used in Adelphi Wharf Phase 1.*
>
> *I am therefore appealing on the grounds that such information was said to be available and, indeed, information regarding phase 2 was actually produced. I find it inconceivable that GMFRS would have no information at all about cladding used in phase 1 when it had such information for phase 2 and carried out a comprehensive review of such blocks post-Grenfell. Although this one was under construction at the time I cannot believe there has been no GMFRS involvement at all.*

I am therefore seeking the remedy of all information about cladding used on Adelphi Wharf Phase 1 to be released."

11. The Commissioner notes that both the complainant's original request and internal review request specify that he required *"a copy of the report on the cladding"* as opposed to *"all information about cladding used on Adelphi Wharf Phase 1"* as written in in his grounds of complaint above. The Commissioner's view is that the wording of the request and the subsequent internal review is clear and only specifies a report. Therefore, should the complainant wish to secure *"all information about cladding"* he should consider submitting a new request.

12. On 24 January 2019, the Commissioner wrote to GMFRS asking it to provide its internal review.

13. GMFRS subsequently provided its internal review on 8 February 2019. It said it did not hold the requested information and advised the complainant as follows:

> *"The GMFRS response on the 18th December 2018 confirmed that we do not hold the information that you requested. Information regarding the Phase 1 you have requested cannot be provided as we do not hold the information.*
>
> *The response also stated that contact details were being sought for you for the Approved Inspectors. Unfortunately this should not have been added to the response as the Approved Inspectors are not subject to FOI.*
>
> *I have confirmed that the report is not something that we should hold and is not being held on our behalf."*

14. On 25 February 2019, having received the internal review, the complainant contacted the Commissioner to raise the following concerns:

> *"Please find attached review response refusing to provide any information about the cladding used on Adelphi Phase 1 because it is only held by an "approved inspector" who is contended to not be subject to FOI.*
>
> *This is an appeal on the basis that there was oversight from GMFRS and so it is contended to have the information. It is effectively saying at the moment it knows nothing about cladding materials used in the construction of Adelphi Phase 1, which is contended to not be true.*
>
> *Salford City Council has also denied my request on an identical basis.*

These two organisations combined are effectively saying they have delegated control of the cladding used in the construction of Adelphi Phase 1 entirely to the private sector with no inspection or oversight by any statutory body whatsoever.

I am therefore appealing to the ICO for an order for GMFRS to release what it knows about the cladding used in Adelphi Phase 1."

15. The Commissioner has considered whether, on the balance of probabilities, the requested report is held by GMFRS. She has also considered under which legislative regime the request should have been handled.

Reasons for decision

16. The request was handled by GMFRS under the FOIA. The Commissioner asked the public authority twice for its view as to whether the request should have instead been handled under the EIR. She received no formal response, other than GMFRS reiterating that it had dealt with the request under the FOIA.

17. From her enquiries made with GMFRS, the Commissioner understands that reports on cladding released under FOIA and EIR by other public authorities (available in the public domain on *WhatDoTheyKnow.com*[1]) typically deal with the types of cladding used, tests undertaken on the cladding and fire safety. She notes that since the Grenfell Tower fire there has been considerable interest in cladding systems used on buildings.

18. The Commissioner has first considered whether the requested information constitutes environmental information.

Regulation 2 - Is any of the information environmental?

19. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Briefly, subparagraph 2(1)(a) of the EIR defines environmental information as material on the state of the elements of the environment including, for example the atmosphere, air, water, land and landscape. Sub-paragraph 2(1)(b) extends this definition to include information on factors such as substances, energy, noise, radiation,

[1] https://www.whatdotheyknow.com/

waste, etcetera, affecting or likely to affect the elements of the environment referred to in (a).

20. Regulation 2(1) states environmental information is 'any information on' the matters listed later in regulation 2(1). This means regulation 2(1)(c) covers:

- documents setting out the measures themselves;
- any information on the way they have been developed and are
- applied; and
- any information about the results of that application.

21. The complainant has requested a report on the cladding used on a specified building. Cladding is used to protect buildings from moisture and the penetration of air, for thermal insulation and to manage wind loads, as well as for aesthetic reasons. In the Commissioner's opinion, the information requested by the complainant constitutes environmental information under regulation 2(1)(f) which states:

> *"The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"*

22. The Commissioner recognises that it can sometimes be difficult to identify environmental information, and has produced guidance[2] to assist public authorities and applicants. The Commissioner's well established view is that authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC[3], which the EIR enact.

23. The Commissioner considers that a report on cladding would constitute a 'measure' as per 2(1)(c) of the EIR and that cladding is designed to protect buildings from environmental elements such as noise, energy, etcetera . She has therefore concluded that the requested information is environmental and that GMFRS should have handled the request under the EIR.

---

[2] https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0004

Regulation 5(1) – general right of access to information held by public authorities

24. Regulation 5(1) of the EIR states requires a public authority that holds environmental information to make it available on request.

25. Under regulation 5(1) public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR.

26. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

27. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, GMFRS held the information requested at the time of the request.

28. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. She will also consider any other information or explanation offered by the public authority which is relevant to her determination.

29. Therefore, in progressing her investigation, the Commissioner asked GMFRS to describe the searches it carried out for information falling within the scope of the request. She also asked whether any of the information falling within the scope of the request was held at one time but had either been deleted or destroyed.

30. In its substantive response to the Commissioner, GMFRS confirmed that it utilises an electronic database 'CRMS' to log and record its activities in relation to fire safety work. This is based on addresses to which individuals are linked as connected persons. The CRMS system was implemented in 2017; previously the 'CFRMIS' system was used which is a property database. GMFRS has explained that the main difference between the systems is the ability within CRMS to upload documents to the property record and to link 'activities' for example emails, telephone, calls or notes to a 'job'. The 'job' records are based on different functions undertaken by Fire Safety Officers and include Building Regulations Consultation, inspections, audits and themed visits.

31. GMFRS advised that it is a statutory consultee for Building Regulations purposes in respect of fire safety matters and therefore for relevant

applications (premises which are covered by the Regulatory Reform (Fire Safety) Order 2005) it should be consulted by both Local Authority Building Control Departments and Approved Inspectors.

32. It said that the consultation may be conducted with copies of the application and any related relevant documentation, including plans, are provided in hard copy form or electronically. If electronic copies are provided these should be linked on CRMS to the relevant job assigned to an officer. If paper copies are provided these may be scanned if practical, and then linked to the job electronically. However, some elements of the information, for example large plans, cannot be scanned. Where it is not possible to scan and save the documentation this is stored locally until the job is complete.

33. GMFRS said that prior to the introduction of the CRMS system, an electronic consultation would have been stored locally or in paper form until completion of the job, and the response would have been stored on the CFRMIS system.

34. It advised that CRMS is a property based system and the address database is linked to and updated from the Property Gazetteer. For Building Regulations Consultations for new developments a 'local record' entry is created as the address will not exist within the system and this is used for the Building Regulations 'job'.

35. GMFRS said there is no prescribed time limit for retaining copies of Building Regulations consultations and, given the volume and size of the paperwork, these are not generally retained for a significant period.

36. In terms of handling the complainant's request, GMFRS said the original request was passed to an administrator who searched the CRMS system using the address details 'Adelphi Wharf'. Having noted that the FOI request described the premises as being "under construction" the search was undertaken with a view to establishing if there any Building Regulations applications and associated documentation linked to the relevant job.

37. This search identified that there was a Building Regulations 'job' that had been completed in April 2017. GMFRS stated that the response letter, which contained no reference to cladding, had been saved on the system but there was no other documentation.

38. GMFRS explained that the administrator identified that there was a second Building Regulations 'job' that had been created in January 2018 and passed to an officer in the Fire Engineering Team. This record showed that the consultation had been submitted electronically and that the officer had saved the consultation documents to the job. A response letter was recorded on the file as having been sent on 11 July 2018.

39. The administrator then referred the FOI request on to the officer who had dealt with the Building Regulations Consultation. This officer was familiar with the development as he was engaged with the Approved Inspector and was aware that the development was in three phases. The following searches were then undertaken:

> *"In relation to Phase 1 a search was undertaken of the CRMS and CFRMIS systems and the local fire engineering drive and this did not return any further information.*
>
> *As the Officer was already familiar with the documents held in relation to the Building Regulations application for Phase 2 he was able to locate the job directly and identified the information which was held on the cladding system which was contained within an email between* [name redacted] *and* [name redacted]*. Held on the system was a copy of the fire strategy for Phases 2 and 3 but it did not include information on the cladding system. A previous query in relation to the cladding system had resulted in the email mentioned above being provided."*

40. GMFRS explained that the officer formulated the response to the request based on the information held on the system and had not considered whether or not it was relevant to confirm whether any report was held by GMFRS. The information that was provided within the response had been provided directly by the Approved Inspector via the Design Manager. GMFRS said that the officer did not consider whether or not the information was held should be considered in relation to any exemptions that may be appropriate and therefore replicated the information held on the file.

41. GMFRS advised that the officer was also aware that a query had been raised about the cladding system and was being considered by a Station Manager elsewhere within the department and therefore referenced this in the response to the original request.

42. When the complainant clarified that he required the report for Phase 1, GMFRS passed this to the Station Manager to consider. His involvement in the case was not as part of a recorded 'job' but through various interactions with outside parties and the correspondence was not logged on the CRMS system.

43. That officer had been informed by the Metal Cladding and Roofing Manufacturers Association ('MCRMA') that the cladding system used at Adelphi Wharf had failed a full scale test in Dubai. This information was relayed to the Approved Inspector and the details of the MCRMA provided in order to obtain further clarification and advice. This information was held on emails by the officer and had not been linked to the job. When the further clarification was received from the

complainant, the officer searched his emails and used this to provide a response. The officer has confirmed that, in line with the responses previously provided, no report on the cladding was held within emails.

44. As set out above, GMFRS has confirmed that the main searches were of the relevant computer systems which should be used to store relevant material and correspondence. One officer searched their emails based on their knowledge and involvement in the case. These emails should also be recorded on the CRMS database and GMFRS said this issue will be addressed through further guidance to the individual concerned.

45. GMFRS said it had never held the requested information; therefore this information had not been deleted or destroyed. It advised there is a statutory duty to consult with GMFRS but there is no duty on GMFRS to respond to consultations, however it endeavours to do so.

46. As above, GMFRS stated that no report was held in relation to the cladding. The information about the cladding which was held was provided in response to the original request.

47. In terms of the retention of Building Regulations information, GMFRS explained that this does not currently form part of a formal records management policy and, given the volume and size of application, the information provided by the Building Control body for consultation purposes is not retained for any significant period once the consultation has been completed. A copy of the response is held on file with no destruction or deletion.

48. The Commissioner asked GMFRS if there is a business purpose as to why the requested information should be held. It replied that the requested information forms part of information which may be provided to GMFRS for the purposes of commenting on the Building Regulations application in respect of fire safety matters. It would not form part of every application and would not necessarily have been provided as a routine matter.

49. GMFRS told the Commissioner that it recognises that this request could have been handled more efficiently and expediently if further clarification had been sought in relation to the information required as part of the original request, and appropriate advice could have been provided at the time. However, it reiterated that the appropriate searches were undertaken and no report was held on file pertaining to the cladding system.

Conclusion

50. The Commissioner considers that GMFRS has provided a clear explanation of the searches and enquiries made to establish that it does not hold the requested report. No evidence is available to the

Commissioner which would indicate that GMFRS' searches were insufficient, or that it holds recorded information relating to cladding beyond that already provided to the complainant.

51. In light of the above, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, GMFRS identified all the information it holds that falls within the complainant's request and that it does not hold the requested report.

Regulation 11 – representation and reconsideration

52. Regulation 11(4) of the EIR sets out that, where a requester has made written representations to a public authority within 40 working days of the date on which he or she believed that the authority has failed to comply with a requirement of the EIR (that is, normally, the date of receipt of the public authority's response), the public authority should reconsider its response and provide its decision *"as soon as possible and no later than 40 working days after the date of receipt of the representations".* This reconsideration is normally referred to as an internal review.

53. In this case the complainant requested an internal review on 26 September 2018. Although GMFRS responded on 18 December 2018, it not provide its actual internal review until 8 February 2019, following the Commissioner's intervention. Both response dates exceed the 40 working days' statutory limit; therefore GMFRS breached regulation 11(4) of the EIR.

54. No remedial steps are required in respect of the time for compliance, but GMFRS should ensure that it meets the requirement to issue internal review responses in a timely manner going forward.

Other matters

---

55. The Commissioner notes the complainant's view (as set out in the 'Scope' section of this notice) that GMFRS, together with Salford City Council, *"are effectively saying they have delegated control of the cladding used in the construction of Adelphi Phase 1 entirely to the private sector with no inspection or oversight by any statutory body whatsoever"*. This is not a matter for the Commissioner to determine as it does not fall within her remit.

Right of appeal

56. 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

57. 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.

58. 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 ……

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