Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 June 2011

Public Authority: **Lancashire Fire and Rescue Service**
Address: **Garstang Road**
Fulwood
Preston
PR2 3LH

Summary

The complainant made requests to Lancashire Fire and Rescue Service for copies of communications relating to its handling of a complaint he submitted against the Chair of Lancashire Combined Fire Authority. He also requested details of all expenses the Chair had claimed over a period of nine years. The public authority refused the requests as vexatious and applied section 14(1) of the Freedom of Information Act 2000 (the 'Act'). The Commissioner's decision is that the public authority was entitled to rely upon section 14(1) and he requires no further action to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant is a retired firefighter. He represents a number of fire service veterans (FSVs) – retired firefighters who receive a pension from the Lancashire Fire and Rescue Service (LFRS) – who are in dispute with LFRS. Lancashire County Council's pensions service administers the LFRS pension scheme under a contract with LFRS.

3. The dispute arises because a supplementary 'injury allowance' has been withdrawn from pensioners who have also received additional benefits (e.g. 'incapacity benefits') from the Department of Work and Pensions

(DWP), associated with disability arising from the injuries which gave rise to their enhanced pension. The allowance has also been withdrawn from pensioners who have refused to co-operate with enquiries relating to any DWP payments.

4. Towards the end of 2007, the LFRS decided to undertake a review of all fire injury pensions being paid following discovery of an overpayment. The regulations governing fire injury pensions require that the actual injury allowance payable must be offset by benefits paid by the state in respect of the same injury. This is designed to ensure that individuals are not compensated twice for the same injury. While the terms of the pensions scheme require LFRS to obtain details of the additional benefits received by those pensioners eligible for injury pensions, the scheme does not expressly provide for the obtaining of this information from the DWP. In view of this, individuals were asked to give their consent for this information to be obtained from the DWP. However, a number of those individuals refused to consent because they felt that this would be a breach of their rights under the Data Protection Act 1998 ("the DPA"). Where consent was not given, LFRS considered that they were justified in suspending injury pension payments until the necessary information was provided and wrote to inform those affected of its position.

5. The complainant has been engaged in substantial correspondence with the LFRS and Lancashire County Council since 2008, including the making of a number of DPA subject access requests and Freedom of Information requests to each public authority.

6. The Commissioner has recently considered a complaint involving the complainant and Lancashire County Council under the case reference FS50321319. The complaint related to a request for copies of correspondence between Lancashire County Council and LFRS about the drafting and amending of consent forms relating to the disclosure of personal data under the DPA. In that case the Commissioner took into account the context and history of the complainant's dispute and decided that Lancashire County Council was correct to refuse the request on the grounds that it was vexatious under section 14(1) of the Act.

7. The requests considered in this Decision Notice are connected to a complaint made by the complainant against the Chair of the Lancashire Combined Fire Authority, which has responsibility for leading and supporting LFRS. The complaint arose from the complainant's dispute with LFRS and the requests stem from the complainant's dissatisfaction with LFRS's handling of that complaint.

The Request

8. On 19 January 2010, in a letter addressed to the Clerk of the Lancashire Combined Fire Authority, the complainant made the following requests for information to LFRS:

   (a) "Did you, or did you not, without consulting the Chairman of the CFA [Combined Fire Authority] personally decide to refuse to circulate my documents to the CFA members? Explain.

   (b) If you did not consult with the Chair, please let me have a detailed explanation why you chose to take the action you did citing the Constitutional or delegated power you have from the CFA in so doing? Explain.

   (c) Why did you use the false premise of sub judice to mislead the Committee into failing to debate this entire issue in the Part 1/2 Session of the CFA meeting of the 14th December 2009? Explain.

   (d) If you did consult the Chair [name], please let me have detailed justification of his instruction to you to refuse to circulate my documents to Elected Members.

   (e) If, retrospectively, you have now consulted with the Chair, in effect the accused, (which given the circumstances would be quite extraordinary to say the least, rather than the Deputy Chair) please let me have a copy of any communication, Minutes, Memoranda, contemporaneous notes, etc taken at such meetings. You are to regard the word 'communication' in its extended generic sense.

   (f) Please supply copies of all public expenditure/reimbursement records claimed by [name of the Chair] during the last 9 years of his elected appointments, or whatever the lesser maximum Treasury record retention requirement is, for example, 7 years. These copies of public expenditure records should also include his submitted accompanying receipts, and any recorded comments by claim 'handling' staff."

9. On 10 February 2010 LFRS responded to the complainant and explained that it was refusing to comply with the requests on the grounds that they are vexatious. LFRS therefore applied section 14(1) of the Act.

10. The complainant did not request an internal review of the refusal of the requests, and instead later referred the matter to the Commissioner.

The Investigation

Scope of the case

11. On 28 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

12. On 3 February 2011 LFRS advised the Commissioner that it was waiving its right to conduct an internal review in light of the circumstances of the case and the time which had passed since its response to the requests.

13. During the course of the Commissioner's investigation the complainant agreed that the Commissioner would only consider the requests listed (e) and (f) at paragraph 8 of this Notice. The scope of the case is therefore limited to those two requests only.

Chronology

14. On 5 April 2011 the Commissioner wrote to LFRS and requested further information and arguments in support of its view that the requests are vexatious. In particular, the Commissioner requested arguments in relation to the five factors he considers relevant when deciding whether a request is vexatious.

15. LFRS responded to the Commissioner on 13 May 2011 and provided a series of information in support of its refusal of the request.

Analysis

Substantive Procedural Matters

Section 14 – vexatious requests

16. The Commissioner has outlined the following five factors as being useful to consider when determining whether a request for information is vexatious:

- Would complying with the request create a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request have the effect of harassing the public authority or distressing its staff?
- Can the request fairly be seen to be obsessive or manifestly unreasonable?
- Does the request lack any serious purpose or value?

17. It is not necessary for all of the above criteria to apply. However, it is the Commissioner's view that at least one of the above criteria must apply for a request to be considered vexatious and, in general terms, the more criteria that do apply the stronger the case. He accepts that many of the arguments submitted by the public authority in support of this exemption can also apply to more than one of the above criteria.

18. When determining whether a request should be deemed vexatious and whether one or more of the above criteria applies, the Commissioner can consider the wider context and history of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form part of a wider pattern of behaviour that makes it vexatious. Nevertheless, the Commissioner recognises that it is the request and not the requester that must be vexatious in order for the exemption to apply.

Would complying with the request create a significant burden in terms of expense and distraction?

19. LFRS has not argued that complying with the requests in this particular case would itself impose a significant burden upon the authority's resources in terms of expense and distraction. However, it believes that weight should be attributed to this factor when the context and history of the requests are taken into account. LFRS has explained that it believes the volume, frequency and repetitive nature of correspondence it has received from the complainant means that significant resources have been spent dealing with requests and correspondence associated with the complainant's campaign about injury pension payments since late 2007. It says that officers at all levels of seniority in LFRS and the Combined Fire Authority have spent large amounts of time dealing with correspondence generated by the complainant's dispute. When viewed in this context, LFRS believes the requests represent a continuation of a pattern of behaviour by the complainant which has created and continues to create a significant burden on the organisation's resources.

20. LFRS has also argued that the burden on the organisation's resources is increased by the nature of the complainant's correspondence and the fact that he often sends the same letter to multiple recipients, which means several officers often end up working on the same enquiries concurrently. LFRS says that this often makes it difficult to keep track of all of the matters being raised by the complainant. Additionally, LFRS has argued that the complainant's correspondence is often voluminous and lacks a logical structure, with requests for information sometimes simply inserted within lengthy correspondence about a variety of matters. On the whole, LFRS believes that the complainant's somewhat 'scattergun' approach to corresponding with the organisation contributes to the burden on its resources.

21. In order to illustrate the amount of correspondence generated by the complainant's dispute, LFRS has provided the Commissioner with an index which lists the bundle of documents collated in relation to ongoing legal proceedings between the parties. The index lists 214 separate documents comprising a total of 674 pages in relation to the dispute, and this includes substantial correspondence between the complainant and LFRS in addition to various other parties such as Lancashire County Council, local councillors and Members of Parliament. Between December 2007 and December 2010 there were 56 exchanges of correspondence between LFRS and the complainant. The complainant sent 28 letters to various LFRS employees in this period, many of them running to several pages and, in some cases, more than ten.

22. LFRS has also provided the Commissioner with a sample of correspondence from the court bundle, most of which relates to the complainant's requests for information and complaints connected with the dispute. By way of example, the complainant's letter of 19 January 2010, which contained the requests in this case, is 12 pages long. It features a series of observations about the Combined Fire Authority's constitution before going on to make a range of queries about the circumstances of a complaint he had made against the Chair of the Combined Fire Authority. Although these points and queries were not identified as requests for information under the Act, they appear to have carried an expectation that LFRS should respond to them. Towards the end of the letter the complainant then also went on to raise the requests for information which are considered in this Notice, which he specifically identified to be handled as requests under Act.

23. Having been provided with a sample of the complainant's correspondence with LFRS, the Commissioner considers that it is clear that the cumulative effect of dealing with the level of correspondence from the complainant over the period of three years will have created a significant burden on the public authority's resources. The Commissioner also considers that it would be inappropriate to attempt to distinguish between the complainant's requests and his wider correspondence because the requests form part of a lengthy and ongoing pattern of dealings with LFRS. Therefore, it is appropriate to consider the burden on resources in terms of the wider use of LFRS's resources in dealing with the complainant rather than only the burden which would be created by complying with the particular requests considered in this Notice. From the pattern of correspondence to date, it also appears clear that any responses LFRS provides to the complainant invariably provoke further correspondence in return.

24. For these reasons, the Commissioner is satisfied that compliance with the request would create a significant burden in terms of expense and distraction. In view of the context and history of the requests he

therefore attaches some weight to this argument, albeit less than full weight to reflect the fact that LFRS has not provided arguments that complying with the requests in this case would itself have created a burden on its resources.

Is the request designed to cause disruption or annoyance?

25. LFRS has explained that it believes the complainant's behaviour and high levels of correspondence are intended as a means of disrupting the authority's provision of its primary functions and distracting it from the ongoing dispute about injury pension entitlements. As an example, it has cited the complainant's tendency to copy in numerous individuals and parties into the same correspondence, a measure which LFRS believes is designed to create further enquiries into his complaints against the authority and in turn require additional resources to be used in dealing with his dispute.

26. The Commissioner notes that, in this case, the request does not appear to have been circulated to more than one recipient and LFRS has not provided specific arguments demonstrating that the requests are designed to cause disruption or annoyance when viewed in isolation. Furthermore, the complainant does not appear to have made any explicit statements indicating that the requests are intended to disrupt or annoy the public authority and its staff.

27. However, the Commissioner believes it is again appropriate to take into account the wider context and history of the request and whether there is evidence of any strategy to cause disruption or annoyance. The Commissioner considers it reasonable to make a distinction between behaviour which is primarily intended to cause disruption or annoyance and behaviour which is mainly determined and persistent but which still might have the effect of causing disruption or annoyance. Although the complainant does not appear to have stated that the requests were designed to cause disruption or annoyance to the public authority, the Commissioner considers that a reasonable person would conclude that some disruption to LFRS's core business would be caused by a pattern of such frequent and voluminous correspondence of the nature sent by the complainant since 2007.

28. Although LFRS has not demonstrated that the complainant's specific intention when making the requests was to cause disruption or annoyance, the Commissioner has taken into account the context of the requests and the disruptive effect the complainant's pattern of behaviour would be likely to have had on the public authority's other business. The Commissioner therefore finds that some weight is given to this factor.

Does the request have the effect of harassing the public authority or distressing its staff?

29. For similar reasons to those outlined above, LFRS has argued that the volume and frequency of the complainant's correspondence has the effect of harassing the public authority and distressing its staff. It believes that the 'scattergun' nature of the complainant's regular and voluminous correspondence, often addressed to a variety of individual LFRS employees and members of the Combined Fire Authority, means that respondents are required to spend a disproportionate amount of time dealing with his correspondence.

30. LFRS also believes that further weight should be given to this factor owing to what it regards as the deliberate and derogatory nature and tone of the language often used by the complainant in his correspondence. In support of its view LFRS has cited particular examples from the letter containing the requests considered in this Notice. In the request letter the complainant refers to LFRS and the Combined Fire Authority as being the *"cultural legacy of fiefdom, 'independence', and LTD company mentality which the two architects [names of CFA members], now joined by [name of current Chair], set up for their own comfort and protection, but for no one else's"*. Two paragraphs later he suggests that an LFRS employee has *"a hidden agenda which operates in the bureaucratic dark away from public scrutiny and accountability; a fiefdom where the LFRS can hire, fire, and dismiss, a la Satanic Mills, without the slightest intervention of Justice, or Democratic intervention in the form of an Elected CFA Member".*

31. LFRS has also pointed to previous correspondence from the complainant surrounding the pensions dispute in which he has accused individual employees of *"lacking professional maturity"* and *"deliberately obstructing and abusing due process"*. LFRS has also emphasised its view that the complainant has not produced any cogent evidence to support his allegations against individual members of staff and instead relies upon supposition, assumption, misinformation and inference in order to justify his claims. It has argued that the tone of the complainant's correspondence and accusations against individual members of staff has caused distress to its employees.

32. When considering arguments relating to the tone of an individual's dealings with a public authority, the Commissioner would expect the public authority to make due allowance for any frustration or annoyance in correspondence on the part of a complainant involved in a grievance or dispute. For this reason, he does not consider that an argumentative or hostile tone in correspondence is necessarily evidence of a vexatious request. The test as to whether such language might be seen as

harassing a public authority or its staff is whether a reasonable person who is confronted with such language might feel harassed or distressed.

33. In this case, the Commissioner considers that the tone of the complainant's correspondence containing the requests is characterised by attempts to discredit and make accusations against specific LFRS employees and members of the Combined Fire Authority. While the language used is not overtly abusive or threatening, the complainant's correspondence is clearly written in a deliberate and provocative tone which would be likely to cause discomfort to individual members of staff and make them feel personally harassed.

34. The Commissioner considers that the complainant's tendency to focus on the identities of individual members of staff and single them out with accusations about their conduct and motivations in their professional roles is the most relevant aspect when considering whether this factor is engaged. It is worth noting that the requests in this case are connected to the complainant's own complaint against the Chair of the Combined Fire Authority, with one of the requests being for full details of any expenses the Chair had claimed in his role over a nine year period.

35. While it is not normally relevant to take into account an applicant's motivation when making a request for information under the Act, the Commissioner considers that the complainant's willingness to single out individual members of staff as the focus of his requests and complaints means this factor is engaged. The nature of the complainant's requests and other correspondence suggest that he has become more interested in pursuing campaigns against individual members of the Combined Fire Authority and LFRS employees than concentrating on the substantive points of his campaign about injury pension payments which he purports to be principally interested in. For these reasons, the Commissioner accepts that a reasonable person would be likely to feel harassed or distressed by the nature of the complainant's dealings with LFRS and finds that this factor is engaged.

Can the request fairly be seen to be obsessive or manifestly unreasonable?

36. It appears clear that the complainant is pursuing a campaign against LFRS as a result of his dispute with the organisation about injury pension payments. The Commissioner accepts that there is often a thin line between obsession and persistence, and that each case must be determined on its own facts. When the Commissioner considers whether a request can be seen as obsessive or manifestly unreasonable, he will often consider whether an applicant has continued with requests for information or a campaign against a public authority despite being in possession of independent evidence on the issue or there having been

an independent determination on the matter, for example by a court or a regulatory body.

37. In this case, the complainant's underlying dispute about the withdrawal of injury pension payments is still a live issue which has not been resolved. LFRS has explained that the matter is the subject of ongoing legal proceedings. On occasions in the past it is clear that the complainant has legitimately sought to use requests under the Act as a means of obtaining information relating to the substantive matter of the pensions dispute.

38. However, in this case the Commissioner considers that a distinction should be made in that it appears the scope of the complainant's campaign has broadened in pursuit of matters which are only a side-effect of the substantive dispute. As discussed at paragraphs 34 and 35, the requests in this case focus on a complaint against an individual member of the Combined Fire Authority and the complainant appears to have become increasingly keen to focus on the identities of individuals as a means of extending his campaign against the public authority. The Commissioner considers that the complainant's inclination to broaden his dispute with LFRS and pursue complaints against individuals is an indication of obsessive or manifestly unreasonable behaviour in this case. This is particularly the case given that the ongoing legal proceedings between the parties provide a clear mechanism through which the substantive matter of the pensions dispute will be independently considered and determined.

39. The Commissioner also considers that the volume and frequency of the complainant's correspondence with LFRS in connection with his dispute and subsequent complaints against individuals is a further indication of behaviour which can be fairly seen as obsessive or manifestly unreasonable. While the significant levels of correspondence exchanged between the parties since late 2007 began as part of the complainant's determined and persistent pursuit of his campaign on the pensions dispute, more recently the focus of the campaign and the related correspondence has shifted to the complainant's dissatisfaction with individuals within the authority. The Commissioner considers that the use of voluminous and frequent correspondence to pursue these secondary elements of the complainant's campaign against LFRS mean the complainant's behaviour and the requests in this case have crossed the line from behaviour which is persistent to that which can be seen as obsessive. The Commissioner therefore considers that a strong degree of weight should be attributed to this factor.

Does the request lack any serious purpose or value?

40. When considering whether this factor is engaged, the Commissioner considers whether a public authority has demonstrated that a request has no serious purpose or value at all. LFRS has not provided arguments to suggest that the requests in this case have no serious purpose.

41. The Commissioner notes that the complainant is pursuing a perfectly legitimate dispute in relation to the injury pensions matter. However, in his consideration of the requests he has taken into account the fact that the information sought by the complainant in this case is not fundamental to that underlying dispute, and instead the complainant appears to have become distracted by what might be seen as secondary matters in his campaign against LFRS.

42. Nevertheless, the Commissioner accepts that the complainant believes his requests have a legitimate and serious purpose in that they are designed to obtain information on what he regards as maladministration within LFRS. The Commissioner considers that applicants have a legitimate right to seek information in relation to grievances under the Act and, in the absence of further arguments from LFRS as to why the requests lack any serious purpose or value at all, does not attach any weight to this factor.

Summary

43. The Commissioner has considered the five factors listed at paragraph 16 and finds that the first four are engaged to some degree. Having taken into account the context and history of the complainant's dispute with LFRS, he is satisfied that the requests in this case would impose a significant burden upon the resources of LFRS and would have the effect of disrupting the authority's business and harassing or distressing the authority's staff. The Commissioner also considers there is a strong indication that the persistence of the complainant's campaign on the underlying matter of the pensions dispute has more recently developed into an obsessive and manifestly unreasonable campaign against the authority and individuals within the authority. For these reasons, the Commissioner finds that LFRS correctly applied section 14(1) of the Act in this case.

The Decision

44. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

45. The Commissioner requires no steps to be taken.

Right of Appeal

46. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

47. 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.

48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of June 2011

Signed ……

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

(a) section 21

(b) section 23

(c) section 32

(d) section 34

(e) section 36 so far as relating to information held by the House of Commons or the House of Lords

(f) in section 40 –

(i) subsection (1), and

(ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,

(iii) section 41, and

(iv) section 44"

Vexatious or Repeated Requests

Section 14(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

Section 14(2) provides that –

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."