

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

Date: 23 April 2018

Public Authority: Hampshire Fire and Rescue Service
Address: Hampshire Fire and Rescue Service HQ
Leigh Road
Eastleigh
Hampshire
SO50 9SJ

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning application. Hampshire Fire and Rescue Service disclosed some information and explained that it did not hold any further information.
2. The Commissioner's decision is that Hampshire Fire and Rescue Service is correct to state that it does not hold any further information. She therefore considers that it has not breached regulation 12(4)(a) of the EIR. However, she considers that it has breached regulations 5(2) and 11(4) of the EIR.
3. The Commissioner does not require Hampshire and Fire Rescue Service to take any steps as a result of this decision.

Background

4. The complainant contacted Hampshire and Fire Rescue Service (HFRS) on 28 November 2016 regarding safety concerns he had in relation to a new housing development.
5. The complainant received an email from a Community Safety Delivery manager for Havant and East Hampshire on 13 December 2016 confirming that, in response to the safety concerns he had raised, the manager would visit the site in question and would let the complainant know his findings.

6. On 18 December 2016 the complainant received another email from the manager, confirming that the site had been visited and that the findings would be given to his manager, who would then send a response to the complainant.
7. On 23 December 2016 HFRS contacted the complainant and confirmed that one of its officer had carried out an on-site review of the development in question. It explained that work was being finalised and discussed with developers and other agencies. HFRS also confirmed that it would inform the complainant of the outcome once the work had been completed.

Request and response

8. On 18 January 2017, the complainant wrote to HFRS and requested information in the following terms:

*" ... Please provide copies of the following information:
-- the report prepared by [name redacted] and given to his manager in December 2016, and
-- any correspondence, notes of meetings etc covering the Service's discussions with 'the developers and other agencies' about these matters, from January 2016 to present."*
9. HFRS responded on 16 February 2017. It explained that in relation part 1 of the request there was no report written by [name redacted]. It also explained that it had already sent the complainant a letter dated 26 January 2017 from [name redacted] which summarised the findings of the site visit in question by the manager in question. In relation to part 2 of the request, HFRS disclosed information to the complainant from South East Water about the retrospective consideration of the number and positioning of fire hydrants.
10. Following an internal review HFRS wrote to the complainant on 12 May 2017. It explained that it had not fully complied with the request as it had located hard copies of incoming correspondence at a local fire station, which it disclosed to the complainant.
11. There was correspondence between the two parties and on 18 August 2017, HFRS contacted the complainant and apologised for failing to inform him that it was considering his request under the EIR. It also reiterated that, although it held information in relation to the first part of his request, it was not a report; HFRS considered that it was an internal communication and was a summary of a casual visit to the site in response to the concerns the complainant had raised regarding safety. HFRS explained that it considered that disclosure would not provide an

accurate summary of the state of the site and that "misleading the public would be a significant ramification for the Authority."

12. HFRS also confirmed that it was withholding this information under regulation 12(4)(e) (internal communications) of the EIR.

Scope of the case

13. The complainant contacted the Commissioner on 5 August 2017 to complain about the way his request for information had been handled. He also explained that he considered that his request should have been dealt with under the EIR. The complainant also complained that HFRS had not responded to a request he made for a "proper review".
14. During the Commissioner's investigation HFRS disclosed the requested information in relation to part 1 of the request. The complainant was dissatisfied with the time taken to disclose this information. He also queried whether HFRS was correct to cite regulation 12(4)(e) initially. The Commissioner explained to the complainant that she considered that the findings/report in question was an internal communication for the purposes of regulation 12(4)(e), but that it could still be disclosed. She will not consider this point any further, as the withheld information has now been disclosed to the complainant.
15. The Commissioner will consider whether the requested information is environmental information for the purposes of the EIR. She will also consider whether HFRS is correct to state that it does not hold any further information in relation to part 2 of the request and the length of time taken to deal with the request, including the disclosure of information to the complainant in relation to part 1 of his request.

Reasons for decision

Is the requested information Environmental Information?

16. The Commissioner is aware that the requested information relates to a housing development.
17. Regulation 2(c) of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect environmental elements and factors. These are listed in regulations 2(1) (a) and (b).
18. The Commissioner considers that, given that the request relates to a housing development, it falls under the EIR.

Regulation 12(4)(a) – Information not held

19. HFRS has explained that it does not hold any further information in relation to part 2 of the request.
20. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. In addition, she will consider any reason why it is inherently likely or unlikely that information is not held.
22. The Commissioner is not expected to prove categorically whether the information was held, but to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
23. The Commissioner made detailed enquiries to HFRS in order to assess whether further information is held.
24. HFRS explained that it had conducted searches on its consultancy team's group email account as well as the individuals who dealt with the developments email accounts. It also confirmed that it had searched the personal files of each person and all of the documentation of those who had a role in discussing the development on behalf of it, together with the recording system in which documents are stored. HFRS also confirmed that it had searched its official documenting system, known as Community Fire Risk Management Information System (CFRMIS).
25. The Commissioner asked whether the information would have been held in electronic format. HFRS explained that all correspondence relevant to its consultation requirements were sent and received via letters and emails. It confirmed that any written letters received by post would be scanned in and stored in CFRMIS. It also explained that these letters were often sent to local fire stations rather than its centralised consultation team.
26. HFRS also confirmed that its search was primarily for data held electronically. The search was carried out on all involved individuals personal storage areas, the team data networked storage area and the official document system CFRMIS. The laptop computers of the individuals involved were also searched, including their email accounts and shared email accounts to which they had access.

27. HFRS also explained that paper records were searched at Eastleigh HQ and at Alton Fire Station. It explained that a search at Alton Station in relation to a previous related request from the complainant had found a few manual records that were scanned into the system and sent to him. It confirmed that no additional records were found.
28. Furthermore, HFRS explained that it had spoken with the Fire Engineering Consultation team and searches were undertaken using HFRS' Premise ID for the site '00823689' and EHDC planning application references '55949/001' and '20252/003'. It also confirmed that it searched the following address based criteria:
 - Medway farm
 - Greenways
 - Brislands Lane
 - Four Marks
 - Co-ordinates 466452,134408
29. In addition, the Commissioner asked whether the information would have been held manually or electronically. HFRS explained that the requested information would have been held as electronic records, as it should have been transferred from paper copy to electronic storage. HFRS confirmed that, as part of a comprehensive search, it had also searched remaining unconverted paper records.
30. The Commissioner also enquired whether any recorded information ever held within the scope of the complainant's request had been deleted or destroyed. HFRS explained that it was possible that records may have existed that were not retained but that this would only have occurred through error. However, it also confirmed that, as a comprehensive search had been undertaken, it was certain that all information relating to the request that was still held by it had been located and delivered to the complainant, in response to a previous, related request it had received from him. This was considered in a separate decision notice.¹
31. The Commissioner also asked what HFRS' formal records management policy says about the retention and deletion of records of this type.
32. HFRS explained that routine inquires and replies have a retention requirement of the current year plus 2 years. However, if there were

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2258363/fer0693883.pdf>

major changes of police or work practices, it would consider archiving information.

33. The Commissioner also asked whether there was a business purpose for which the requested information should be held; if there was, what would be the purpose.
34. HFRS explained that there was no business purpose for it to hold the requested information, but it should be held by the district council.
35. The Commissioner also asked HFRS whether there were any statutory requirements on it to retain the requested information.
36. HFRS explained that whilst the consultation with it on access to premises and water supplies itself is statutory for a local authority under the Hampshire Act, there is no statutory requirement for HFRS to respond. It confirmed however, that it does respond under section 6 of the Fire Service Act 2004 offering advice and guidance. It also confirmed that there are no statutory requirements for it to document and maintain records regarding this advice.
37. Furthermore, the Commissioner asked whether there was information held that was similar to the requested information.
38. HFRS explained that it had disclosed all the information it had found in a previous related EIR request from the complainant. However, it also confirmed that it had reviewed its information again in relation to the present request. HFRS confirmed that it did not hold any more similar information.
39. The Commissioner also considered whether HFRS had any reason or motive to conceal the requested information, but she has not seen any evidence of this.
40. Taking everything into account, the Commissioner does not consider that there is any evidence that shows that HFRS holds any further recorded information in relation to part 2 of the request
41. The Commissioner is therefore satisfied that, on the balance of probabilities, HFRS does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of regulation 12(4)(a) of the EIR.

Procedural issues

Regulation 5(2) – time for compliance

42. The complainant made a request on 18 January 2017. In its internal review of 12 May 2017, HFRS explained that it had not provided the complainant with all of the information it could have and made a further disclosure.
43. During the Commissioner's investigation, HFRS disclosed information in relation to part 1 of the request on 18 March 2018.
44. Regulation 5(2) of the EIR states that:

"Information shall be made available....as soon as possible and no later than 20 working days after the date of receipt of the request."

45. The Commissioner considers that HFRS has breached regulation 5(2) as it took longer than 20 working days to disclose the information to the complainant as set out in paragraphs 42 and 43.

Regulation 11 – Representations and reconsideration

46. The complainant requested an internal review on 9 March 2017. HFRS responded on 12 May 2017.
47. Regulation 11(4) of the EIR states that:

"A public authority shall notify the applicant of its decision ... as soon as possible and no later than 40 working days after the date of receipt of the representations."

48. The Commissioner considers that HFRS has breached regulation 11(4) as it took longer than 40 working days to respond to the request for an internal review.

Other matters

49. The Commissioner notes that the complainant has complained that HFRS did not respond to his request on 17 May 2017 for a "FULL AND PROPER internal review.
50. Regulation 11 of the EIR requires a public authority to carry out an internal review in response to a request to do so from an applicant. The Commissioner notes that HFRS carried out an internal review on 12 May 2017.
51. The Commissioner therefore considers that HFRS did carry out an internal review for the purposes of regulation 11. She does not consider that it was under any legal obligation to carry out a further internal review under the EIR.

Right of appeal

52. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. 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.
54. 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

**Deborah Clark
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