

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 July 2022

**Public Authority:** Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services

**Address:** First floor  
Clive House  
70 Petty France  
London  
SW1H 9EX

### Decision (including any steps ordered)

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1. The complainant has requested, from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), information about a COVID Inspection.
2. The Commissioner's decision is that HMICFRS has correctly applied section 33 (Audit functions) of FOIA to the request and that the public interest favours maintaining the exemption. He also finds that HMICFRS did not breach section 16 (Advice and assistance) of FOIA.
3. The Commissioner does not require any steps to be taken.

### Request and response

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4. On 29 April 2021, the complainant wrote to HMICFRS and requested information in the following terms:

"Following informal discussion with a representative from HMICFRS I was unable to informally secure information relating to a recent "COVID Inspection" carried out by HMICFRS and published on 22nd January 2021

(Link:

<https://www.justiceinspectors.gov.uk/hmicfrs/publications/covid>

-19-inspection-cambridgeshire-fire-and-rescue-service/).

I wish to access the information that underpins the inspections stated findings. I believe the stated findings in a number of areas do not represent the lived reality.

Detailed Description:

Under the Freedom of Information Act 2000, can you please provide me with electronic copies of the following information in relation to the COVID Inspection(s) carried out by HMICFRS in Cambridgeshire Fire & Rescue Service (CFRS), which underpins the findings in both the report published on 22nd January 2021 and the associated letter sent to CFRS on 22nd January 2021:

1. The survey that was sent to CFRS in connection with the COVID-19 inspection with any explanatory associated documentation.
2. The COVID-19 inspection survey response from CFRS and any documentary evidence sent by CFRS that underpinned CFRS survey responses.
3. Any other information and documentation used by HMICFRS as part of the COVID-19 inspection of CFRS, that evidences HMICFRS stated findings about CFRS in HMICFRS "Responding to the pandemic: the fire and rescue service's response to the COVID-19 pandemic in 2020" report and in the associated letter sent to CFRS dated 22nd January 2021 from [name redacted].

If you require any clarification relating to the above, please contact me in accordance with section 16 of the FOIA".

5. On 24 June 2021, HMICFRS responded. It refused to provide the requested information, citing section 33 (Audit functions) of FOIA.
6. On 11 July 2021, the complainant requested an internal review.
7. On 6 August 2021, HMICFRS provided the outcome of its internal review. It maintained its position.
8. During the Commissioner's investigation, HMICFRS made reference to section 40 (Personal information) of FOIA in respect of any staff named within the withheld information.

## Scope of the case

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9. The complainant contacted the Commissioner on 15 August 2021 to complain about the way his request for information had been handled. He explained:

"I have requested the underpinning information regarding a nationwide audit by HMICFRS completed in 2020 regarding UK Fire Rescue COVID-19 response. This audit was publicly reported upon in Jan 2021, after it's [sic] completion with all applicable organisations. I have specifically only requested information relating to Cambridgeshire Fire & Rescue Service's audit results and none of the information I have requested is personal data, but is organisational data. Despite the very specific audit process being completed in its entirety with all Fire & Rescue Services in the UK, and question marks surrounding the stated findings, on the 24th June 2021 the HMICFRS have refused to disclose this underpinning information under section 33. This is despite HMICFRS itself stating "There is a strong public interest in the inspectorate disclosing information about its activities" and quoting the many reasons why.

... Reviewing all available guidance from the ICO and citing this to HMICFRS, I can also see no evidenced reason why HMICFRS is refusing to disclose this information in the absence of any evidence to robustly satisfy the prejudice test".

10. The complainant also complained that HMICFRS did not contact him to discuss the case or provide advice and assistance.
11. The Commissioner will consider HMICFRS's duties under section 16 and the citing of section 33 below. He has viewed the withheld information.

## Reasons for decision

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### Section 16 – Advice and assistance

12. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so.
13. In his grounds of complaint to the Commissioner the complainant said:
- "I openly also already requested in my original FOI request ... for HMICFRS contact me [sic] in accordance with section 16 of the FOIA to provide advice to refine my request if there were concerns with any specifics. HMICFRS did not contact me to discuss or request [sic] and refining of my request".

14. It is noted that the original request includes the statement:

“If you require any clarification relating to the above, please contact me in accordance with section 16 of the FOIA”.

15. When requesting an internal review, the complainant again said:

“If you require any clarification relating to the above, please contact me in accordance with section 16 of the FOIA”.

16. HMICFRS did not try to clarify the request. However, in the Commissioner's view, the request was clearly expressed and HMICFRS interpreted it in line with the complainant's intended meaning. It therefore required no clarification.

17. HMICFRS refused to provide any part of the requested information, a position which was clearly expressed and did not need any further explanation, so the Commissioner cannot see that any further contact would have been beneficial.

18. The Commissioner is therefore satisfied that, in the circumstances of this request, that it was reasonable for HMICFRS to have not further engaged with the complainant about his request. Accordingly, he finds no breach of section 16.

### **Section 33 – Audit functions**

19. This exemption has been applied to the information in its entirety.

20. Section 33(1)(b) of FOIA states that the exemption applies to any public authority which has functions in relation to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

21. Section 33(1) should be read in conjunction with section 33(2) of FOIA. This provides that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

### **Audit function of HMICFRS**

22. The first step is to establish whether HMICFRS has the audit functions described in section 33(1)(b) of FOIA.

23. HMICFRS explained to the Commissioner:

“HMICFRS inspect and report on the efficiency and effectiveness of the police under section 54(2) of the Police Act 1996, and the fire & rescue services under section 28(A3) of the Fire and Rescue

Services Act 2004. We therefore fall under section 33(1)(b) of the FOI Act because our functions relate to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

In August 2020, the Home Secretary commissioned HMICFRS to inspect how fire and rescue authorities in England responded to the Covid 19 outbreak and the challenges it presented. The information in this request concerns the Covid 19 inspection in Cambridgeshire Fire and Rescue Service (CFRS)".

24. In its role as an inspectorate, the Commissioner is satisfied that HMICFRS clearly has a relevant audit function in relation to the examination of the economy, efficiency and effectiveness of how public authorities use their resources, ie Constabularies and Fire & Rescue Services (FRS).
25. The Commissioner will now consider whether disclosure of the requested information would, or would be likely to, prejudice the audit functions performed by HMICFRS.

### **The causal relationship**

26. HMICFRS explained that it considers the request to have two separate parts, which it dealt with separately in its investigation response to the Commissioner. The Commissioner has therefore considered each of these in the same way.

### **Part 1 of the request**

27. HMICFRS explained that this part of the request comprises two surveys that were used in the Covid-19 inspection, one for the service and one for the staff.
28. In respect of this information HMICFRS explained:

"We consider disclosure of this information would be likely to prejudice future inspection responses because it provides information on our methodology and how we conduct our inspections which would be likely to enable fire & rescue services to prepare responses for inspections, prejudicing our ability to make warranted assessments and recommendations.

We publish a significant degree of detail on our existing programme of FRS inspections and this includes the judgment criteria used when determining grades for fire and rescue service inspections. We also published the overarching methodology for the inspection into the fire and rescue service response to Covid-19.

The information we publish provides the public (and our inspected sectors) with information on how we run our inspections and make our assessments.

However, were we to publish and release the detailed question methodologies that are used in our inspections, it would be likely to reduce the effectiveness and rigour of our inspection function.

The timing of this request is particularly pertinent, as we consider the level of prejudice will reduce in the longer term as our methodology evolves but currently the passage of time since the completion of the covid inspections is not enough to warrant disclosure as this methodology may be used to support future survey iterations of both covid and other inspections.

There is a risk that disclosing our survey methodology would enable inspected sectors to prepare more thoroughly for specific inspection scopes, reducing the variety of responses we aim to gather through these exercises thus restricting our ability to provide useful recommendations. We publish information on the process and work closely with inspected sectors allowing them to adequately prepare for inspections. However, disclosing exact question sets may allow them to build a more definitive understanding of what to expect during the process and design their responses to ensure a more positive outcome which would undermine the aim of the inspectorate to encourage improvement.

Finally, there is a risk, albeit minor, that disclosure of the survey questions may enable those with knowledge of the fire & rescue services to infer from the published report who provided what information as the surveys supplied are for different recipients. This would prejudice the willingness of parties to work with us now and in the future if they were of the understanding their responses could be identified through the disclosure of certain sets of information".

### **Parts 2 and 3 of the request**

29. HMICFRS explained that these parts of the request include the staff and service responses, the survey responses from representative bodies, evidence gathering templates and other documents relevant to the inspection, including the document return.

30. In respect of this information HMICFRS explained

"The success of our work is based on the comprehensive nature of our evaluations which are largely based on material supplied by services and other interested parties and reviewed by us during our inspections. During this process, services and other parties can

disclose sensitive information to support the evidence. These details are provided to us on the understanding that we will use them only for the purposes of our inspection role. Disclosure of these responses and supporting evidence would prejudice our ability to discharge our functions as an inspectorate if parties were not willing to work with us”.

31. In respect of all parts of the request, HMICFRS had argued that disclosure of the requested information ‘would be likely’ to cause the prejudice it has envisaged. The Commissioner therefore considers that the chance of prejudice occurring must meet the requirement of being a real and significant risk in order for him to find the exemption engaged.
32. Taking the arguments presented into consideration, the Commissioner accepts HMICFRS’s reasoning set above as to how, if the information were disclosed, there would be a real and significant risk of prejudice to its ability to carry out effective audits in the future.
33. The Commissioner has therefore decided that section 33 is properly engaged. He will now go on to consider the public interest test.

### **The public interest**

34. The public interest test, as set out in section 2(2)(b) of FOIA, considers whether “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.

### **Public interest in favour of disclosure of the information**

35. When asking for an internal review the complainant argued:

“The case for disclosure is fundamentally based upon the arguments for transparency, understanding and accountability. Furthermore, to better understand the decisions made.

Disclosure of the information requested does not prejudice future audit processes as I have demonstrated above, due to all FRS having already been through this audit and therefore are fully informed of its content and methodology.

Disclosure of the information requested should be welcomed by all parties to demonstrate that the report’s findings are accurate and correlate with the evidence provided. Therefore, this will not prejudice future information disclosure by any FRS.

In the absence of provision of such generic information to substantiate the findings, it is impossible for the public to be

assured of the integrity of the report or understand the findings, which provides for an opaque process”.

36. HMICFRS has argued that it:

“... recognises that there is a degree of public interest in the way fire services treats [sic] its employees. There is a strong public interest in the inspectorate disclosing information about its activities as such disclosure will improve the public’s understanding of decisions made by public bodies, improve public participation in debate, promote accountability in relation to decision-making and the use of public funds by public bodies”.

### **Public interest in favour of maintaining the exemption**

37. HMICFRS has argued:

“The survey questions form part of our current inspection work and disclosure of these questions would be likely to prejudice future inspection responses. The success of our work is based on the comprehensive nature of our evaluations which are largely based on material supplied by services and other interested parties and reviewed by us during our inspections. During this process, services and other parties can disclose sensitive information to support the evidence. These details are provided to us on the understanding that we will use them only for the purposes of our inspection role.

Were services and other parties to feel unable to share material in good faith and with a degree of reassurance that the material will be protected, where needed, we would struggle to discharge our responsibilities in providing the public, the fire service and Parliament with the scrutiny that is necessary. We therefore consider there is a strong public interest in the activities of the inspectorate not being impeded and its effectiveness not being compromised by disclosure.

We are of the view that if fire services and other parties were aware that any information, they voluntarily supplied to us, or the detail of our discussions, would be liable to disclosure to the public without them having any control over it, the future volume and quality of information provided would be affected. This would affect the full and open nature of our engagement with services and other parties and, in turn, undermine our ability to carry out our functions effectively”.

38. It also advised the Commissioner that:

“The fire & rescue service is still relatively new to the HMICFRS inspection process, having only become part of our remit in 2017.



We are still building their confidence in the process and their approach to sharing information. It is a sensitive process and disclosing information they have openly supplied would be detrimental to their engagement with us and their willingness to be full and open during future inspections.

Services and other parties must feel able to share material in good faith and with a degree of reassurance that the material will be protected, where needed, otherwise we would struggle to discharge our responsibilities in providing the public, the fire service and Parliament with the scrutiny that is necessary.

The activities of the inspectorate should not be impeded and its effectiveness not compromised by disclosure. We are of the view that if fire services and other parties were aware that any information, they voluntarily supplied to us, or the detail of our discussions, would be liable to disclosure to the public without them having any control over it, the future volume and quality of information provided would be affected. This would affect the full and open nature of our engagement with services and other parties and, in turn, undermine our ability to carry out our functions effectively and without prejudice”.

### **The Commissioner's conclusion**

39. It is initially noted that the complainant has said that he wishes to access the information as he believes “the stated findings in a number of areas do not represent the lived reality”. However, he does not give examples so it is not possible for the Commissioner to expand on these particular points. The Commissioner has viewed nothing in the information which would suggest that it has been inaccurately reflected.
40. The Commissioner recognises that there is a strong public interest in the disclosure of information regarding the effectiveness of key services such as CFRS.
41. That said, HMICFRS’s arguments are also very strong in identifying likely issues which would arise from a disclosure of the withheld information. These issues would be likely to affect its ability to carry out effective audits in the future as disclosure of this information would be likely to strongly discourage other services from co-operating fully and in a candid manner in future audits as they would be aware the information may be disclosed to the world at large. Prior knowledge of survey questions might also encourage services to pre-prepare responses which do not necessarily reflect the true position at the time of the survey.
42. The public interest in maintaining HMICFRS’s ability to carry out audits effectively and therefore assure the effectiveness of CFRS and other bodies it is responsible for inspecting is significant.

43. For this reason, the Commissioner's decision is that the public interest in the exemption being maintained outweighs that in the information being disclosed on this occasion. HMICFRS was not, therefore, obliged to disclose the requested information.
44. As he has found section 33 to be properly engaged, the Commissioner has not found it necessary to consider section 40. However, his initial view is that, where relevant, it would be engaged.

## Right of appeal

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45. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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**