

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 November 2022

**Public Authority:** London Fire Brigade  
**Address:** 169 Union Street  
London  
SE1 0LL

#### **Decision (including any steps ordered)**

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1. The complainant requested fire and safety related reports from London Fire Brigade ('LFB') in relation to a named residential location. LFB provided some information but withheld the remainder under section 31(1)(g) of FOIA (the exemption for the exercise by any public authority of its functions for any of the purposes specified in subsection (2)). LFB said that the relevant purposes were section 31(2)(a) (the exemption for the purposes of ascertaining whether any person has failed to comply with the law) and section 31(2)(c) (the exemption for purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise). During the course of the Commissioner's investigation, LFB reconsidered its position in relation to the requested fire safety/audit inspection reports and disclosed these to the complainant. It maintained that section 31 applied to the remaining emails.
2. The Commissioner's decision is that LFB has correctly applied section 31(1)(g) of FOIA to the remaining withheld information as disclosure would be likely to prejudice the exercise of its functions under sections 31(2)(a) and (c). The public interest favours maintaining this exemption.
3. No steps are required as a result of this notice.

## Background

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4. The request below relates to information about fire safety at a specified residential development comprising seven buildings in London.
5. LFB has explained that responsibility for fire safety in most buildings lies with those that own, manage or operate the building, in accordance with the Fire Safety Order<sup>1</sup>. The person with that responsibility is known as 'the responsible person'.
6. LFB also said that the head of LFB is the London Fire Commissioner ('LFC'), the fire and rescue authority for London. The LFC is responsible for enforcing the Fire Safety Order in London; however the LFC is not responsible for carrying out Fire Risk Assessments, nor are those responsible for fire safety in buildings required to submit their documentation to the LFC. A guide to fire safety responsibilities is available on the government website<sup>2</sup> which also includes the range of enforcement actions that a fire service can take.
7. In its investigation response, LFB acknowledged the Commissioner's blog article<sup>3</sup> about the need to improve the transparency arrangements for fire safety information on residential buildings held by local authorities following the Grenfell Tower fire. It said it "works hard to make as much information available" as possible and that this includes:
  - Publishing a list of all inspections, carried out by LFB fire safety inspectors, under the Fire Safety Order. The date, location and compliance outcomes of those inspections are published one month post-inspection on the London Datastore<sup>4</sup>.
  - Where an inspection results in the premises being "broadly compliant" with the Fire Safety Order, the notes are published, suitable redacted for personal and confidential information.

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2005/1541/contents/made>

<sup>2</sup> <https://www.gov.uk/workplace-fire-safety-your-responsibilities>

<sup>3</sup> <https://www.thecomplainingcow.co.uk/information-commissioner-encourages-disclosure-of-fire-safety-information-in-light-of-the-grenfell-tower-tragedy/#:~:text=Information%20Commissioner%20encourages%20disclosure%20of%20fire%20safety%20information,at%20all%20aspects%20of%20their%20roles%20and%20responsibilities.> (Link no longer available on ICO website)

<sup>4</sup> <https://data.london.gov.uk/dataset/regulatory-fire-safety-inspections>

- Where an inspection results in the premises being deemed to be “non-compliant” with the Fire Safety Order, and after the appeal period of 21 days, the following are made publicly available:
  - A copy of the notice which identifies the areas of non-conformity.
  - Where an entry on the Public Register is required (in accordance with the Environment and Safety Information Act 1988) this is published on LFB’s website.
  - A copy of the inspector’s notes (again suitably redacted).
- 8. LFB clarified that any correspondence between it and third parties involved will not generally be published.
- 9. It is against this background that the request set out below has been considered.

## **Request and response**

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10. On 10 August 2021, the complainant wrote to LFB and requested information in the following terms:

“I understand from Firstport, my managing agent has contacted your department to carry out [sic] fire risk assessment at [location redacted]. Can you please supply [sic] copy of the assessment reports. Please include copies of Fire Risk Assessments, Waking Watch reports and safety inspections. Based on the correspondence they are held by [name redacted], Fire Safety Inspecting Officer, at Millwall Fire Station. Thank you for your kind assistance in this matter.”
11. In advance of providing its substantive response to the request, LFB wrote to the complainant on 3 September 2021 advising him of an online meeting on 6 September 2021 which LFB understood to be open to the residents of [location redacted]. LFB explained that the information it would be able to provide under FOIA would be “somewhat restricted” and suggested that the meeting would give the complainant the opportunity to learn more about LFB’s regulatory role and to ask questions about his concerns for the building.
12. LFB then responded to the request on 10 September 2021. It provided some information within the scope of the request in relation to audits and explanations about the Waking Watch information, Fire Risk

Assessments and correspondence with FirstPort Ltd, including that some information was held for each, stating:

"...most documents (including correspondence comprising emails, letters), detailed audit/inspection notes, other documents (such as the fire risk assessment reports or documents provided to us by the 'responsible person' for the building) and other fire safety information held by the Brigade will usually be exempt from access via the FOIA provisions".

13. LFB said that these documents were exempt from disclosure under section 31 of FOIA (the exemption for law enforcement, specifically section 31(1)(g) (the exemption for the exercise by any public authority of its functions for any of the purposes specified in subsection (2)) combined with 31(2)(a) (the exemption for the purposes of ascertaining whether any person has failed to comply with the law) and 31(2)(c) (the exemption for the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise). LFB also specified it was using these exemptions not to disclose the audit/inspection report from May 2021.

14. It explained that:

"The Brigade does understand the interest that residents and building occupiers have about the relative safety of the buildings they live in and visit. However, as a regulator and enforcing authority we also need to preserve and protect our routes for enforcement actions which can lead to prosecution.

It is for the safeguarding of the enforcement process (including fair trial and free from prejudice) that most documents (including correspondence comprising emails, letters), detailed audit/inspection notes, other documents (such as the reports or documents, including fire risk assessments, provided to us by the 'responsible person' for the building) and other fire safety information held by the Brigade will usually be exempt from access via the FOIA provisions."

15. The complainant requested an internal review on 19 September 2021.
16. Following its internal review LFB wrote to the complainant on 28 September 2021 and maintained its original position. It provided a fuller explanation as to why it was withholding the remaining information in scope. It also said:

'I have reviewed [name redacted] response to your original request [reference redacted] submitted via our website on 10 August 2021, and I uphold her decision to rely on the exemption under S[section] 31 of the Freedom of Information Act 2000 to

not provide you with the specific documents you were seeking as set out in your email, namely "... copy of the assessment reports ... copies of Fire Risk Assessments, Waking Watch reports and safety inspections".'

## Scope of the case

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17. The complainant contacted the Commissioner on 11 October 2021 to complain about the way his request for information had been handled. He submitted the following grounds of complaint which the Commissioner asked LFB to consider as part of its investigation response:

"Refusing to share the correspondences Firstport initiated which had impacted to unequal outcomes for one building out of seven in [location redacted] not needing waking watch [sic]. All the 7 buildings have similar fire faults with same EWS1 B2 certificate. These buildings have no pending enforcement notices since they were built in 2009. NB: unsure if LFB added this building intentionally or by mistake. The address [redacted] is different from the 7 buildings the 750 residents live [sic]. It was not part of my request."

18. LFB told the Commissioner that the information for the redacted address in London had been included in error when it had responded to the request. It confirmed that this address is not part of the development about which the complainant is seeking information, so should be disregarded.
19. On 2 November 2022, during the course of the Commissioner's investigation, LFB reconsidered its position and disclosed the requested fire safety/audit inspection reports with section 40 of FOIA redactions for personal information. It maintained that section 31 of FOIA applied to the remaining withheld emails.
20. LFB confirmed that it had also reconsidered the withheld emails (with the 'responsible person' for the building) under section 31 of FOIA, but had concluded that it would not be appropriate to disclose them even in redacted form. It also explained the following:

"We do not hold any document which could be described as an '**assessment report**'.

A '**fire risk assessment**' must be produced by the 'responsible person' for the building; it is not produced by the LFB. It is the 'responsible person' who must maintain this and keep it up to date, and to implement any recommendations or actions within

the assessment. It is the Brigade's role to ensure that such a risk assessment has been carried out and that the 'responsible person' implements any actions arising from the assessment. Whilst we are sometimes supplied with copies, we do not retain these, and it is the 'responsible person' who should hold the up-to-date version. We will more often review the fire risk assessment when we inspect a property.

We are not clear what a '**waking watch reports**' [sic]. Some of the correspondence withheld refers to the 'waking watch' in place at various buildings. It is the responsibility of the 'responsible person' to determine whether or not to put in place a 'waking watch'. Some correspondence refers to the 'waking watch' in some buildings, as do some fire safety audit reports.

So far as concerns the request for '**safety inspections**', when we responded to [the complainant] in September 2021 and undertook an internal review (28 September 2021), it was not our normal practice to routinely provide reports of our fire safety audits, as explained in our letter to you of 2 September 2022. As outlined above, we are happy to supply these (Annex B – to be redacted for personal information [since disclosed on 2 November 2022]). There are eight documents with two for one building. These fire risk safety audit report [sic] completed by LFB inspecting officer."

21. The Commissioner wrote to the complainant seeking his view on the partial disclosure but heard nothing further. The Commissioner has therefore disregarded the disclosed information and redactions from further consideration. He has also disregarded LFB's explanation as to why it does not hold a 'fire risk assessment' or any 'waking watch reports' as its explanations were not challenged by the complainant.
22. The Commissioner has considered whether the remaining information has been correctly withheld by LFB under sections 31(2)(a), 31(2)(c) and 31(1)(g) of FOIA.

## **Reasons for decision**

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### **Section 31 – law enforcement**

23. LFB has confirmed that it is withholding the remaining requested information under section 31 of FOIA. LFB has provided the Commissioner with copies of this information.

24. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
25. Under section 31(1)(g) of FOIA, information which is not exempt from disclosure by virtue of section 30 (investigations and proceedings) is exempt information if its disclosure under FOIA would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
26. LFB has confirmed that it considers that the applicable purposes under subsection 31(2) are as follows:
  - (a) the purpose of ascertaining whether any person has failed to comply with the law; and
  - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
27. In order to engage a prejudice based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects.
28. In its response, LFB told the complainant that:

'The Information Commissioner recognises the value of having a 'safe space' to work with those being regulated in their guidance<sup>5</sup> on Section 31 of FOIA. In the section on "Voluntary supply of information" the Commissioner notes (my [ie LFB's] emphasis):

"Investigations, particularly those protected by section 31(1)(g) via 31(2), can be aided by either individuals, or organisations providing information to the investigating authority. Where information is volunteered by a confidential source, ie someone who has provided information on the understanding that they will not be identified, the information and identity of its source will be protected by section 30(2) as explained at paragraph 74 [of the guidance]. **However, even where the provider of the information is not a confidential source, there is still a public interest in not discouraging others from cooperating with public authorities and supplying them with the information they need on a voluntary basis.**

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<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

Co-operation between those being regulated and the regulator is important. Organisations are often encouraged to report problems they have had. Investigations take less time when those under investigation co-operate. This can be true even where a regulator has the power to compel a party to supply information as reliance on such powers often involves bureaucratic procedures which can cause delays. There is clearly a public interest in not deterring the voluntary supply of information...".

29. LFB has argued that disclosure of the withheld information would be likely to prejudice its ability to determine whether any measures, such as Notice of Deficiencies, Enforcement Notices or other enforcement action should be taken. It said that enforcing authorities, including LFB, are assisted in their investigations if witnesses and those responsible for compliance with regulations are willing to cooperate with the investigation on a voluntary basis. In this way, investigators are able to take full contemporaneous notes and enter in discussions (either verbally, or by correspondence) with those involved to enable them to explore all aspects of the case and then arrive at a decision as to the appropriate action to take.
30. The Commissioner considers that LFB has demonstrated that disclosure of the remaining withheld information would be likely to prejudice its functions. He finds that section 31(1)(g) with subsections 31(2)(a) and (c) are engaged. He must next consider the associated public interest test.

### **Public interest**

31. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the section 31 exemption at section outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosure**

32. In his complaint to the Commissioner, the complainant said:

"Hopefully, the correspondences requested will inform LFB's assessment processes as all 7 buildings have similar fire safety defects".

33. In considering the public interest, LFB acknowledged that:

"...there is a clear and strong public interest in knowing that the buildings the public occupy, and visit are safe from fire and that the LFB as a regulator of fire safety training are taking appropriate actions to promote and enforce fire safety law".



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

34. In its substantive response LFB told the complainant that:

"The Brigade's role is as an enforcing authority to make sure that the 'responsible person' has done what is necessary as required by fire safety law. The Brigade needs to maintain a balance between the public interest in safety and the Brigade's ability to work with the 'responsible person' in an honest, frank and meaningful way. It is important for us as an enforcing authority, that we work with the 'responsible person' for the building with any audit/inspections that the Brigade may undertake, if the 'responsible person' is willing to cooperate with the audit/inspection on a voluntary basis and our inspecting officers are able to take full contemporaneous notes and enter in discussions (either verbally, or by correspondence) with those involved to enable them to explore all aspects of the case and then arrive at a decision as to any appropriate action to take (if necessary). We believe that the public interest in preventing that prejudice outweighs the public interest in releasing the information.

When the Brigade identifies any safety concerns, we make this information available within an informal notification of fire safety deficiencies (NOD), and through the public register of any formal enforcement action on our website [here](#)<sup>6</sup>. Where there is no fire safety concern that merits either formal or informal action, then this information should be protected from publication to preserve the safe space for good regulation principles. That is because any information we hold could be used at a later date as part of formal enforcement action or prosecution where this material can help demonstrate the behaviour, actions or omissions of the 'responsible person'."

### **Balance of the public interest**

35. Weighed in the round and considering the details discussed above, the Commissioner's view is that the public interest lies in maintaining the section 31(1)(g) exemption.
36. The Commissioner acknowledges that there is a strong argument in favour of openness and transparency regarding LFB's regulatory role and the issues affecting fire safety. However, he considers that disclosure of

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<sup>6</sup> <https://www.london-fire.gov.uk/community/public-notice/>

the requested fire safety/audit inspection reports during his investigation have gone some considerable way towards meeting the public interest in this matter.

37. LFB has said it has given greater weight to the argument against disclosure for the reasons above – namely, the adverse effect that disclosure would be likely to have on its effectiveness as a regulator.
38. The Commissioner is satisfied that there is greater, wider public interest in LFB being a robust and efficient regulator of the fire safety through withholding certain information in this case. It follows that he finds section 31(1)(g) and subsections 31(2)(a) and (c) of FOIA have been properly applied.

## Right of appeal

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39. 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)

40. 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.

41. 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**