

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 June 2011

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

Summary

The complainant requested the names of 2 fire officers who would have been assigned to carry out a fire safety check of her home had she not cancelled the appointment. The authority said that as the appointment had been cancelled no fire officers had been assigned to carry out the safety check and so the information was not held. The authority said that information on the pool of officers who might have been assigned to the task was held however this was exempt under section 40(2) of the Act (personal information). On review it upheld its initial decision.

The Commissioner's decision is that an objective reading of the complainant's request was that she only requested the names of Fire Officers who would have attended the fires safety assessment had it not been cancelled, and that information is not held by the authority. He has not therefore made a decision on the application of section 40(2).

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 rents property from the Women in Sheltered Housing Foundation (WISH). As part of its service it wrote to the complainant stating that it wished to carry out a health and Safety check of the property she was renting, and that it would turn up on a particular day, with Fire Officers from the GMF&RS to carry out the check. The complainant wrote to the GMF&RS prior to the visit stating that she would not allow the officers into her premises. Fire Officers were not therefore sent to the property.

The Request

3. On 11 May 2010 the complainant requested from the authority:

"I write to make a Subject Access Request with respect to the "Compulsory Home Fire Risk Assessment that was informed would be carried out at my previous address [address redacted]."

Although GM Fire & Rescue did not enter my home (due to my informing yourselves that I would call the police and your employees would be arrested), I now write to request the names of those individuals from GM Fire & Rescue who intended to turn up on my doorstep on 23 June 2009."

4. The Fire Service responded on 7 June 2010. It stated that as no actual visit had been carried out it was difficult to say which two officers would have carried out the visit (as they perform inspections in teams of two).
5. It also stated that the information was exempt under section 40(2) as it the information was the personal data of its officers and a disclosure of their identities would breach one of the data protection principles. It added that the individuals objected to the disclosure.
6. On 15 June 2010 the complainant wrote back to the Fire Service. She pointed out that although the Fire Service was stating that it did not know who would be difficult to know which officers would have attended it also said that the two individuals objected to the disclosure of their information. She said that this proved that the Fire Service did know the details of the individuals concerned, and added that, presumably, they would be the individuals who went into the other properties in the same block of flats on the same day.
7. The Fire Service responded on 13 July 2010. It stated that its previous letter had not said that the two individuals objected to disclosure. It said

that its response was in respect of a group of individuals who were available to the Fire Service to carry out Fire Risk Assessments on that day. It added that all of those individuals objected to the disclosure of their identity in relation to the request. It added that it remained of the view that the information was exempt under section 40(2) of the Act.

The Investigation

Scope of the case

8. On 17 September 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information she had requested should have been disclosed to her.

Chronology

9. The Commissioner initially dealt with the complaint as a subject access request from the complainant to the Fire Service under The Data Protection Act 1998. However having completed his assessment he also needs to deal with the complainant's rights to request the information under the Freedom of Information Act.
10. The Commissioner wrote to the authority as part of his assessment into whether GMF&RS' processing of her personal data was compliant with her rights under the DPA. On 24 February 2011 he wrote to the authority and asked it to provide details as to how it had handled the request for information. He asked the authority to confirm whether any information was held which fell within the scope of the request. The GMF&RS responded on 21 March 2011. It explained in greater detail why it believed that it did not hold information falling within the scope of the request.

Analysis

Substantive Procedural Matters

An objective reading of the request

11. The authority is required to read the request objectively. That is to say that it is not intended to 'read into' request interpretations that are not

the obvious intention of the complainant to ask. If there is ambiguity in what the requestor is requesting then an authority is under a duty under section 16 of the Act to provide help and assistance, and to go back to the complainant and ask them to clarify their request. In *Berend v the Information Commissioner and London Borough of Richmond upon Thames* EA/ 2006/0049 & 50 however the Information Tribunal clarified that if there is no ambiguity in the request for information then there is no requirement on the authority to go back to the complainant.

12. In this case the complainant asked the GMF&RS for the names of the officers who *'intended'* to visit her property on the given date. The GMF&RS stated that no officers are assigned until the date of the visit, and as the complainant had cancelled the appointment in the days prior to this no officers had been in fact been assigned. There was therefore no record held of any officers who *'intended'* to visit her property to carry out the assessment as the assessment had already been cancelled.
13. The complainant then wrote back stating that she did not believe that the GMF&RS for the reasons outlined above. She said that she presumed that the officers concerned would have been those that carried out assessments on other properties within her apartment on the same day.
14. The complainant did not ask for the GMF&RS to provide her with details of all of the individuals who were on the watch which was assigned to carry out the assessments. The Commissioner is therefore satisfied that on an objective reading of the request, the complainant's request was for the names of the officers who had been assigned to carry out the assessment on her property, or in the absence of that information, the names of the officers who had carried out assessments on other properties within her building on the same day. She did not request the names of all of the individuals who work on that watch and were on the rota to work on that day.

Is the information held?

15. The GMF&RS explained that it assigns fire officers to carry out HFSA's on the day of the visit, based on the officers available to particular *'watches'* on that day. It does not record details of the fire officers who carry out the assessments, but does record the particular watch which dealt with the assessment.
16. It stated therefore that in this particular instance, as no assessment had been carried out, no officers had been assigned as such. It could work out which watch would have been assigned, based on the area of

the property concerned, however the details of the individuals who 'intended' to visit, were not held because no officers intended to do so given the cancellation of the assessment.

17. The complainant's argument is that the GMF&RS should be able to answer the request by ascertaining which officers carried out the other assessments in the building on the day and providing her with their identity. In response to this the GMF&RS stated to the Commissioner that it does not record which officers carried out which assessment, merely which watch. It does not therefore hold that information either.
18. The Commissioner has already established above that he does not consider that an objective reading of the request is that the complainant asked for the names of all of the individuals on the watch on that day. The GMF&RS clarified that it could obtain those details by referring to its employee rota for that particular watch on the day, however the Commissioner is satisfied that that is not necessary as an objective reading of the request is that the complainant did not ask for that information.
19. The Commissioner is also satisfied that the GMF&RS is not under a duty to ask members of the watch concerned if they attended the particular property on that day to carry out assessments. Although that might be possible, section 84 of the Act clarifies that the right under section 1 of the Act is for individuals' to be able to request a copy of 'recorded' information. The GMF&RS confirmed that it does not record information on the specific employees who carry out HFSA's on particular properties on its database. It purely records the details of the watch that carried out the assessment. In confirmation of this, the Commissioner notes that the GMF&RS disclosed a record of a visit it had done on a property to the complainant and also provided this to the Commissioner. He notes that in the section of the form which should be completed for the officer who had completed the assessment the form simply noted which watch had been responsible for the visit rather than naming an officer concerned.
20. The Commissioner is therefore satisfied that on a balance of probability, the information which the complainant requested is not held by the authority.

Conclusions

21. The Commissioner notes that the GMF&RS stated to the complainant that information was held on the pool of employees which the GMF&RS had available to carry out the assessment but that it was difficult to determine which 2 employees would have been assigned to carry out the task. It also stated that the information was exempt because it was

the personal data of members of the watch and because the individuals involved had refused consent to the disclosure of their personal data.

22. In fact the information requested by the complainant was not held. GMF&RS' reliance on section 40(2) was in respect of the identities of the officers in the pool of officers available on that day. There was therefore no breach of the Act because it made clear to the complainant that it did not hold the specific information which she had requested.

The Decision

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

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

25. 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

26. 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.
27. 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 16th 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"

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (c) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - 1. any of the data protection principles, or
 - 2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (d) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."