

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 December 2009

Public Authority: London Fire and Emergency Planning Authority
(London Fire Brigade)
Address: London Fire Brigade Headquarters
169 Union Street
London
SE1 0LL

Summary

The complainant requested all the recorded information the public authority had about its handling of a specified fire at a specific location. The public authority provided some information and relied on section 40(2) to withhold some other information including the audio tape of the call about it. The Commissioner was asked to consider seven aspects by the complainant and found as follows. For four aspects the public authority informed the complainant that it did not hold relevant recorded information and the Commissioner is satisfied that it did not do so at the time of the request. For three aspects the public authority has applied section 40(2). It released information for two of those aspects during the Commissioner's investigation. The Commissioner has divided the outstanding redactions into three distinct items. He has found that section 40(2) has been applied correctly in this case to the outstanding information. The Commissioner has found procedural breaches of sections 10(1), 17(1) and 17(1)(c) in this case, but he does not require any remedial steps to be taken in this case.

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. There is a dispute between the complainant and the public authority about how it classifies fires. In particular there is a difference in perception about what

constitutes a secondary fire and what amounts to a malicious call. The Commissioner cannot adjudicate on the merits of the classification and can only consider information rights issues.

The Request

3. The London Fire Brigade is run by the London Fire and Emergency Planning Authority, who are the relevant public authority for the purposes of Schedule One of the Act (Schedule One, paragraph 20). However, for clarity the Commissioner will refer to the London Fire Brigade as if it were the public authority in this Notice.

4. On 21 March 2009 the complainant requested the following information from the public authority in accordance with section 1(1) of the Act:

'On 15th November 2008 at about 17:00 the London Fire Brigade was called to [Address 1 redacted]. The original call may have been to a "fire in the woods behind [location redacted]."

Please may I have copies of all materials you hold concerning this matter including any audio tapes'

5. On 21 April 2009 the public authority provided a response. It said that there was an incident at [Address 2 redacted]. It stated that it was recorded as a secondary fire. It stated that the Fire Investigation Team did not attend the incident so there was no fire report available.

6. On 28 April 2009 the complainant made another request for similar information in accordance with section 1(1) of the Act:

'Please may I have details of the incident at [Address 2 redacted], including details of the original call, and the audio tapes. The LFB arrived at my door at about that time. I would like to ascertain how this was possible, as I did not call them.

Please may I have copies of all material you hold concerning this matter, including any audio tapes'

7. On 28 May 2009 the public authority provided a new response. It provided a transcript of the emergency call, but redacted the number of the house. It stated that the door number needed to be redacted in order to comply with the Data Protection Act. It also explained that the public authority generally tried to ascertain the exact location of the fire as soon as possible and this can mean that it will try to gain access to the area of the fire via nearby properties.

8. On 30 May 2009 the complainant made another request for similar information:

'Having read the material supplied it has confirmed to me that someone made a bogus 999 call. It would be impossible to see any flames as described. In the

circumstances, no person should have the right to anonymity. In any event, the details supplied are probably false anyway.

Please would you supply an unedited version of the call. I also still require the audio tapes.

You have not explained how it was that the fire brigade knocked at my door. I believe that you have additional material which you have not supplied which would explain this. Please would you supply this information.'

9. On 5 June 2009 the public authority provided another response. It explained that it recorded the call as a secondary fire. This was a fire that does not involve casualties and does not involve more than four pumping appliances to deal with it. It explained that there are four types of secondary fire – rubbish, open land, derelict buildings and derelict vehicles. It explained that for 'bogus' calls it would record the call as a hoax/malicious call. It said that having discussed what the fire was with the relevant officers it established that it involved a burning brazier and therefore the secondary fire status was correct.
10. It also explained that the transcript it provided was unedited and the only thing that was being withheld was the house number, which was third party personal data. It explained that it did not wish to provide the audio tape as the Act only applies to information held and not to specific documents etc. It also said that it felt the audio tape was exempt by virtue of section 40(2) as the caller could be identifiable from it. It said that the release of the information would be a breach of the duty of confidence it had to the data subject. It finally explained again that its policy was to find the fire as quickly as possible and that this led to the complainant's door being knocked on. It explained that it did this to ensure optimum access to the potential fire. It also explained its internal review process.
11. On 9 June 2009 the complainant made another request for similar information:

*'You clearly state in your letter of 28th May 2009 that the caller was from **[Address 2 redacted]**. I do not understand why you have sent me a transcript with the door number of **[number redacted]** blanked out. I have spoken to the occupant of **[Address 2 redacted]** who did not call the Fire Brigade.*

*Your statement that the caller can be easily identified from the tape is incorrect. As previously stated, this was a bogus call, because the occupants of **[Address 2 redacted]** did not call the LFB, and therefore the caller will not be easily identified.*

Your statement that FOIA does not grant access to documents and audio tapes is incorrect. I suggest that you take legal advice in this respect.

...

Please would you supply:

- * *Copies of all audio recordings, including any calls made by the LFB to the informant to clarify the location of the fire.*

* *The report completed by the fire officers who attended.'*

12. On 8 July 2009 the public authority issued another response. This response was to be its internal review in this matter. It tried to deal with each point that was made by the complainant in turn. It rejected the suggestion that it clearly stated that the call came from [Address 2 redacted]. It said it was satisfied that it was correct to protect the identity of the caller under the Data Protection Act (the 'DPA'). It stated that it believed it was correct that the person's voice can be personal data and could identify an individual and that it was correct to provide a transcript rather than the tape. It maintained that the tape was exempt by virtue of section 40(2).
13. It explained that the public authority's control officers who handle 999 calls do not ask for, nor routinely record, the details of the caller. Instead they ask for:
 - * The name of the road or street, and the number and/or name of the premises where the fire or incident is in progress, if known.
 - * The locality or district and/or postal district (e.g. E17).
 - * The nearest side turning (if the incident is on a main road or thoroughfare) or the nearest main road (if the incident is on a side turning); alternatively a nearby landmark or prominent building.

It explained that on some occasions the control officer would use a 'challenge procedure' in order to reduce malicious/hoax calls, however it did not do so in this case as it had no reason to believe it was a malicious call and an attendance was made.

14. It explained that it still believed that access was to information and not documents and cited the Commissioner's website. It discussed the delays and acknowledged that it did not provide the transcript within 20 working days as required by the Act. In respect of the report it acknowledged that it had been misleading. It explained there was no fire report available as no fire investigator attended the scene. However it did hold information both on its Incident Management System (the summary report) and 999 computerised mobilising system (the long end of the report). It provided this information, redacting the personal data within it. It explained that it had not provided this information within the statutory time limits, although it did not contain any new information. It finally stated that it was satisfied that it was correct to withhold the information that would be likely to identify third parties, in accordance with the DPA.

The Investigation

Scope of the case

15. On 21 May 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.

16. During the course of the Commissioner's investigation the complainant confirmed that he would be content if the Commissioner investigated the following seven points:
 1. Whether a copy of the audio tape can be provided to the public, or whether it is exempt by virtue of section 40(2) [third party personal data].
 2. Whether the house number was correctly redacted from the transcript, ie. whether it is also exempt by virtue of section 40(2).
 3. Whether the information was correctly redacted from the computerised Incident Management System report and the 999 computerised mobilising system report ie. whether it is exempt by virtue of section 40(2).
 4. Whether the London Fire Brigade holds a report about the fire, or whether it was correct that it did not have one.
 5. Whether the London Fire Brigade holds a copy of 'the handwritten report completed by the senior fire officer who attended' (similar to part four).
 6. Whether the London Fire Brigade has recorded information about whether it called at [address redacted] and the response of the occupant.
 7. If there is recorded information about 'any further calls made by the LFB to the informant to find a better location for the fire.'
17. On 23 October 2009 the public authority released the following information:
 1. The full transcript of the telephone conversation (the information previously withheld for part 2).
 2. The full 'confirmation of attendance of London Fire Brigade' report was released to the complainant under the DPA as it comprised of his own personal data (part of the information previously withheld for part 3).
 3. The house numbers within the report entitled 'Long End of Incident report' (part of the information previously withheld for part 3).

The Commissioner regards these aspects as being informally resolved and will not consider them further in this Notice.
18. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the Commissioner cannot make any judgment about whether the public authority was correct that the fire was a 'secondary fire' and not a hoax or malicious call. The Commissioner is aware that the complainant is concerned that the call may have exaggerated the nature of the fire but can make no comment on that. The Commissioner can only consider what recorded information is held about an incident. He is not interested in its content other than to be certain that it is all the recorded information held.

Chronology

19. On 12 August 2009 the Commissioner wrote to the public authority to ask for it to provide copies of the withheld information to him. On 3 September 2009 the public authority provided some of the withheld information to him.
20. On 23 September 2009 the Commissioner telephoned the complainant. He explained his remit and the nature of the investigation he could carry out. He discussed the scope of the case and explained that he would write to him in order to set the scope of his investigation. On the same date, the Commissioner wrote to the complainant to confirm his understanding of the scope of the investigation.
21. On 28 September 2009 the complainant replied to the Commissioner, he explained that he wanted the scope of the investigation to encompass the seven items in paragraph 16 above. On 30 September 2009 the Commissioner replied to the complainant and informed him that he would take forward those seven items.
22. On 30 September 2009 the Commissioner telephoned a representative of the public authority. He asked it to provide further detail about its approach to the incident, to clarify whether it had further relevant recorded information and why it was sure that it did not and finally for it to release some of the previously withheld information as in his view it should be disclosed.
23. On 9 October 2009 the Commissioner called the public authority again and asked it to reconsider one item under the DPA as well. On 23 October 2009 the Commissioner had two detailed phone conversations with the public authority. As a result of these conversations the public authority released the information identified in paragraph 17 on the same day.

Analysis

Substantive Procedural Matters

What recorded information is held that is relevant to the seven issues the Commissioner has considered?

24. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. This is made clear in section 1(4) of the Act.
25. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information

was held by a public authority was not one of certainty, but rather the balance of probabilities.

26. The Commissioner will apply his standard of proof for points one and four to seven, as there is a disagreement as to whether or not relevant recorded information is held by the public authority.

Point 1

27. The public authority originally claimed that it was not required to provide the audio tape as a transcript contains the same information and the Act only applies to information.
28. The Commissioner's view is that the audio tape contains additional information to the transcript. It contains the voice of a third party who may not have been identifiable otherwise. He therefore believes that it should be possible to request the audio tape under the Act and its format is not relevant. It should also be provided unless an exemption can be correctly applied to it.
29. As explained in the request section of the Notice, the public authority changed its position and maintained that the tape would be exempt from disclosure by virtue of section 40(2) in any event. The Commissioner will consider these arguments in the 'exemption' part of this Notice below.

Points 4 and 5

30. Points 4 and 5 are very similar. The Commissioner believes that point 4 is wider than point 5 and is likely to cover any information that would be encompassed by it.
31. The Commissioner enquired of the public authority what its procedure was when dealing with fires and in particular what reports are generated when attending them.
32. The public authority explained to the Commissioner that it categorised fires in two ways – as primary fires and secondary fires.
33. This classification was important as it directly related to the action that it took after the fire. It never sent fire investigators to investigate and create a report in respect of secondary fires. It accordingly believed it held no further recorded information in respect of this fire.
34. The public authority explained to the Commissioner that the computerised Incident Management System report was the only information it required for its business purposes when dealing with secondary fires. This information was used to create statistical data to measure its performance and resources. It would not expect the Senior Fire Officer to submit a written report about a secondary fire. Indeed the report on the system indicates that no Senior Fire Officer attended.

35. Having regard to the answers above, the Commissioner believes that on the balance of probabilities there is no further recorded information held for points 4 and 5.

Point 6

36. Having considered the answers above, the Commissioner is content that there is also no recorded information held in relation to this point either.
37. He notes the public authority's explanation of its procedure in dealing with fires and views it as reasonable. In particular the caller is not of concern when dealing with a fire, the focus is on the fire. It therefore has no requirement to visit the premises of any particular house. It would not be required to visit two premises when it can visit one set of premises and deal with the fire.
38. The Commissioner is therefore content that on the balance of probabilities there is no recorded information held for point 6.

Point 7

39. The Commissioner asked the public authority whether it had any further telephone conversations with the specified address to 'find a better location of the fire'. It said it did not. It provided the Commissioner (and redacted version to the complainant) of all the telephone transcripts to do with the incident.
40. The public authority informed the Commissioner that the original telephone call provided all the information it required to find the fire and that it did not need to make a further call. The Commissioner has viewed a map of the area and believes that the transcript is accurate enough to locate the fire and that there would be no need for a further telephone call.
41. The Commissioner notes that the complainant has provided no evidence to suggest that there would have been a further telephone call.
42. The Commissioner is content that on the balance of probabilities there is no recorded information held for point 7.

Exemption

Section 40(2)

The information being withheld

43. The public authority is only relying on one exemption to withhold information. However the Commissioner feels that it is worthwhile to clarify what is being withheld for each point at the outset of his analysis.

Point 1

44. The information contained on the audio tape is being withheld. The Commissioner can confirm that the transcript contains all the material information that is on the audio tape and is a correct representation of it. The audio tape does contain additional information from the transcript. That is how the voice sounds of the person who made the call to the fire brigade. It is this information that is being withheld by virtue of section 40(2). The Commissioner can confirm that the tape is very clear in this case. The tape will be referred to as 'item one' in the remainder of this notice.

Point 2

45. The information that was being withheld was the house number in the transcript. This has subsequently been released and will not be considered further.

Point 3

46. Point 3 covers the following two reports:

- (1) A report entitled 'confirmation of attendance of London Fire Brigade to a fire incident.' As indicated in the scope section this information was released to the complainant under the DPA (as part of a Subject Access Request) and will not be considered further in this notice.
- (2) A report entitled 'Long End of Incident report'.

47. In relation to the second report there are two things that continue to be withheld:

- (1) The phone number of the individual who made the call ('item two').
- (2) The names of the two fire officers who attended the call ('item three').

Application of the exemption

48. The public authority's main arguments centred on the application of the first data protection principle. It believes that disclosure of the personal data in question would be unfair and would not satisfy one of the conditions for processing listed in Schedule 2 of DPA.
49. In analysing the application of section 40(2), the Commissioner therefore considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

50. Personal data is defined in section 1 of DPA as data '*which relate to a living individual who can be identified—*

- (a) *from those data, or*
- (b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

Item one

- 51. In this case whether the audio tape contains additional information that is the personal data of any living individual was contentious and the arguments of each side were considered in detail by the Commissioner.
- 52. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "Determining what is personal data" which can be accessed at:
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf
- 53. From his guidance there are two questions that need to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of individuals:
 - (i) *Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the data controller?*
 - (ii) *Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*
- 54. It is clear that the audio tape of a call about a fire, if it can be linked to an identifiable individual, is the personal data of that individual. The question to be determined is whether a living individual can be identified from this specific data if the information is disclosed to the public.
- 55. The Commissioner considers that truly anonymised data is not personal data and thus there is no need to consider the application of the data protection principles. The Commissioner considers that even where the data controller holds the additional 'identifying' information, this does not prevent them from anonymising that information to the extent that it would be not possible to identify any living individual from that information alone and thus would no longer be personal data. The test of whether information is truly anonymised is whether a member of the public could identify the individuals by cross-referencing the data with information or knowledge already available to the public. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgement in the House of Lords' case of *the Common Services Agency v Scottish Information Commissioner (2008) UKHL 47*,

“..Rendering data anonymous in such a way that the individual to whom the information from which they are derived refers is no longer identifiable would enable the information to be released without having to apply the principles of [data] protection.”

56. The Commissioner has listened to the audio tape and does not consider that the withheld information in this case to be truly anonymous. His reason for this view is that while no individual is identified in the content of the conversation, the voice is clear and the Commissioner believes that, given the limited population from which the call is likely to have come, it would be possible to link it to a specific individual. In the light of the above, the Commissioner is satisfied that the audio tape constitutes personal data.

Item two

57. The Commissioner is satisfied that the phone number of an individual property constitutes the personal data of the subscriber to the line.
58. An individual can be linked by using a phone directory and the information does relate to the subscriber. He is satisfied that this information constitutes personal data.

Item three

59. The Commissioner is satisfied that the fire fighters' names are their personal data.
60. Given that the three outstanding items are personal data, the Commissioner must then go on to consider whether disclosure of them would contravene the first data protection principle.

Would disclosure contravene the first data protection principle?

61. The first data protection principle has two main components. They are as follows:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data.
62. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first principle.

Would disclosure be fair and lawful?

63. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City*

Council v The Information Commissioner (EA/2005/0026 and EA/2005/0030)) confirmed that, “*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*” (paragraph 52):
http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf.

Item one

64. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- The individual's reasonable expectation of what would happen to their personal data;
- Whether this expectation would be reduced by any accompanying expectation that this sort of information would be available;
- Whether the information in the public domain reduces the expectation of privacy in this case;
- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and
- Legitimate interests of the public in knowing the withheld information and tracking calls made to emergency services.

65. The public authority stated that disclosure of the withheld information would be unfair to the data subject. It does not think that the data subject would have had a reasonable expectation of the withheld information being released in this case. Instead there was an expectation of confidentiality and privacy. The Commissioner having considered the information itself and its nature is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair. He notes that the primary concern of an individual reporting a fire is that the fire is combated on behalf of the public. If a real fire is reported then the person that reports it would not have the expectation that his/her personal data would be released to the public.

66. The Commissioner has considered whether there would be any accompanying expectation that this sort of information would be made available. The Commissioner believes that there is a fair expectation that the public authority may release malicious or hoax calls as publicity to try and shame individuals into not wasting resources. The Commissioner sees no accompanying expectation when a real fire is reported. The public would hope that an individual would report a fire, as should a fire not be reported then the fire may cause more damage. The public would have the expectation that the individual could remain anonymous should he/she choose to do so, and any change in this expectation could deter genuine reporting.

67. The Commissioner has considered whether the information in the public domain would make the disclosure of this information fairer. The Commissioner notes that the public authority has released the transcript of the tape. The Commissioner can confirm that the transcript is a faithful report of the audio tape. The only information that is not provided is the voice of the individual and the Commissioner believes that the concern is his/her identifiability. The information in the public domain does not therefore enhance the fairness of disclosure in this case. In fact because so much information has been provided by the public authority the Commissioner believes it would be more likely to be unfair to release the tape in these circumstances, than if all the information had been withheld initially.
68. The Commissioner has considered whether the release of the information would cause unnecessary or unjustified damage or distress to the individual concerned. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individual in this case.
69. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has released the transcript of the tape. The Commissioner appreciates that it is important that the public authority can be seen to be taking transparent action when it fights fires but does not see this factor as favouring further disclosure to the extent that it would outweigh the individuals' privacy interest in this case.
70. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject. The central reason for this conclusion is that the legitimate expectations of the individual are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.
71. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA.
72. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to 'item one'.

Item two

73. The release of the phone number from which the individual made the call would be unfair for the same reasons as in 'item one'. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to 'item two.'

Item three

74. The Commissioner has considered whether the release of the names of the fire officers would be unfair.
75. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individual's reasonable expectation of what would happen to their personal data;
 - Whether this expectation would be reduced by any accompanying expectation that this sort of information would be available;
 - Whether the information in the public domain reduces the expectation of privacy in this case;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and
 - Legitimate interests of the public in knowing the withheld information.
76. The public authority stated that disclosure of the withheld information would be unfair to the data subjects. It does not think that the data subjects would have had a reasonable expectation of the withheld information being released in this case. Instead there was an expectation of confidentiality and privacy. The Commissioner having considered the information itself and the public authority's general policy can understand that there are some expectations for privacy in this instance.
77. The Commissioner's guidance on the application of section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*
78. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. In this case the information relates directly to individuals in their official capacity answering fire calls.
79. The Commissioner has considered whether there would be an accompanying expectation that this sort of information would be made available. The

Commissioner believes that there is an expectation that information about the rank of fire officers would be disclosed so that the public can understand issues concerning value for money. The Commissioner notes that the information about the rank of the Officers was provided in acronym form WMPL, which stands for Watch Manager Pump Ladder.

80. The Commissioner has considered whether the information in the public domain would make the disclosure of these names fair. He notes that the Senior members of the Fire Brigade are on the force's website. These individuals are more senior than those identified in the withheld information. The information in the public domain does not therefore enhance the fairness of disclosure in this case.
81. The Commissioner has considered the submissions of the public authority in detail and in particular whether it felt that the release of the information would cause unnecessary or unjustified damage or distress to the individuals involved. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individuals in this case.
82. In finally considering the legitimate interests of the public, the Commissioner appreciates that it is important that the public authority is accountable for the resources it expends and that therefore the rank of the officer would appear adequate. The Commissioner does not feel that there is anything further to be gained from releasing the names of the officers in these circumstances.
83. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subjects. The central reason for this conclusion is that the release would not accord with their reasonable expectations and that the public interest in accountability in this instance is satisfied by the provision of their rank.
84. The Commissioner therefore upholds the public authority's application of section 40(2) [by virtue of section 40(3)(a)(i)] in relation to 'item three'.

Procedural Requirements

85. Section 10(1) requires that a response that accords with section 1(1)(a) is provided to all requests for information within twenty working days. In this case the public authority took more than twenty working days to identify the transcript, the audio tape, the summary page of the Incident Management System report and the Long End of the Incident report and therefore the Commissioner has found four breaches of section 10(1) of the Act.
86. Section 10(1) also requires that a response that accords with section 1(1)(b) is provided to all requests for information within twenty working days. In this case the public authority took more than twenty working days to provide the full transcript and the redacted versions of the summary page of the Incident Management System report and the Long End of the Incident report. The Commissioner therefore finds three further breaches of section 10(1) of Act.

87. In failing to issue a refusal notice within twenty working days for the audio tape and the redacted versions of the summary page of the Incident Management System report and the Long End of the Incident report, the Commissioner finds three breaches of section 17(1) of the Act.
88. Finally, the Commissioner does not believe that the public authority provided a full explanation at any time within the correspondence about its application of section 40(2) to redact the elements of the Long End of the Incident report. He therefore finds a breach of section 17(1)(c) of the Act.

The Decision

89. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- * *The public authority has located all the relevant recorded information that it held about the fire incident.*
 - * *The public authority has applied section 40(2) correctly to the audio tape, the names of the fire officers and the telephone number of the caller.*
90. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- * *The public authority breached section 10(1) as it did not inform the complainant within twenty working days that it held relevant recorded information, or provide the information to which he was entitled.*
 - * *The public authority breached section 17(1) as it did not issue its refusal notice within twenty working days in relation to the information that it continued to withhold.*
 - * *The public authority breached section 17(1)(c) as it did not explain why it was relying on an exemption where it was not obvious.*

Steps Required

91. The Commissioner requires the public authority to take no remedial steps in this case.

Right of Appeal

92. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 3rd day of December 2009

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

Section 17(1) – Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is

relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) 'Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

(3) 'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) 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.

(3) The first condition is—

(a) 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 [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] 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).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—
 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.