

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 March 2015

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

#### Decision (including any steps ordered)

---

1. The complainant has requested copies of all London Fire Brigade ("LFB")'s policies and procedures. Having initially incorrectly applied the cost limit LFB subsequently found the request to be vexatious under section 14(1) of the FOIA. The Commissioner's decision is that it was entitled to do so; he requires no steps.

#### Background

---

2. The request can be followed on the "What do they know" website<sup>1</sup>.

#### Request and response

---

3. On 1 January 2015, the complainant wrote to LFB and requested information in the following terms:

*"In a response to a previous FOI request*

---

<sup>1</sup> [https://www.whatdotheyknow.com/request/policies\\_and\\_procedures\\_4](https://www.whatdotheyknow.com/request/policies_and_procedures_4)

>><https://www.whatdotheyknow.com/request/b...>

*you said that brigade orders " were replaced on 1 September 2008 by a new series of Policies and Procedures which is till [sic] in use"*

*Please send me a copy of all these policies and procedures by email".*

4. LFB responded on 7 January 2015. It explained that:

*"The 2008 review which resulted in the replacement of Brigade Orders also replaced several other series of procedures, including those dealing with human resources, and administrative matters. These were all combined into a single series which currently consists of 599 documents; some are very long documents in excess of 50 pages".*

5. LFB went on to state that it would exceed the cost limit to comply with the request as all of the documents would need to be reviewed in order to assess whether or not they were suitable for release into the public domain. However, in order to assist the complainant, LFB did provide him with a list of all current documents and suggested that it might be able to provide those he was most interested in within the cost limit.
6. The complainant asked for an internal review advising LFB that it was not able to take the amount of time needed to review the documents into account within the appropriate limit calculation.
7. Following an internal review LFB wrote to the complainant on 30 January 2015. It revised its position and stated that it had found the request to be vexatious under section 14(1) of the FOIA.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 31 January 2015 to complain about the way his request for information had been handled. He asked him to consider whether or not the request is vexatious. The Commissioner will consider this below.

## Reasons for decision

---

### Section 14 – vexatious request

9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
10. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
11. In particular the Commissioner accepts that there may cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by LFB in this case.
12. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
  - The requester has asked for a substantial volume of information AND
  - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner AND
  - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

### LFB's position

13. LFB has argued that the request is vexatious on the basis that it would require "*a disproportionate effort*" to respond to it and also that the complainant had been "*unreasonably intransigent*" in dealing with LFB.
14. It went on to explain that the previous request that the complainant made reference to in his own request:

*"... related to a subset of internal policy information that was out of date and no longer relevant to current operations. The scope of the previous request covered just 30 documents and due to their age, required very little reviewing or redactions as part of the process".*

15. By comparison it explained that his request covered 599 policies and that a conservative estimate of 10 minutes per policy would mean it would take just under 100 hours to review them all. Whilst mistakenly citing the cost limit initially, this error did not in its view detract from the volume of work that would need to be undertaken to ensure the policies were suitable for disclosure. When advising the complainant to this effect it provided him with a list of all the policies in an attempt to assist him by focusing his request to cover those items which were of particular interest. It explained to him:

*"... I am able to supply a list of the current policies which is attached; may be this will be sufficient for your purposes. If not, you could tell me which policies are of most interest to you and I could potentially arrange to supply these without exceeding the 'appropriate limit'."*

16. LFB accepted at internal review that it could not cite the appropriate limit but it remained concerned that to meet the request would cause more than 100 hours' work. It explained to the Commissioner:

*"The Authority employs two permanent staff who are responsible for FOIA and DPA [Data Protection Act] related work. At our conservative estimate of 100 hours, this is more than 14 full days of work".*

17. It further explained:

*"As part of our internal review we discussed and considered our overall approach to the release and publication of internal policies and procedures. Whilst some of our policies contain operationally sensitive information, there are others that are not and could be published more easily. We used the time before responding to [the complainant]'s review request to revise our internal processes so that as policies are reviewed (which they are on a three year rolling programme) they would, where appropriate, be made available to the public via our publication scheme (in line with the model scheme)".*

18. LFB advised the Commissioner that it had read his guidance on section 14 and had concluded that the request was vexatious on the following grounds.

### ***Disproportionate effort***

19. LFB explained to the Commissioner:

*"We had evaluated the time to respond in full to the request and estimated a minimum of 100 hours of work. This would have had a detrimental impact on the small team who deal with FOIA and DPA matters with an expectation that other requests and deadlines would be missed. I was mindful of a quote in the Commissioners Guidance from Judge Jacobs where he said "Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources needed to provide it.""*

20. It added that it had asked the complainant to focus his request on three occasions and that it was therefore of the view that:

*"If he had a purpose, beyond just obtaining a large number of documents, he had opportunity to express that purpose, either directly or indirectly. [The complainant] did not focus his request and therefore I was guided only by his original request. My opinion was that [the complainant]'s purpose only followed as a result of a previous request (which in itself is not unreasonable), but that [the complainant] had no specific purpose of his own".*

21. In further correspondence with the Commissioner, LFB expanded on this explaining:

*"Our estimate of the time (i.e. 10 mins) it would take to review each policy and decide on potential redaction and to otherwise prepare them for publication was based on a sampling exercise. This was carried out by our Knowledge Management Team on 27 February 2015. The policy/procedures officer spent the day reviewing a sample of policies (including shorter and longer documents) and was able to review 40 policies during the course of that day. She found that she could review about an average of 6 an hour, hence 10 minutes each. We used an estimate of 10 minutes in an original reply to [the complainant], and our sampling confirmed this estimate to be correct. Of course, this 10 minutes does not include the time it would take to (a) consult the 'owner' of the policy. Whilst the Knowledge Management Team manage the 'policies' process, all the policies are owned by a head of department within the Authority; it would be necessary to consult these people to make a final decision, and to resolve any differences of opinion; (b) remove any hypertext links that refer to documents only accessible internally; and (c) create a PDF of the*

*final document for publication and upload to our website. Taking all this into account, this is where we came to with our estimate of 40 minutes for more complex/sensitive policies.*

*Our policies cover a broad range of subject matter, from human resources matters to detailed operational procedures. Our aim is to keep policies as short as possible, i.e. no more than 10 to 20 pages. However, the complex nature of some operational matters mean that these policies are much longer. For example, policy 476 (Respiratory protective equipment – breathing apparatus – Dräger PSS 7000 – technical information) is 95 pages in length, policy 712 (Attendance management) is 73 pages, policy 412 (Mobilising) is 92 pages.*

*As has already been made clear, we do have a programme to publish as many of our policies as possible as part of our publication scheme. All policies have review dates and owners are prompted to review/update each policy after a set period. This process now includes confirmation about the publication of the policy and whether any redaction is required. The list of policies available on our web site is available here. There are about 50 policies currently available, together with a full list of policies”.*

### **Intransigence**

22. LFB advised the Commissioner:

*“As set out in the Commissioners guidance, [the complainant] clearly “takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the Authority”.*

### **Scattergun approach**

23. LFB also added that the complainant:

*“... has declined the opportunity to focus his request. As it stands, the request for all policies can be considered to be ‘fishing’ for information without any idea of what might be revealed”.*

### **Complainant’s position**

24. In explaining why he refused to ‘narrow’ his information request the complainant advised the Commissioner as follows:

*“The public authority argues that because I “rejected [their] attempts to assist [me]”, my request must be vexatious. This is absurd. Their offer to “assist me” was, in fact, an offer to assist*

*themselves by reducing their own workload. They asked me to request less information. I did not want to request less information. I wanted all the information I originally asked for, hence the reason for asking for it. Refusing to narrow a request cannot constitute evidence of vexatiousness”.*

25. He also countered LFB’s argument that he had no purpose for requesting the information by saying:

*“The public authority argues that because my request was prompted by the response to another request on the WhatDoTheyKnow website, they are “therefore minded to think that [I] personally had no original purpose or use for the information”. They are not entitled to draw this conclusion. The ICO actively encourages public authorities to publish FOI responses, so it is unsurprising that a disclosure to one person may spark or inspire requests from another. It is absurd to argue that this constitutes vexatiousness.”*

26. In respect of the value to the public in the publication of the information the complainant advised that he believed all the information should be available in line with the Commissioner’s model publication scheme and that there is:

*“... a public interest in this sort of information being released, especially where it relates to how a fire brigade keeps London’s residents safe, so the public authority will simply have to go ahead and release it”.*

27. Finally, the complainant also commented that:

*“The public authority argues, as part of its reasoning for finding my request to be vexatious, that “the list of published policies [within the scope of my request] will expand over time as our policies are reviewed and updated”. Fine. I accept that. I requested the current policies. That the information may change over time does not affect the validity of my request and cannot possibly transform it into a vexatious one.”*

### **The Commissioner’s position**

28. With regard to the figures provided by LFB, in the Commissioner’s opinion an estimate of ten minutes to review a policy document, some of which exceed 50 pages, and to determine whether it is exempt in its entirety or could be disclosed in a redacted form, is a sensible one. In particular the Commissioner considers the accuracy of this estimate to be sound given that it is based on a sample exercise undertaken by the LFB. Therefore the Commissioner accepts that it would take the LFB



almost 100 hours simply to read and make a preliminary assessment as to whether a document should be withheld in full or whether it could be disclosed in a partially redacted form.

29. The Commissioner further notes LFB's attempts to assist the complainant by offering to deal with those policies which are of most importance to him – a position it attempted prior to determining that the request was vexatious. The complainant has rejected this offer of assistance to him as: "*an offer to assist themselves by reducing their own workload*". LFB only has two members of staff who deal with both FOIA and DPA matters so to deal with this request would obviously impact on its ability to deal with any other work in these areas. As such, this means that LFB may be unable to comply with other requests within legal time limits because of the additional burden imposed by dealing with the complainant's request. The Commissioner therefore views LFB's offer to give the complainant as much information as it reasonably can, on whatever subject matter is of most interest to him, as being helpful. Indeed, in providing a list of everything it holds it has demonstrated its willingness to assist him. The Commissioner therefore does not accept the complainant's view.
30. The complainant is of the opinion that his refusal to narrow his request "*cannot constitute evidence of vexatiousness*". However, in the Commissioner's view, a pattern of behaviour and an unwillingness to cooperate with a public authority can indeed indicate that a request is vexatious. In addition, his unwillingness to focus his request in order to try and obtain the information which is of most use to him would indicate that the request is indeed 'scattergun' in nature as there are hundreds of policy documents caught by the request covering all manners of business activities.
31. Whilst the Commissioner accepts the complainant's argument that best practice when complying with the model publication scheme would include the routine publishing of policies and procedures, this does not currently detract from the fact that to do so in "one hit" would be of significant burden to LFB. He also notes its recognition of this point and its decision to amend its practices and make suitable documents available on its publication scheme when they are routinely reviewed. This is a positive outcome.
32. The Commissioner also accepts the complainant's view that there is a public interest in a fire brigade's policies and procedures being made available to the public. However, public interest is not a factor which is taken into account when deciding whether or not a request is vexatious.
33. The Commissioner is persuaded that LFB can rely on section 14(1) of FOIA to refuse to comply with this request. He has reached this



conclusion because of the very limited number of staff who would be required to deal with the sheer volume of information falling within the scope of the request, and the amount of time it would take them to review and prepare the documents for disclosure after exemptions had been considered and applied. The Commissioner considers any reasonable person would find it difficult to conclude that this would place anything but a grossly excessive burden on the two members of staff at LFB who would be burdened with undertaking the task.

## Right of appeal

---

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**