

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 14 March 2011

**Public Authority:** West Yorkshire Fire and Rescue Service  
**Address:** Oakroyd Hall  
Bradford Road  
Birkenshaw  
West Yorkshire  
BD11 2DY

### Summary

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The complainant requested details of fleet vehicles used by the public authority. Some information was disclosed but the remainder was withheld under section 24(1) of the Act. The public authority later sought to rely on section 31(1)(a) and section 40(2). The Commissioner finds that the public authority was correct to rely on section 24(1) and requires no steps to be taken.

### The Commissioner's Role

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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

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2. The National Co-ordination and Advisory Framework<sup>1</sup> (NCAF) is a structure offering assistance to the Fire and Rescue Service. The purpose of the NCAF is to enable the provision of support and advice to the Fire and Rescue Service and central government during incidents that are of national significance and/or require national co-ordination.

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<sup>1</sup> [www.communities.gov.uk/documents/fire/pdf/nationalframework200811.pdf](http://www.communities.gov.uk/documents/fire/pdf/nationalframework200811.pdf)

3. As part of this national framework West Yorkshire Fire and Rescue Service (WYFRS) hosts the UK's Fire and Rescue Service National Control Centre (NCC). It is responsible for monitoring and coordinating available national and local resources on a day to day basis. In the event of a serious national incident it will coordinate national resources, and will assist the nine regional control centres in mobilising the required resources. A critical part of the role of the NCC is to have an accurate and up to date database of the location and availability of all resources.

## The Request

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4. On 31 March 2010 the complainant requested the following information from WYFRS:

*"Please could you provide me with a current and up to date fleet list containing all vehicles owned and used by West Yorkshire Fire and Rescue Service:*

*If possible could you provide the make, model, age, index, function and the station/location where the vehicle is based? If possible could I have this in an excel spreadsheet please?*

*Also could you advise me of the name and contact details of the current fleet manager of West Yorkshire Fire and Rescue Service?"*

5. On 13 April 2010 WYFRS responded to the complainant's request. It provided the complainant with the name of the fleet manager together with a spreadsheet containing the information on the age, make and model and function of the vehicles. WYFRS withheld the details of vehicle index (registration number) and location citing section 24(1) of the Act.
6. On 14 April 2010 the complainant contacted WYFRS to request an internal review of the decision.
7. On 19 April 2010 WYFRS completed its internal review and maintained its reliance on section 24(1) of the Act.

## The Investigation

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### Scope of the case

8. On 19 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant expressed the view that, as he had made similar requests for the same information to four other fire and rescue services, and this had been disclosed to him, he should also have received the information in this case.

### Chronology

9. On 3 September 2010 the Commissioner wrote to WYFRS to request a copy of the withheld information as well as further information about the handling of the request.
10. On 24 September 2010 WYFRS provided a detailed response to the Commissioner. At this stage WYFRS advised the Commissioner that it now also sought to rely on sections 31(1)(1)(a) and 40(2) of the Act for all of the withheld information.

### Analysis

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#### Exemptions

##### Section 24(1) – national security

11. Section 24(1) of the Act provides an exemption from disclosing information where the exemption is “required for the purpose of safeguarding national security”. Section 24(1) is reproduced in the legal annex to this notice. This exemption is subject to a public interest test.
12. National security is not defined in law but the Commissioner considers that it can be interpreted widely. The Commissioner is guided by the Information Tribunal’s comments in the case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The Tribunal had noted that it was unable to find an exhaustive definition of “national security” in either any statute or judicial decisions. In referring to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153) the Tribunal stated that they found a number of useful observations on the issue:

*“(i) “national security” means the “security of the United Kingdom and its people” (para 50 per Lord Hoffman);*

*(ii) the interests of national security are not limited to action by an individual which can be said to be "targeted at" the UK, its system of government or its people (para 15 per Lord Slynn);*

*(iii) the protection of democracy and the legal and constitutional systems of the state is part of national security as well as military defence (para 16 per Lord Slynn);*

*(iv) "action against a foreign state may be capable indirectly of affecting the security of the United Kingdom" (para 16-17 Lord Slynn): and*

*(v) "reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security" (para 17 Lord Slynn)."*

13. Section 24 only applies where exemption is required for the purposes of safeguarding national security. The Commissioner understands that the word 'required' in this context means reasonably necessary and sets a fairly high threshold for the use of the exemption. Therefore the Commissioner considers that:

- Section 24 does not apply simply because the information may relate to national security.
- The word "required" means "reasonably necessary". It may not be vital to apply the exemption but it must certainly be more than just useful or convenient.
- Section 24 should not be applied in a blanket fashion. There must be evidence that disclosure of the information in question would pose a real and specific threat to national security.

14. WYFRS advised the Commissioner that, as a member of the emergency services sector of the Critical National Infrastructure<sup>2</sup>, it is of paramount

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<sup>2</sup> The Government places a high value on ensuring that the UK is well protected against attacks by terrorists or other national security threats. National infrastructure is focused around the concept of essential services such as comprising those facilities, systems, sites and networks necessary for the delivery of the essential services upon which daily life in the UK depends and which ensure the country continues to function socially and economically. There are nine national infrastructure sectors which provide these essential services: communications, emergency services, energy, finance, food, government, health, transport, water.

importance that WYFRS does all it can to reduce vulnerabilities to terrorism. WYFRS explained that it hosts the NCC that deploys and coordinates resources in response to single or multiple large scale incidents across the UK. WYFRS also advised that it is the only fire and rescue service in the UK to employ automatic number plate recognition technology for controlling access to some of its sites. Taking these factors into consideration WYFRS argued that disclosure of the withheld information could represent a threat to national security through improvised explosive devices being attached to 'cloned' vehicles seeking to infiltrate its sites. This in turn could impact on WYFRS' ability to respond to local and national critical incidents.

15. The complainant told the Commissioner that he requested similar information from other fire and rescue services in the UK and that this information had been disclosed to him. He argued that he should therefore be given access to the same information by WYFRS as he did not believe that the reasons stated were sufficiently serious enough to prevent disclosure specifically of the registration numbers and locations.
16. The Commissioner has considered the withheld information and has also considered the national framework<sup>3</sup> within which WYFRS operates. The Commissioner is mindful of the significance of the national infrastructure for responding to national critical incidents and understands the implications to the UK if the ability to respond to such incidents were compromised. He notes that WYFRS has explained the difference between it and other fire and rescue services which demonstrates why it considers the withheld information is exempt under section 24(1). The Commissioner considers that WYFRS has a unique and critical position within the emergency services sector in relation to the national infrastructure because it hosts the NCC.
17. WYFRS was of the view that, if the registration numbers and locations of its vehicles became known, this information could be used in conjunction with that already disclosed on make and model to bypass its security systems and potentially carry out terrorist or criminal activities. Specifically, the information could be used to 'clone' WYFRS vehicles. Cloned vehicles could be used to bypass the automatic number plate recognition system and could then be used as a potential weapon to destabilise the ability of the NCC to respond to national critical incidents. WYFRS believed that this was a very real threat, which if activated would significantly impact on its abilities to coordinate national resources for major national critical incidents.

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<sup>3</sup> Fire and Rescue Service Operational Guidance National Co-ordination and Advisory Framework, ISBN: 978-1-4098-1817-5

18. The Commissioner understands the complainant's argument that he should be provided with the withheld information in this case as he has received similar information from other authorities. He understands that in isolation it may seem incongruous that registration numbers and locations of vehicles would attract the exemption for national security.
19. However, the Commissioner is satisfied, on the basis of the arguments presented by WYFRS and the distinguishing features in relation to the role of WYFRS compared to other local fire and rescue services, that exemption from disclosure of the withheld information is required for the purpose of safeguarding national security, he finds that section 24(1) is engaged. The Commissioner has therefore gone on to consider the public interest arguments.

**Public interest arguments in favour of disclosing the requested information.**

20. WYFRS understood that there would be a public interest in knowing how public funds are spent on such vehicles, that those vehicles were well maintained and placed to respond to any type of incident. It stated that it understood that disclosure of the registration numbers and locations of the vehicles could aid the public's understanding of how public funds are utilised. WYFRS argued that it had released most of the requested information on this basis.
21. The complainant understood that national security is paramount for all government departments but argued that there should be a "common sense approach" in regards to the freedoms associated with living in the UK. For this reason the complainant remained of the view that the withheld information should be disclosed.
22. The Commissioner accepts that there is a legitimate public interest in the public being satisfied that any fire and rescue service has up to date and well maintained vehicles to deliver services to the public when and where required. The Commissioner notes that information about make, model and age of vehicle has already been disclosed. Although that disclosure goes some way to satisfying the public interest identified, the Commissioner does attribute some weight to this argument in favour of disclosing the information which is still withheld.

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

23. WYFRS argued that disclosing the information about registration numbers and locations would not add to the public's understanding or awareness on the matter. Rather, WYFRS maintained that disclosure of the withheld information would create a major vulnerability to its aim to maintain the effective operation of its local and national emergency provision.

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

24. The Commissioner considers that there is a strong public interest in knowing that the fire and rescue service have appropriate vehicles and that disclosing the registration marks alongside other vehicle details could ordinarily meet this interest. However, the public interest in disclosing that information is very slight as it would add very little in terms of accountability for public expenditure or decision-making.
25. The public interest in safeguarding national security is very great indeed. Having found that the exemption is engaged in this case, for the reasons stated above, the Commissioner considers that this public interest could only be balanced by the presence of equally strong public interest factors in favour of disclosure. There are none in this case. Therefore the balance of the public interest weighs heavily in favour of maintaining the exemption.
26. Accordingly the Commissioner finds that WYFRS was correct to rely on section 24(1). The Commissioner has not gone on to consider formally sections 31(1)(a) and 40(2) of the Act. However, it follows from his conclusions above that section 31(1)(a) would almost certainly also apply to justify withholding the information in this instance.

## **The Decision**

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

## **Steps Required**

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28. The Commissioner requires no steps to be taken.

## Right of Appeal

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29. 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: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

30. 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.
31. 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 14<sup>th</sup> day of March 2011**

**Signed .....**

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

## Legal Annex

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### Section 24 - National Security

(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

### Section 31 - Law enforcement

- (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) the prevention or detection of crime,
  - (b) the apprehension or prosecution of offenders,
  - (c) the administration of justice,
  - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
  - (e) the operation of the immigration controls,
  - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
  - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
  - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
  - (i) any inquiry held under the [1976 c. 14.] Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

- (2) The purposes referred to in subsection (1)(g) to (i) are—
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
  - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
  - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
  - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
  - (e) the purpose of ascertaining the cause of an accident,
  - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
  - (g) the purpose of protecting the property of charities from loss or misapplication,
  - (h) the purpose of recovering the property of charities,
  - (i) the purpose of securing the health, safety and welfare of persons at work, and
  - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

## **Section 40 – Personal Information**

### Section 40(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.”

Section 40(3) provides that –

“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 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 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).”