

Mr Richard Parker
via Whatdotheyknow.com

Please ask for:
Justin Johnston
Telephone: 01772 862545
Email: dp&foi@lancsfireandrescue.org.uk
Your Ref:
Our Ref: 861/18
Date: 07 August 2018

Dear Sir,

**Freedom of Information Act 2000 / Environmental Information Regulations
2004 – Internal Review of Decision FOI 861/18.**

I am writing further to your message on whatdotheyknow.com of 19 July 2018, where you requested an Internal Review of our decision to refuse your Freedom of Information / Environmental Information Regulations request sent to you on 18 July 2018.

I have undertaken an internal review of the decision to refuse your request on the following basis:

The requested information is exempt under the following sections of the Freedom of Information Act 2005.

Section 24(2) – National Security
Section 31(3) – Law Enforcement
Section 38(2) – Health and Safety

And the following Regulations within the Environmental Information Regulation 2004:

Regulation 12(5)(a) – Adverse effect upon international relations, defence, national security, or public safety.

Regulation 12(6) – A public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH



I do consider the original decision maker's refusal under FOIA Section 24, 31 and 38 and EIR Regulation 12(5) to be legitimate and reasonable, and as such we do seek to apply the relevant exemptions to refuse to communicate the detail of that information to you.

Please find my decision below:

Thank you for your feedback relating to fracking at Preston New Road, I can assure you that Lancashire Fire and Rescue Service in conjunction with the LFR will have all relevant plans in place prior to the commencement of this activity.

Lancashire Fire and Rescue Service have provided the following information relating to its Site Specific Plans etc., and as such I believe this to be the limit of the information we can release, due to the undermentioned exemptions:

"The LFRS site specific plan deals with on-site risks and would be implemented in conjunction with the plans of other agencies as appropriate, should an incident occur. The LFRS site specific planning includes, in no particular order:

Life risk, Access, Water supplies, Firefighting information, Utility hazards, Site plans / floor plans, Hazards (including chemical and gasses), Salvage, Environment, Local infrastructure, Economic risk, Other agency plans, Holding areas, RVPs ETC.

LFRS does not work in isolation and would respond to an emergency at this site in partnership with other Category 1 Responders (as defined in the Civil Contingencies Act). LFRS is part of the Lancashire Resilience Forum (LRF). The LRF is not a legally constituted entity, and is formed with representatives from organisations involved in the planning for and response to emergencies. A risk assessment has been undertaken for the Cuadrilla Preston New Road site by the LRF. The outcome of this LRF risk assessment was an overall risk rating of Medium – which means the level of risk does not warrant specific multi-agency planning and can be covered by generic arrangements and single-agency plans, as appropriate. More information relating to this can be found at <https://www.stayintheknow.co.uk/EmergencyInfo>.

The LRF risk assessment is under constant review and will be updated as necessary when there is a substantial change, for example when fracking actually starts.

Responsibility for the evacuation of schools lies with the schools themselves although they can be guided by the LRF. Lancashire County Council's Health Safety and Resilience Service (as part of the LRF) has recently updated the templates and guidance to aid schools in developing appropriate and effective emergency / contingency plans."

Lancashire Fire and Rescue Service can confirm that it holds information to be able to answer your question; however this letter serves as a Refusal Notice under Regulation 12(1) of the Environmental Information Regulations 2004 and under Section 17 of the Freedom of Information Act 2000.

Environmental Information Regulations 2004:

Regulation 12(1) says:

Exemptions to the duty to disclose environmental information

12. – (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) An exception to disclosure applies under paragraphs (4) or (5); and
- (b) In all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

and under

Regulation 14(3) of the Environmental Information Regulations 2004

Regulation 14(3) of the Environmental Information Regulation 2004 relates to refusals to disclose information, and states:

- (3) The refusal shall specify the reasons not to disclose the information requested, including
- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
 - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Under the Environmental Information Act I am required to articulate the position and the public interest.

Regulation 12(5)(a) – Adverse effect upon international relations, defence, national security, or public safety.

National Security

ICO guidance emphasises there is no definition of national security and refers to an Information Tribunal Decision (EA/2006/0045) that noted the following:

- "National security" means the security of the United Kingdom and its people;
- The interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- Action against a foreign state may be capable indirectly of affecting the security of the UK;
- Reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

The national security exemption is based on the effect that disclosure would have, not on the content or source of the information.

As you may be aware, disclosure under EIR is a release to the public at large. Whilst not questioning the motives of the applicant, releasing any information held regarding the planning for such incidents, would show criminals what the capacity, tactical abilities and capabilities of the fire and rescue service are, allowing them to target specific areas of the UK to conduct their criminal/terrorist activities. Releasing such information for specific circumstances, would lead to an increase in harm of attacks and compromise law enforcement. This would be to the detriment of providing an efficient emergency response service and a failure in providing a duty of care to all members of the public.

The threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. Since 2006, the UK Government have published the threat level. The UK continues to face a sustained threat from violent extremists and terrorists and the current UK threat level is set at 'severe'. The recent attacks in Manchester and London, together with the related security activity in Belgium, France and Spain only serves to emphasise the reality of such threats.

The disclosure of local and national information would limit operational capabilities as criminals/terrorists would gain a greater understanding of the emergency service's capacity, methods and techniques, enabling them to take steps to counter them. It may also suggest the limitations of capabilities in this area, which may further encourage terrorist activity by exposing potential vulnerabilities. This detrimental effect is increased if the request is made to several different emergency services and law enforcement agencies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tactics are or are not deployed or where levels of capability exist. This can be useful information to those intent on committing crimes. It would have the likelihood of identifying location-specific operations which would ultimately compromise response tactics and operations as individuals with malicious intent could counteract the measures used against them.

Any information identifying the focus of emergency response and planning activity could be used to the advantage of terrorists and/or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

Public Interest Considerations

Factors favouring release:

The public are entitled to know how public funds are spent. Any such release of information by Lancashire Fire and Rescue Service would allow the public to gauge the appropriate use of public funds in carrying out their national security obligations. In addition, it would provide appropriate transparency and reassurance regarding the level of capability in Lancashire.

This may also enhance public confidence in the fire and rescue service. This in turn would add to the accuracy of public awareness and debate whilst providing an insight into the service and enable the public to have a better understanding of effectiveness of the fire and rescue service and the use of public resources. It would inform other issues that are currently the subject of public debate in relation to response capabilities and improve the quality and accuracy of public debate, which may otherwise be steeped in rumour and speculation.

Factors favouring withholding the information:

The strongest reason favouring non-release of this information is the need to ensure that national security is not placed at risk by enabling those with criminal intent the opportunity to gain an operational advantage over the Fire and Rescue Service in respect of disclosing details regarding our capability to respond to specific incidents.

On balance, I find there is a much stronger public interest in non-release of the information.

Public Safety

If the requested information was provided, this could lead to attacks being carried out locally or nationally, this is likely to involve criminal acts and threaten the safety of Fire and Rescue Service staff, partner agencies and members of the public.

Public Interest Considerations

Factors favouring release:

Provision of this information would lead to better informed public awareness and debate.

Factors favouring withholding the information:

Provision of this information would endanger the public safety of any residents or visitors to the county and would undermine Lancashire Fire and Rescue Service's ability to protect the safety and well-being of the community.

Whilst there is a public interest in the transparency of the use of public funds and the accountability of the Service, there is also a strong public interest in maintaining confidence in Lancashire Fire and Rescue Service with regard to national security and protecting the safety and well-being of citizens.

Public safety and the ability to deliver effective emergency planning and response provision is of paramount importance to the Fire and Rescue Service. Provision of this information would undoubtedly compromise both national security and public safety processes.

On balance, it is our opinion that there is a much stronger public interest in non-release of the information.

Freedom of Information Act:

This letter serves as a Refusal Notice under Section 17 of the Freedom of Information Act 2000.

Section 17 of the Act provides:

- (1) A public authority which, in relation to any request for information, is to any extent relying 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 the fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.

In relation to your request for details regarding the above request, Lancashire Fire and Rescue Service can Neither Confirm Nor Deny (NCND) whether the information requested is held as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Section 24(1) – National Security

Section 31(1) – Law Enforcement

Section 38(1) – Health and Safety

Section 24(1) - National Security

Section 24(1) states:

Section 24(1) provides that information is exempt if exemption from section 1(1)(b) is required for the purposes of safeguarding national security.

- National security includes more than the security of the UK, its military defence and its systems of government, it also involves co-operation with other states in combating international terrorism and guarding against actions targeted at other states which may impact on the UK and its people.
- "Required for the purposes of" is interpreted as meaning reasonably necessary.
- Although there has to be a real possibility that the disclosure would undermine national security, the impact does not need to be direct or immediate.

The exemption is based on the effect that disclosure would have, not on the content or source of the information.

ICO guidance emphasises there is no definition of national security and refers to an Information Tribunal Decision (EA/2006/0045) that noted the following:

- "National security" means the security of the United Kingdom and its people;
- The interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- Action against a foreign state may be capable indirectly of affecting the security of the UK;
- Reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

Whilst national security is not defined under the Freedom of Information Act, it does include the security of the United Kingdom and its people.

Public Interest Considerations

Factors favouring release:

The public are entitled to know how public funds are spent. In addition, it would provide appropriate transparency and reassurance regarding the level of capability in Lancashire.

This may also enhance public confidence in the fire and rescue service. This in turn would add to the accuracy of public awareness and debate whilst providing an insight into the service and enable the public to have a better understanding of effectiveness of the fire and rescue service and the use of public resources. It would inform other issues that are currently the subject of public debate in relation to response capabilities and improve the quality and accuracy of public debate, which may otherwise be steeped in rumour and speculation.

Factors favouring withholding the information:

The strongest reason favouring non release of the information is to that national security is not placed at risk by enabling those with criminal intent the opportunity to gain an operational advantage over the Fire and Rescue Service in respect of disclosing details regarding capability to respond to specific incidents.

Section 31(1) - Law Enforcement

Section 31(1) states

31.—(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 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 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 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.

The term 'law enforcement' should be interpreted broadly. In the case of *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust* the Upper Tribunal commented that "it is plain from reading the activities listed in s.31(1) and the purposes specified in s.31(2), that they include activities and purposes which go beyond actual law enforcement in the sense of taking civil or criminal or regulatory proceedings. They include a wide variety of activities which can be regarded as in aid of or related to the enforcement of (i) the criminal law, (ii) any regulatory regime established by statute, (iii) professional and other disciplinary codes, (iv) standards of fitness and competence for acting as a company director or other manager of a corporate body (v) aspects of law relating to charities and their property and (vi) standards of health and safety at work" (paragraph 75).

Public interest considerations

Factors favouring release:

Providing information relating to the response and planning for such incidents would provide an insight into the Fire and Rescue Service's actions and enable the public to have a better understanding of the effectiveness of the emergency services. It would show how public funds are being spent in relation to protection against risk of such incidents which can be exploited by terrorism and other criminal activity.

Some information may already be in the public domain regarding the response and planning for such incidents and providing further information would ensure transparency and accountability and enable the public to see what capability the Fire and Rescue Service has to assist with attending such incidents.

Factors favouring withholding the information:

It has been recorded that FOIA releases are monitored by criminals and terrorists and so releasing information held regarding the planning and operations of terrorist attacks and tactics would undermined and compromise law enforcement and it would also hinder any local, regional or national operations.

It can be argued that there are significant risks associated with providing information in relation to any aspects of terrorism planning and that any nation's security arrangements, by releasing the information, may reveal the relative vulnerability of what we may be trying to protect.

Lancashire Fire and Rescue Service would not wish to reveal information that would undermine any law enforcement operations and would impact on emergency response resources, as more crime would be committed because terrorists/criminals would know such information, capacity or interest and individuals would therefore be placed at a greater risk. A fear of crime would be realised because if the terrorists identified more vulnerable areas, they would target and exploit these areas and the public would be in fear of more terrorist or criminal activity occurring. This may lead to the emergency services needing to increase their resources to reassure and protect the community.

Section 38(1) - Health and Safety

Section 38(1) states information is exempt information if its disclosure under this act would, or would be likely to –

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual

Evidence of Harm

The requested information could lead to attacks being carried out locally or nationally, is likely to involve criminal acts and threaten the safety of Fire and Rescue Service staff, partner agencies and members of the public.

Public Interest Considerations

Factors favouring release

Release of the information is would lead to better informed public awareness and debate.

Factors favouring withholding the info

Release of this information would endanger the health and safety of any residents or visitors to the county would undermine Lancashire Fire and Rescue Service's ability to protect the safety and well-being of the community.

Balance Test – Sections 24(1), 31(1) & 38(1)

Whilst there is a public interest in the transparency of the use of public funds and the accountability of the Service, there is also a strong public interest in maintaining confidence in Lancashire Fire and Rescue Service with regard to national security, law enforcement, protecting the safety and well-being of citizens.

If you are not content with the outcome of this review, you may apply directly to the Information Commissioner for a decision.

The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Telephone: 08456 30 60 60 or 01625 54 57 45
www.ico.gov.uk

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Johnston', written over a horizontal line.

Justin Johnston
Director of Strategy and Planning