

## Expert comment

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**R**ecent enforcement action by the Information Commissioner has shone a light on the difficulties that public authorities face when responding to information requests resulting from a major incident of national interest, such as the Grenfell Tower fire.

On 2nd March 2018, the Information Commissioner issued seven decision notices finding that the Royal Borough of Kensington and Chelsea ('RBKC') had breached section 10 of the Freedom of Information Act 2000 ('FOIA') and/or Regulation 5(2) of the Environmental Information Regulations ('EIRs') 2004 by failing to respond to seven requests for information concerning Grenfell Tower. The requests were made at various times in 2017 by different requesters. They included information relating to advice on building safety and control for Grenfell Tower; tender documents, invoices and protocols for refurbishment and subcontracting works for the Tower and fire safety and inspection reports. None of the requests had been answered within the statutory period and, apart from initial acknowledgements, the requesters had not received any correspondence from RBKC. In each case, once a complaint had been made, the Commissioner wrote to RBKC notifying it of the complaint and invited responses to be made to the complainants. None was made, nor did RBKC engage with the Commissioner's office.

The Commissioner acknowledged in her decision notices that RBKC was dealing with "exceptional and difficult circumstances". However, she emphasised that the public authority's statutory obligations remain, and that she could not ignore the lack of response to the requesters and the lack of engagement with her office. Inevitably, the decision notices were picked up by and reported in the national media, leading to further criticism of the authority and its response to the tragedy.

It is plain that RBKC found itself in an extraordinarily challenging situation. In the first five months after the Grenfell Tower fire, the authority received 1,025 FOIA/EIRs requests. It responded within time to 572 of those requests. What can public authorities do when faced with such difficult circumstances?

There are three key lessons that can be learned from the Grenfell decision notices. The first is that responding to information requests concerning major incidents should be an important part of a public authority's overall crisis response strategy.

No doubt RBKC had, and still has, a huge number of demands on its resources in the wake of the fire. But it undermines the positive work done to rebuild trust with the community if the main conduit through which the public can request information is not functioning. And it risks yet more bad national press. Events such as Grenfell will inevitably produce a spike in information requests. Part of the authority's major incident response budget should therefore be put towards dealing with that increase.

The second lesson is that engagement with the ICO is crucial, even if that engagement means being open about the difficulty of complying with the statutory requirements in responding to requests. The Commissioner would likely not have issued a slew of decision notices against RBKC had there been some response to her correspondence. She said in the decision notices that her preference is always to resolve complaints on an informal basis where possible, but that cannot happen if the authority fails to engage with her office.

The third lesson is that public authorities can and should ask for assistance from the ICO when facing the large increase in requests that will be prompted by a major incident. The Commissioner had highlighted this in an earlier decision notice, issued on 23rd November 2017, concerning RBKC's failure to respond to a request for a structural engineer's report regarding Grenfell Tower. In that notice the Commissioner acknowledged the difficulties faced by RBKC and encouraged the Council to engage with her and to ask for help.

It can be challenging even in normal circumstances for public authorities to comply with their statutory obligations under FOIA and the EIRs. At a time of crisis and heightened scrutiny, with numerous competing demands on resources and staff, it is even more difficult. But having a positive strategy for dealing with requests for information and liaising with the ICO, as part of a major incident response, can help public authorities to use FOIA/EIR requests to begin rebuilding public confidence in their processes.

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