

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 March 2015

**Public Authority:** Plymouth City Council  
**Address:** Ballard House  
West Hoe Road  
Plymouth  
PL1 3BJ

### Decision (including any steps ordered)

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1. The complainant requested the names of two parties connected to the reporting of an alleged burial of industrial waste. Plymouth City Council (the 'Council') initially confirmed that it held the requested information but advised that it was exempt by virtue of section 40(2) (personal information) of the FOIA. During the Commissioner's investigation it subsequently advised that it had not recorded the names so the information was not held. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the information; he does however find a breach of section 16. No steps are required.

### Request and response

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2. On 4 October 2014, the complainant wrote to the Council and requested information in the following terms:

*"In 2009, when I was Vice President, Director & General Manager of [company redacted] I was contacted by someone [name redacted] from the Environmental Health department who advised the department had received information that industrial waste from an old barium salt bath heat treatment system had been illegally buried on the [company redacted] site.*

*A private company was contracted to take core earth samples from across the site but no contamination of any type was found and the case was closed.*

*Under the freedom of information, I would like to know the names of the two people who claimed to the environmental department that toxic waste was buried on the [company redacted] site”.*

3. The Council responded on 22 October 2014. It stated that it held the requested information but that it was exempt from disclosure by virtue of section 40(2) of the FOIA.
4. Following an internal review the Council wrote to the complainant on 17 November 2014. It maintained that the requested information was exempt under section 40(2). It made no reference to the additional information requested during the internal review.

### **Scope of the case**

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5. The complainant initially contacted the Commissioner on 25 November 2014 to complain about the way his request for information had been handled. The Commissioner required further clarification regarding his grounds of complaint which was provided on 4 December 2014. The complainant explained why he thought the requested names should be provided.
6. During the investigation the Council advised that it did not actually hold the names. At the Commissioner's behest it wrote to the complainant on 9 January 2015 to advise him of this but provided no reasons for changing its position. The Commissioner wrote to the complainant again who advised that he did not accept that the names would not be held. The Commissioner will consider this below.
7. The Commissioner would also like to note that, when requesting an internal review, the complainant expanded his request to cover “...all the information it has on file relating to this case”. The Council does not appear to have considered this additional request. However, the complainant has not pursued this, nor did his complaint to the Commissioner refer to it. The Commissioner has therefore not considered this in his notice.

## Reasons for decision

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### Section 1 – general right of access

8. Section 1(1) states that:

*"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".*

9. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or whether it was held at the time of the request).

11. The complainant has disputed the Council's claim that it does not hold the names of the parties concerned. He advised the Commissioner:

*"I do not agree with the response from PCC and believe based on the conversations I had at the time on the telephone with the environmental health department staff that they must have this information.*

*I am extremely disappointed with their lack of cooperation to my information request and I would request if they do not have this information can they at least advise how the environmental health concern at [company redacted] raised in the first place! What instigated the call to my office raising this concern?"*

12. The Commissioner has investigated the complaint by asking the Council a number of questions in order to determine whether it held the names requested. He asked the Council to detail the enquiries and searches it had carried out to identify and locate this information.

13. The Council explained to the Commissioner that all information recorded about the incident was electronic and that it was still held on its corporate systems - and that it would be retained for ten years. It gave

him a copy of its "*corporate record regarding the complaint*" and also provided copies of some related emails which gave details about the event. The Council also confirmed that it had asked one of its officers who had been involved in the case and that she had confirmed that the names of those instigating the complaint were not recorded.

14. The information provided allowed the Commissioner to peruse the events. Although it may seem strange, and disappointing to the complainant, that names were not obtained prior to the inspection of his company premises being performed, from viewing the evidence provided by the Council the Commissioner is satisfied that, on the balance of probabilities, the names are not recorded.

### **Section 16 – advice and assistance**

15. Section 16(1) provides that:

*"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".*

16. In its late confirmation to the complainant that the names were not in fact held, the Council provided no explanation as to why this was the case or why it had changed its position. It merely advised him that:

*"I am writing to inform you after further investigation and searching of our records, the information you requested is not held by Plymouth City Council".*

17. The Commissioner considers this to be a poor response with no explanation as to why the information was not held and why it had changed its position. Had it provided a reasonable response then this may have been accepted by the complainant. He therefore finds this to be in breach of section 16.

## Right of appeal

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18. 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)

19. 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.
20. 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 .....**

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