

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 August 2024

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

#### Decision (including any steps ordered)

---

1. The complainant requested information in connection with the handling of a previous freedom of information request. Plymouth City Council (the Council) stated that it did not hold the information requested. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any information falling within the scope of the request. The Commissioner does not require any steps to be taken.

#### Request and response

---

2. On 18 December 2023 the complainant wrote to the Council and requested information in the following terms:

"could you explain specifically what Tracey Lee meant when she said that answering a FOI request (which concerned children's safeguarding at Mt Tamar School) at 19 minutes to midnight on the final (20th) working day permitted, was an "operational issue". What were the specific "issues" in your "operation" that meant that an FOI request was answered at such a time.

The timing of the response was labelled "not a deliberate act" - so it seems that the exact circumstances of this action are known".

3. The complainant provided clarification on 30 December 2023 and confirmed that the request related to a previous FOI request which a member of the public submitted to the Council in 2016 and provided the relevant reference number.
4. The Council responded on 18 January 2024 and stated that it did not hold any recorded information falling within the scope of the request.
5. On 18 January 2024 the complainant requested an internal review of the handling of the request. They indicated that the information about the "operational issue" was known as they had received correspondence from their local MP which supported this assertion.
6. The Council provided the outcome of its internal review on 19 February 2024 and upheld its decision that it did not hold the information requested.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 20 February 2024 to complain about the way their request for information had been handled.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any information falling within the scope of the request.

### **Reasons for decision**

---

#### **Section 1 – information not held**

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
11. The complainant asserts that the Nolan Principles require council officers to be open, honest, have integrity and can be held to account. They

consider that by failing to respond to the request just because the information is not recorded contradicts these principles. The complainant considers that information is 'known' about the operational issue as they are in receipt of a letter from an MP about the matter in which the MP stated that they were satisfied with the explanations from the Council about the timing of the response.

12. The Council's position is that no recorded information is held. It pointed out that the request is asking for clarification of a statement made by its Chief Executive over 7 years ago about the handling of a previous information request. Relevant searches were undertaken at the time the request was received and no recorded information was identified.
13. The Council advised the Commissioner that the officers involved in the subject matter have been consulted and they are confident that no documents or information was generated which would provide clarification of the statement made by the Chief Executive about the handling of the request in question. The Council explained that, even if such information had been generated at the time, as it was 7 years ago, the information would no longer be held as it would have been deleted in accordance with its retention policy.

## **Conclusion**

14. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
15. The complainant considers that the information will be 'known' to the Council and as such it should respond to the request. The Commissioner would point out that the FOIA only applies to recorded information held by a public authority. A public authority is not required to create new information in order to respond to a request for information. As such, even if someone in the Council does 'know' the operational reasons or other for the timing of the response in question he could not require the Council to provide that information in a recorded format.
16. Having considered the explanations provided by the Council, whilst taking account of the points raised by the complainant, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, no recorded information within the scope of the request is held.

## Right of appeal

---

17. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**