

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 October 2024

**Public Authority:** Armagh City Banbridge and Craigavon  
Borough Council

**Address:** Civic Building  
Downshire Road  
Banbridge  
BT32 3JY

#### **Decision (including any steps ordered)**

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1. The complainant requested from Armagh City Banbridge and Craigavon Borough Council (the Council) information about a report relating to a meeting at the Orchard Leisure Centre Armagh. The Council stated that it does not hold the information as described in the request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information falling within scope of the request, and it has complied with section 1(1)(a) of FOIA. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Background information**

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3. The Council explained to the Commissioner that on 7 April 2017, a drowning incident occurred at Orchard Leisure Centre Armagh. This resulted in a fatality, and the incident is the subject of an ongoing criminal case which is due to be reviewed in October 2024.

## Request and response

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4. On 24 April 2024 the complainant wrote to the Council and requested information in the following terms:

"Further to a FOI request ref IR-2024-238 on the 3rd April 2024 I would appreciate it if you could please provide me with a copy of the report that [name redacted] received from the three senior officers, [names redacted] and I believe [name redacted] who all attended a meeting on the 10th April 2017 in the Orchard Leisure Centre Armagh. I do believe that this "version of events" as [name redacted] put it, does in fact constitute a report, and therefore should have been included in your response to my FOI REQUEST."

5. On 3 May 2024 the Council responded and stated that it does not hold the information as described in the request of 24 April 2024.
6. On the same day, the complainant asked for an internal review.
7. On 14 May 2024 the Council provided its review response and maintained its original position.

## Reasons for decision

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8. This reasoning covers why on the balance of probabilities, the Council does not hold information within scope of the request.

## Section 1 – information held/not held

9. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
10. The public authority is not obliged to create or acquire information to satisfy a request.
11. The Commissioner's role when determining whether a public authority has complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or adequacy of this information. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request at the time it was made.
13. The Council described its searches to the Commissioner. It said the legal repository for electronic records and manual records, has restricted access permission in place due to the nature of the documents that are stored there. The Council confirmed electronic information held in relation to the Orchard Leisure Centre (OLC) incident is stored within this repository. A box containing hardcopy information is stored in a locked cabinet in the legal office, which includes material collected at the time of the incident. The Council explained that most information held in the box has been scanned and is stored in the online legal repository. Data was retained in the box, as at the time of the incident, the Council was aware there could be legal proceedings in the future. Therefore, all data was preserved for legal purposes. The Council said the search points for information within the Council is securely controlled, and that wider searches across council departments are not relevant in this case. It stated that this is because of the sensitive nature and legal implications of the subject matter.
14. The Council named its current information asset owner, and stated [name redacted] carried out a search of the network location where all electronic documents relating to the incident are held. Also, [name redacted] consulted with the Head of Department – Environmental Health, as they had co-ordinated the incident response when this request was received. The outcome of the search was nil return.
15. The Council confirmed the outcome of the consultation which was that a report was never drafted in respect of these matters. There was no record made of the meeting on 10 April 2017 by the Council, and the meeting had not been minuted. The Council also confirmed that the Chief Executive had written to [name redacted] (Principal Health and Safety Inspector) on 14 April 2017 following the meeting and further to investigative enquiries raised by the Principal Inspector.
16. The Council informed the Commissioner of the search terms 'Report' '[name redacted]' 'meeting' were used to search the relevant repository.

17. The Council confirmed that based on its searches and consultation undertaken with staff, no recorded information was ever held relevant to the scope of the request, or deleted/destroyed.
18. The Council quoted its retention and disposal schedule:

"SECTION: CORPORATE HEALTH & SAFETY: Incident recording and investigation records: should be held for 40 years. Action at end of administrative life of record: Destroy".
19. With regard to a business purpose for which the requested information should be held, the Council said there isn't one. It also said there are no statutory requirements for it to retain the requested information.

### **The Commissioner's position**

20. It is not the Commissioner's position to determine what information ought to be held by the Council in this matter, but rather what is held, and whether appropriate searches have been conducted.
21. The Commissioner notes the complainant's concerns with the Council's responses, and he acknowledges how important the requested information is to him. The complainant informed the Commissioner that the HSENI (Health and Safety Executive Northern Ireland) confirmed to him in the presence of the PSNI DS Inspector who investigated the incident, "that this report was in fact given to [name redacted], they also state in a FOI request that this report was given to [name redacted] by the ABC Council." The complainant said he has tried to get the information (copy of this report) from both bodies, and that the Council "states they have no such report". It is clear the complainant strongly considers the information requested is held by the Council. However, while the complainant may believe this, the Commissioner has found no evidence which would indicate the Council holds the report in question, and he sees no reason to doubt the Council's explanation.

### **Conclusion**

22. The Commissioner considered the searches undertaken by the Council and the search terms used. He also took into account that when conducting its searches, the Head of Environmental Services had been consulted. The Commissioner acknowledges the outcome of the consultation; confirmation that a report was never drafted, no record was made of the meeting on the date in question, and was not minuted. He also accepts the Council's reporting of correspondence from the Chief Executive to [name redacted] after the meeting in April 2017 and following investigative enquires, and that this was not a report.

23. Based on the evidence provided to him, the Commissioner is satisfied the Council conducted appropriate searches for the requested information.
24. In conclusion, the Commissioner determined that on the balance of probabilities, the Council does not hold information within the scope of the request. He is therefore satisfied that the Council complied with the requirements of section 1(1) of FOIA in this case.

## **Right of appeal**

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25. 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)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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