

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

### **Decision notice**

**Date:** 27 September 2021

**Public Authority:** City of York Council

**Address:** West Offices

Station Rise

York

YO1 6GA

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

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1. The complainant has requested from the City of York Council, information regarding the resignation of a councillor from a Scrutiny Committee. The council denied that the requested information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the City of York Council does not hold the requested information.
3. The Commissioner does not require any steps.

## Request and response

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4. On 9 September 2020, the complainant wrote to the City of York Council ("the council") and requested information in the following terms:

*"As a citizen who follows the democracy at CYC I was disappointed to see the resignation of [redacted] from [their] role as Scrutiny Chair.*

*Normal practice would be correspondence to the Monitoring Officer formalising this. I would like to see this correspondence and understand the reasons for [their] departure. Considering [their] Scrutiny along with all but one Other scrutiny had been cancelled it would be interesting to understand the reasoning."*

5. The council responded on 15 September 2020. It refused to provide the requested information on the basis of section 40(2) (personal information).
6. The complainant requested an internal review on 27 September 2020.
7. The council wrote to the complainant with the outcome of its internal review on 15 October 2020. The council changed its position to state that the information was not held, and provided this explanation:

*"In providing the original response it was considered that any resignation letter received by the council, unless provided as an open letter to the public, is the person's personal information. In these circumstances it would be appropriate to apply section 40 of the FOIA.*

*On review I can however advise the Monitoring Officer did not receive a copy of a resignation email and the information is not held by the council."*

## Scope of the case

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8. The complainant contacted the Commissioner on 17 October 2020 to complain about the way their request for information had been handled. Specifically the complainant disputes the council's position that it does not hold any information which is in scope of the request.
9. The scope of the case is whether the council is likely, on the balance of probabilities, to hold the requested information.

## Reasons for decision

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### Section 1 general right of access

10. Section 1 of the FOIA 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."*

11. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

### The complainant's position

14. The complainant states they have been advised by "*an impeccable source*", that the resignation was done by email to many persons of the council including to the Scrutiny Committee.

15. The complainant is concerned that the information is being withheld in order to cover up the reasons for the resignation.

### The council's position

16. Councillors notify their political party if they wish to resign from a committee. The political party would subsequently inform the Monitoring Officer of the name of the councillor taking their place.

17. The council stated there is no requirement for councillors to send the Monitoring Officer a resignation letter when leaving a committee. Any such resignation letter would be held by the councillor's political party.
18. The council confirmed that searches were also executed on its systems to check for any information within the scope of the request. Searches were undertaken in the email folders of the Monitoring Officer, Director of Economy and Place and the Democratic Services team and in shared storage areas. The search terms used were the councillor's name, the name of the committee and the words "resignation" and "resign".
19. The council informed the Commissioner that all officers must log into the council's secure network in order to access and retrieve emails or documents saved on any council systems. Information can only be stored electronically on the secure network therefore the council is satisfied that it has undertaken adequate searches.
20. The council advised that its records management policy does not refer to councillor resignation letters from roles on committees because there is no business purpose nor statutory requirement for the council to receive them.

#### The Commissioner's conclusion

21. The Commissioner has considered the council's position, in conjunction with the request and the complainant's position.
22. The Commissioner notes that the complainant states they have evidence of the resignation being communicated to many persons including the Scrutiny Committee.
23. The Commissioner has considered a scenario where a member of the council had received the resignation letter. She concludes that as the council states it has no purpose to receive such information from councillors, it follows that there would be no requirement for the council to retain it.
24. The Commissioner is satisfied that the council have verified their position by carrying out adequate searches on relevant electronic mailboxes, folders and systems.
25. The Commissioner considers that there is no contradictory evidence available to indicate that the council's position is wrong.
26. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

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