

[REDACTED]

From: Official Information
Sent: Friday, 14 July 2017 4:25 p.m.
To: [REDACTED]
Subject: LGOIMA 17/216 response - [REDACTED] - CTV building
Attachments: LGOIMA 17-216 response - CTV building.docx

Dear [REDACTED],

Thank you for your email, received on 25 May 2017, and refined on 16 June 2017. You requested information regarding the CTV building, under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

Please find attached a response to your LGOIMA request.

Publication of responses to LGOIMA requests

Please note: our LGOIMA responses may be published on the Christchurch City Council website a month after they have been responded to, with requesters' personal details withheld. If you have any concerns about this please contact the Official Information team on officialinformation@ccc.govt.nz.

Yours sincerely,

[REDACTED]
Public Information Adviser
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Christchurch City Council
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Which government agency is responsible for taking action over the fact this building did not comply with the building code of the day?

Clarified: Which government agency is responsible for taking action at the present time? And which agency was responsible for taking action in the past?

Response: The CTV building was constructed in 1986/7. At the time of construction the building was believed to be compliant with the current standards. This was partly in reliance on various certifications from the professional engineers employed by the building owner. This practice was typical at the time. The building was constructed under the legislation of the day (Building Bylaws under the Local Government Act 1974) which was prior to the Building Act 1991. Before the Building Act 1991 no government agency had an obligation to ensure compliance (unless it was a Crown building) until the Building Act 1991 came into force. After this Act was enacted, the responsibility was with the Building Industry Authority, that transitioned into the Department of Building and Housing, and then into part of the Ministry of Business, Innovation and Employment (MBIE), as the government agency responsible for administration of the 1991 and 2004 Building Acts.

The Council's responsibility for the building post construction was only triggered if the building was considered dangerous, earthquake-prone or insanitary and then only if the Council knew about this. There is no positive obligation on the Council to inspect and certify buildings unless there is a complaint or the Council learns of an issue with the building. The Council had no knowledge of any issues relating to the CTV building. The evidence of the Royal Commission was that the defects in the building were not readily apparent prior to the collapse. The Royal Commission found that the Council had no knowledge that any of these criteria were an issue prior to the collapse of the building. If the Council had known, it could have exercised various powers under the Building Act if the building was dangerous, insanitary or earthquake-prone.

Which agency is responsible if this happens again?

Clarified: Which agency is responsible if a new building now does not comply with the current building code? Also if that building is found to have not complied with the building code when it was built?

Response: It is the responsibility of the owner to ensure a new building complies with the Building Code. The Council is required to be satisfied on reasonable grounds that a building complies with the Building Code before a building consent is issued, and that the building complies with that consent before a code compliance certificate is issued. After a code compliance certificate has been issued, the Council's ability to address issues is limited to when a building is dangerous, earthquake-prone or insanitary. The Building Act, however, gives overreaching powers and responsibilities to the Chief Executive of MBIE, who can, amongst other things, overturn Council decisions and investigate issues. It is best to request information on these responsibilities directly from MBIE.

What action was done about the CTV being a non compliant building?

Clarified: What action was taken by the Council over the timeframe since the CTV building was constructed?

Response: Between the completion of the building in 1987 and February 2011 the owner was primarily responsible for the building compliance. The Council's primary role and responsibilities are in Sections 12 and 14F of the Building Act 2004 and, as above, the Council could only have taken action if it was aware that the building was dangerous, earthquake-prone or insanitary. The Royal Commission found that the Council did not have knowledge of non-compliance.

Also, as with the response above, the Building Act gives overreaching powers and responsibilities to the Chief Executive of MBIE, who should be contacted for further information on what actions they have taken where there has been a potential of nationwide non-compliance.

What action could be taken?

Response: The Council has powers it can exercise under the Building Act if the building is dangerous, insanitary or earthquake-prone. The Council can issue a notice under section 124 of the Building Act to require that people are protected from the danger. This can be challenged by the owner by way of the determination process in the Building Act 2004. There has been no indication that the building was in such a state of non-compliance that the Council could have issued such a notice.

If this wasn't done why not?

Response: The Council had no knowledge of non-compliance.

All information/documents relating to the CTV families group's inquiries about what action was being taken about the CTV building not complying with the code of the day.

Response: The Council acknowledges that it has been in correspondence with various families affected by the CTV building collapse but has decided to withhold specific details on the grounds of privacy and legal professional privilege according to the following sections of the LGOIMA:

- 7(2)(a) – to protect the privacy of natural persons
- 7(2)(g) – to maintain legal professional privilege

In the Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.

You have the right to request the Ombudsman to review this decision. Complaints can be sent by email to info@ombudsman.parliament.nz, by fax to (04) 471 2254, or by post to The Ombudsman, PO Box 10152, Wellington 6143.