

# Decision Notice



Decision 229/2011 Mr Dougall Campbell and Glasgow City Council

Training Records of Road and Pavement Maintenance

Reference No: 201101215

Decision Date: 15 November 2011

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Campbell requested from Glasgow City Council (the Council) information relating to the inspection, maintenance and repair of a specified road. The Council responded by providing information. Following a review, Mr Campbell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr Campbell's request for information in accordance with Part 1 of FOISA and regulation 5(1) of the EIRs, by not identifying and disclosing all relevant information it held (some of which was environmental information) in its initial response and response to Mr Campbell's requirement for review. Given that the information had since been identified and disclosed, he did not require the Council to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions (a), (c) and (f) of environmental information) and (2) (Interpretation) and 5(1) and 2(b) (Duty to make environmental information available on request)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 6 May 2011, Mr Campbell's solicitor wrote to the Council on his behalf, requesting specific information (18 questions) relating to the inspection, maintenance and repair of pavements, road surfaces and street furniture at Port Dundas Road, Glasgow. This decision notice relates to point 8 of the request, which sought the following information:

"Details of the training, guidance, limits and examples provided to local authority inspectors to assist, guide or train them in the correct identification and correct classification of defects to the pavement, road surface or street furniture on Port Dundas Road."



2. Subsequent references in this decision to correspondence from and to Mr Campbell should be read as including correspondence from and to his solicitor on his behalf.
3. The Council responded on 1 June 2011, supplying information and explanations. With regard to point 8, it provided a single sentence explanation of training given to inspectors.
4. On 9 June 2011, Mr Campbell wrote to the Council requesting a review of its decision in respect of point 8 (in addition to other matters), on the grounds that the Council had not fully addressed this particular point and should have provided more information in response.
5. The Council notified Mr Campbell of the outcome of its review on 29 June 2011, providing (in relation to point 8) an additional explanation of the training given to inspectors.
6. On 4 July 2011, Mr Campbell wrote to the Commissioner, explaining why he remained dissatisfied with the outcome of the Council's review in respect of point 8 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
7. The application was validated by establishing that (in respect of point 8) Mr Campbell had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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8. On 5 August 2011, the Council was notified in writing that an application had been received from Mr Campbell and was asked to provide any withheld information. The Council advised that it held no formal documentation of the training provided to inspectors. The case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the Council giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to:
  - describe the steps it had taken to identify and locate any information it held and which fell within the scope of point 8
  - clarify aspects of the training provided to inspectors with regard to the identification and classification of defects
  - indicate whether it had considered whether point 8 was seeking environmental information, given the nature of the information requested



- if it did consider any of the information to be environmental, confirm whether it wished to rely upon section 39(2) of FOISA and comment on how the request should properly have been dealt with under the EIRs.
10. The Council provided its submissions on 26 August 2011, commenting on the points in paragraph 9 above and supplying further relevant information it had identified. Subsequently, the investigating officer obtained further clarification of certain points from the Council and confirmed with the Council that it had provided Mr Campbell with the additional information it had located: in this connection, it was confirmed (to both the investigating officer and Mr Campbell) that personal information relating to specific inspectors was being withheld under section 38(1)(b) of FOISA and regulation 11(2) of the EIRs.
  11. On 8 September 2011, Mr Campbell indicated he remained dissatisfied that the disclosures fully addressed point 8, commenting in detail on why he believed this to be the case. He did not express any dissatisfaction with the withholding of the personal information: consequently the withholding of this information will not be considered further in this decision notice.
  12. The Council was informed of Mr Campbell's comments and carried out further checks, communicating the outcome of its findings to the investigating officer and to Mr Campbell by email on 30 September 2011.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Campbell and the Council and is satisfied that no matter of relevance has been overlooked.

### Whether all the information has been provided

14. In his application to the Commissioner, Mr Campbell indicated that the Council had only confirmed the fact that inspectors received training. It had not, he argued, provided details of the training or guidance they actually received when carrying out their duties. Mr Campbell considered it logical to expect there to be information held by the Council pertaining to this.
15. Having received further information in the course of the investigation, Mr Campbell did not accept that this answered his request; he argued that the information provided did not state *how* the inspectors actually applied their training or how they determined which category a defect fell into. Mr Campbell also complained that the Council's provision of a list of training records contradicted previous responses to the effect that training was not formal. Finally, he submitted that the extract report provided from the inspectors' handheld devices contained categories of defect which did not match those in the Code of Practice for Highway Maintenance (the Code of Practice), which the Council claimed to follow.



16. In light of Mr Campbell's comments above, the Council conducted a further check, confirming to both the investigating officer and Mr Campbell that no further information was identified other than that already disclosed. It explained that "on the job training" was provided to new inspectors by more experienced members of staff, in accordance with the section of the Code of Practice already disclosed to Mr Campbell. The Council reiterated that it did not hold recorded information on "defect investigatory levels" or a "defect risk register" (as Mr Campbell had suggested it should): information on these matters was conveyed verbally to inspectors, in line with the Code of Practice. In explaining that it did not hold recorded training documentation or minutes of training, other than the relevant parts of the Code of Practice, it stated that it considered the Code of Practice clear on how defects should be assessed. It provided an explanation of the relationship between the categorisation used in its handheld devices and that contained in the Code of Practice.
17. Mr Campbell's dissatisfaction appears to stem largely from the content of the information he has received, and in particular what it does not describe. "Information" is defined in section 73 of FOISA as "information recorded in any form", while it is clear from the provisions of section 1(4) that the information provided in response to a request under section 1(1) is the (recorded) information held by a Scottish public authority at the time it receives the applicant's request. It is not the Commissioner's role, therefore, to consider further what information the authority might reasonably be expected to hold, where he is satisfied in all the circumstances that all recorded information held and falling within the scope of the request has been identified, located and provided to the applicant. It is clear that FOISA does not require the authority to create recorded information in order to respond to a request, or to provide information that is not held in recorded form (e.g. verbal communications or instructions).
18. Having considered all the submissions received both from the Council and from Mr Campbell, on balance the Commissioner is satisfied that the Council has now identified all likely sources of information falling within the scope of point 8 of Mr Campbell's request, and has carried out all searches which would reasonably be expected to retrieve information covered by point 8. In light of this, the Commissioner accepts that the Council has now taken adequate steps to identify and locate its records of training, guidance, limits and examples provided to local authority inspectors to assist, guide or train them in the correct identification and classification of defects. Any relevant information held by the Council has been provided to Mr Campbell.
19. That said, the Commissioner is not satisfied that the Council conducted adequate searches for the information in dealing Mr Campbell's information request or his requirement for review, given that further information was later identified as a result of this investigation.
20. As noted previously, the Council initially dealt with the request under FOISA rather than the EIRs. During the investigation, the Council acknowledged that the requested information was environmental information (as defined in regulation 2(1) of the EIRs) and therefore should have been dealt with under the EIRs. Having considered the nature of the information requested, the Commissioner accepts this assessment. The Council also advised that it did not wish to rely upon any exception in the EIRs, given its view that it had released all of the information it held and which fell within the scope of Mr Campbell's request. The Commissioner does not, in any event, find it necessary to consider the application of any exceptions to the information requested, given his findings as detailed above.



21. In conclusion, therefore, the Commissioner finds that the Council failed to comply with section 1(1) of FOISA or regulation 5(1) of the EIRs in dealing with Mr Campbell's request. Bearing in mind the steps taken subsequently to identify and locate any relevant information, and given that Mr Campbell has now received all of the relevant information held by the Council, the Commissioner does not require the Council (in this particular case) to take any action in relation to these failures.

## DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 or with regulation 5(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs), by failing to identify, locate and provide to Mr Campbell all the information it held and which fell within the scope of his request, which was environmental information as defined by regulation 2(1) of the EIRs.

Given that the Commissioner is satisfied with the searches carried out during the investigation and the further information and clarification provided by the Council as a result, he does not require the Council to take any action in respect of these failures in response to Mr Campbell's application.

## Appeal

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Should either Mr Campbell or Glasgow City Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**15 November 2011**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

#### The Environmental Information (Scotland) Regulations 2004

##### 2 Interpretation

- (1) In these Regulations –
- ...
- "environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- ...
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- ...



- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

- (2) For the purpose of these Regulations, environmental information is held by a Scottish public authority if it is-
  - (a) in its possession and it has been produced or received by that authority; or
  - (b) held by another person on that authority's behalf,

and, in either case, it has not been supplied by a Minister of the Crown or department of the Government of the United Kingdom and held in confidence.

...

## **5 Duty to make available environmental information on request**

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-

...

- (b) is subject to regulations 6 to 12.

...