

# Decision Notice

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**Decision 024/2016: Mr T and City of Edinburgh Council**

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## **Advertising revenue**

Reference No: 201501560

Decision Date: 3 February 2016



Scottish Information  
Commissioner

## Summary

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On 14 April 2015, Mr T asked City of Edinburgh Council (the Council) for confirmation of whether revenue was generated from advertising drums in the City by City Centre Posters (CCP). The Council responded under the EIRs, informing Mr T that it did not hold the information. Mr T remained dissatisfied following a review and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had failed to comply fully with the EIRs in responding to Mr T's request for information. It held relevant information which it did not identify until during the investigation. Given that this information was available to Mr T by that time, the Commissioner did not require the Council to take any further action.

## Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 14 April 2015, Mr T made a request for information to the Council. The information request read as follows:  
  
"With regards to FOISA request 6913 [a previous request by Mr T to the Council] is revenue generated from selling the poster displays which are used to advertise arts and cultural events by the sole operating company City Centre Posters (CCP) who own and operate all the advertising drums positioned on the City of Edinburgh Council owned land."
2. The Council responded on 14 May 2015, explaining it did not generate revenue from the advertising drums and held no information on revenue generated by CCP. It concluded that it did not hold the information he requested.
3. On 26 May 2015, Mr T wrote to the Council, requiring a review of its decision. He did not accept the Council's conclusion, noting that he had not asked about revenue generated by the Council.
4. The Council notified Mr T of its review decision on 23 June 2015. It confirmed the original response was correct, providing details of the searches conducted to establish this. It emphasised that had not sought to deny that the advertising sites in question would potentially generate revenue for CCP.
5. On 24 August 2015, Mr T wrote to the Commissioner. He applied 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 specified modifications. Mr T stated he was dissatisfied with the outcome of the Council's review, because he believed the Council held information which would answer his request.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr T made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was allocated to an investigating officer.
7. On 16 September 2015, the Council was notified in writing that Mr T had made a valid application. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application. In particular, it was asked to explain the searches used to identify what information, if any, was held.
8. Submissions were received from the Council. Mr T also provided comments during the investigation.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr T and the Council. She is satisfied that no matter of relevance has been overlooked.

### Application of the EIRs

10. The Commissioner is satisfied that the information covered by this request is environmental information, as defined in regulation 2(1) of the EIRs (see paragraphs (a), (c) and (f) of the definition, in particular: the text of each paragraph is reproduced in Appendix 1). The information relates to structures known as advertising drums, situated in public view on Council-owned land. Mr T has not disputed the Council's decision to handle the request under the EIRs and the Commissioner will consider the information solely in terms of the EIRs in what follows.

### Information held by the Council

11. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to the information held by an authority when it receives a request.
12. Mr T submitted that the Council did hold details of revenue, based on what he knew about the advertising drums from his previous requests to the Council. He questioned the adequacy of the Council's searches and expected information to be disclosed. Mr T referring to particular information obtained as a result of another request, which he submitted identified payments made by the Council to CCP in relation to the advertising drums. This, he suggested, contradicted the Council's response in relation to this present request.
13. The Commissioner's remit here extends only to the consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA or the EIRs in responding to a request. Also, the Commissioner cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. The same standard is applied in respect of both FOISA and the EIRs. In determining whether a Scottish public authority holds

information, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information.

15. In this case, the Council does not appear to have wished, at any point in its handling of Mr T's request, to hide its understanding that the advertising drums are intended to (and might be expected to) generate revenue for CCP. On the other hand, the Commissioner does not consider the Council to have been helpful in interpreting the request as in any way relating to revenue generated by the Council: the point of the request could have been expressed more clearly, but the Commissioner believes it was clear enough that it related to revenue generated by CCP only.
16. That said, as indicated above, the question for the Commissioner is what relevant information the Council held on revenue generated by CCP, not what it understood about that revenue. In that connection, it might not be expected to have a complete picture of revenues generated by a third party, but it is still conceivable (given that the advertising sites are clearly something in which the Council has an interest) that it will hold some information on the matter.
17. The Council was asked to describe the searches it had carried out to identify and locate any relevant information, with reference to systems searched, search terms used and any other parameters applied, including which staff/departments were involved and why. It was specifically asked to search financial records.
18. During the investigation, the investigating officer referred the Council to the information received from Mr T during the investigation, which identified payments made to Build Hollywood Ltd. It was clear from that information that the Council considered CPP and the entity receiving the payments to be one and the same.
19. The Council provided details of the searches it had carried out, both at the time of the request and requirement for review, and during the investigation. It supplied supporting documents evidencing its searches. The Council confirmed that it had searched financial records, and specifically against "Build Hollywood Ltd". It confirmed that the only potentially relevant information was that relating to payments made to Build Hollywood Ltd, as identified by Mr T.
20. From the Council's submissions, it does not appear to have considered itself to be in a position to confirm that the payments made to Build Hollywood Ltd could be equated with revenue received by that entity.
21. The Commissioner is satisfied that the searches and other enquiries undertaken during the investigation were adequate in the circumstances. She is satisfied that these searches would have identified and located any information held by the Council and falling within the scope of Mr T's request. The question is whether the information on payments to Build Hollywood Ltd should have been identified as falling within the scope of the request.
22. In the Commissioner's view, it should have been. In the circumstances, she does not consider it necessary to explore the precise legal relationship between CCP and Build Hollywood Ltd: the Council considers them to be one and the same, and has said as much to Mr T. In the hands of CCP/Build Hollywood Ltd, on a straightforward interpretation of the word, these payments must represent "revenue": what else could they be? On the basis of that information, the Council could have responded to the effect that revenue was generated (which was all that was required, given the terms of the request).

23. In failing to identify the information on payments (which must have been quite readily accessible to it at the time of the request – it was disclosed to Mr T in response to another request, only shortly afterwards), the Council failed to respond to Mr T's request in accordance with regulation 5(1) of the EIRs. The Commissioner will not require the Council to take any action in respect of this failure, given that information on the payments is now available to Mr T.
24. The Commissioner is concerned that the Council has created unnecessary challenges in the handling of this request. She can understand it wishing to be accurate in its responses, but here (in referring to its own revenue and failing to take a simple, straightforward approach to what might reasonably be interpreted as CCP's resources) it has simply appeared evasive. Mr T's requests may present challenges of their own, but the Council must address these challenges efficiently and effectively and in line with the requirements of the EIRs.

## Decision

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The Commissioner finds that City of Edinburgh Council failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr T. In failing to identify all of the information it held and which could provide an answer to the request, it failed to comply fully with regulation 5(1) of the EIRs. Given that any relevant information is now available to Mr T, the Commissioner will not require any action in respect of this breach, in response to Mr T's application.

## Appeal

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Should either Mr T or City of Edinburgh Council wish to appeal against this decision, they have the right to 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.

**Margaret Keyse**  
**Head of Enforcement**

**3 February 2016**

### 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

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(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 environmental referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

#### 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.

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