

# Decision Notice



Decision 065/2013 Mr Julian Calvert and Strathclyde Partnership for Transport

Information relating to the Gourock – Kilcreggan ferry contract

Reference No: 201202317  
Decision Date: 9 April 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

On 9 September 2012, Mr Calvert asked Strathclyde Partnership for Transport (SPT) to provide him with information relating to the Gourock – Kilcreggan ferry contract. SPT provided certain information to Mr Calvert and stated that it did not hold any further information.

Following an investigation, the Commissioner found that SPT had provided Mr Calvert with all of the relevant information that it held.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 9 September 2012, Mr Calvert emailed SPT in relation to a document that SPT had published concerning questions and answers about the Gourock to Kilcreggan ferry contract. Mr Calvert noted that the document stated:

*“SPT requires that there should be provision to replace the vessel if it becomes unavailable for service for whatever reason. Clydelink has evidenced satisfactory arrangements in this regard by having sourced a back-up vessel of the required capacity and by having begun negotiations to put in place charter arrangements as a further secondary option.”*

Mr Calvert requested copies of the evidence referred to as having been provided to SPT concerning (a) the back-up vessel and (b) the further charter arrangements.

2. SPT responded on 4 October 2012. In relation to the back-up vessel, SPT provided Mr Calvert with a photograph of the back-up vessel which it indicated had been provided to SPT by Clydelink. In relation to the negotiations for charter arrangements, SPT gave notice in terms of section 17 of FOISA that it did not hold any information relating to this part of his request.



3. On 10 October 2012, Mr Calvert wrote to SPT requesting a review of its decision. Mr Calvert was dissatisfied that the only information provided in response to his request was a photograph of a boat. He noted that he would have expected additional information to be held by SPT.
4. SPT notified Mr Calvert of the outcome of its review on 31 October 2012 upholding its original response without modification.
5. On 6 November 2012, Mr Calvert wrote to the Commissioner, stating that he was dissatisfied with the outcome of SPT's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Calvert 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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7. The investigating officer subsequently contacted SPT, 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, SPT was asked to provide background information regarding the subject of the request and to explain the searches that had been undertaken in order to locate and retrieve any relevant information falling within the scope of Mr Calvert's request.
8. SPT responded on 10 January 2013, providing some information on the searches that had been undertaken and stating that it held no other information beyond that already provided to Mr Calvert.
9. In subsequent correspondence and discussion, the investigating officer asked SPT to carry out additional searches and to further explain why it did not hold any additional information falling within the scope of Mr Calvert's information request.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Calvert and SPT and is satisfied that no matter of relevance has been overlooked.



**Has all relevant information been identified and retrieved by SPT?**

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
12. As noted above, SPT provided Mr Calvert with a photograph which it stated was all of the information that it held in relation to part (a) of his request. In relation to part (b) of his request, SPT stated that it did not hold any recorded information regarding charter arrangements.
13. The Commissioner notes the submissions provided by Mr Calvert, in which he provides reasons why he considers SPT should hold further information beyond a single photograph.
14. In its submissions, SPT explained that it had acquired only a service from Clydelink. There was no obligation on SPT to seek or hold evidence of the purchase of any specific vessel to be used by the operator in the execution of the contract. SPT also explained that there was no requirement for the contractor to evidence any back-up arrangements.
15. SPT explained that, since responding to Mr Calvert, the staff responsible for the ferry service and the creation of the Q&A document had carried out additional searches of paper and electronic records. SPT confirmed that it did not hold any additional information.
16. SPT stated that the evidence referred to in the Q&A document had been received verbally from Clydelink during telephone conversations or face to face meetings. SPT acknowledged that the word “evidence” had been used incorrectly in the Q&A document as the reference to evidence had been made following verbal assurances from Clydelink regarding back-up arrangements.
17. Having considered all relevant submissions, the Commissioner accepts that, by the end of the investigation, SPT had taken adequate, proportionate steps to establish what information it held falling within the scope of the request. She also accepts SPT’s explanation that it was purchasing a service and there was no requirement for it to seek or hold evidence regarding back-up arrangements.
18. The Commissioner is therefore satisfied that SPT was correct to give Mr Calvert notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of part (b) of his request. In providing a single photograph in response to part (a) of the request, she is satisfied that it dealt with the request in accordance with section 1(1) of FOISA.

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19. The Commissioner notes that her remit in carrying out this investigation extends to the consideration of whether SPT actually holds the relevant information requested by Mr Calvert. She cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process. Consequently, in this instance, she cannot comment on whether SPT ought to hold further recorded information, or whether it is entitled to make public statements based on the limited recorded information it holds.

## DECISION

The Commissioner finds that Strathclyde Partnership for Transport complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Calvert.

## Appeal

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Should either Mr Calvert or Strathclyde Partnership for Transport 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**  
**9 April 2013**



## 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.
- ...

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...