

# Decision Notice



Decision 105/2009 Mr Jack Craig and Glasgow City Council

Information relating to a manhole

Reference No: 200900584

Decision Date: 3 September 2009

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**Kevin Dunion**

Scottish Information Commissioner

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

Mr Craig requested from Glasgow City Council (the Council) information relating to a Safety Inspection Sheet which had been provided to him in response to a previous information request. The Council responded initially by advising Mr Craig that it did not hold the information requested. Following a review the Council amended its view, stating that that the information had already been supplied in response to an earlier information request. Mr Craig remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had not dealt with Mr Craig's request for information in accordance with Part 1 of FOISA, in that it failed to provide him with such advice and assistance as would reasonably have been expected in the circumstances. Consequently, the Commissioner found that the Council had failed to meet obligations under section 15 of FOISA. Given the further information provided to Mr Craig in the course of the investigation, the Commissioner 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) section 15 (Duty to provide advice and assistance)

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

## Background

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1. On 13 January 2009, Mr Craig wrote to the Council requesting the following information:  
*"... from the Safety Inspection Sheet (referring to information provided to Mr Craig in response to a previous information request) can you please advise me which reference and location codes apply to the manhole in question..."*  
For clarification, the reference to a manhole in the above request was in relation to a claim Mr Craig had made to the Council regarding damage to his car.
2. The Council responded on 12 February 2009, stating that it did not hold the information requested by Mr Craig and therefore giving him notice in terms of section 17(1) of FOISA.



3. On 24 February 2009, Mr Craig wrote to the Council requesting a review of its decision.
4. The Council notified Mr Craig of the outcome of its review on 27 February 2009. The Council advised Mr Craig that, after reviewing its decision, it was of the view that it had already supplied the information to him in response to a previous information request and that the information Mr Craig sought in this particular request was easily identifiable from the column marked “reference” in that information provided earlier.
5. On 26 March 2009, Mr Craig wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council’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 Craig 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. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer wrote to the Council on 4 May 2009, notifying it in writing that an application had been received from Mr Craig, 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 provide a comprehensive overview of its handling of Mr Craig’s request and to provide an explanation as to the apparent shift in position from originally responding to Mr Craig on the basis that it did not hold the information requested to its response at review stage where it confirmed that the information had already been supplied to him. It was also asked to comment on the steps it had taken to comply with its obligations under section 15 of FOISA (Duty to provide advice and assistance).
8. The Council responded on 21 May 2009. The Council noted that it had interpreted Mr Craig’s request for review as a fresh request for information and dealt with it as such. It acknowledged that the request might have been dealt with more satisfactorily, noting that verbal advice on the request was understood to have been given to Mr Craig, but that no record of the content of that advice had been retained. It went on to explain the content of the Safety Inspection Sheet (SIS), pointing out that road defects (which were at the root of Mr Craig’s various requests for information) were identified by reference to street lighting columns (for which it was responsible) rather than sewerage manhole covers (which were the responsibility of Scottish Water – to which authority Mr Craig had been directed in the Council’s initial response to his request). The Council believed that Mr Craig should have been able to locate and identify the manhole he was concerned about from the SIS it had supplied to him, although it acknowledged that aspects of the handling of the request, combined with misunderstandings as to terminology, might have led to confusion in this regard.



9. Further discussions between the investigating officer and the Council led to Mr Craig being provided with the relevant lighting column location code (which was not in fact referred to on the SIS provided to him earlier), along with a copy of the only safety inspection record the Council held under this particular code. On receiving this information, Mr Craig confirmed he was satisfied that the requirements of his original information request had now been met, but also advised that he was unhappy with the way in which his request had been handled by the Council. Consequently, he still required a decision from the Commissioner.

### **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 and other information provided to him by both Mr Craig and the Council and is satisfied that no matter of relevance has been overlooked.
11. Given the specific circumstances of this case, as outlined above, this decision focuses on the Council's handling of Mr Craig's request for information and in particular the Council's response to its obligations under section 15 of FOISA.

#### **Section 15 (Duty to provide advice and assistance)**

12. Under section 15 of FOISA, a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Where the authority has complied with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (commonly known as "the Section 60 Code") in providing advice and assistance in any particular case, it is taken to have complied with this duty.
13. While noting the clarification eventually provided to Mr Craig, it is the Commissioner's view that in responding to his request for information and request for review, the Council failed to effectively communicate its position to Mr Craig. In particular, it failed, in responding to his request for review, to explain adequately how Mr Craig might extract the information he was seeking from the SIS. Given the context of this and Mr Craig's other requests for information, it should have been reasonably clear to the Council what Mr Craig was looking for and reasonably straightforward for it to explain what relevant information it held (as it eventually did). In not doing this earlier, the Commissioner concludes that the Council did not provide Mr Craig with such advice and assistance as it would have been reasonable to expect in the circumstances of this particular case. Consequently, it failed to comply with section 15 of FOISA.



## DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Craig, in that it failed to provide him with such advice and assistance as would reasonably be expected in the circumstances. Consequently, the Council failed in dealing with Mr Craig's request to comply with section 15 of FOISA.

Given the information provided to Mr Craig in the course of the investigation, the Commissioner does not require the Council to take any action in response to this particular application in relation to this failure.

## Appeal

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Should either Mr Craig 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**  
**03 September 2009**

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## Appendix

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### Relevant statutory provisions

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

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).