

# Decision Notice



Decision 109/2009 Mr Hugh Humphries and Renfrewshire Council

Pupil safety risk assessment

Reference No: 200900811

Decision Date: 11 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 Humphries requested from Renfrewshire Council (the Council) a copy of (i) certain guidelines for assessors relating to pupil safety and (ii) a specific risk assessment. The Council responded by providing Mr Humphries with a copy of its general risk assessment documentation for schools but advised that it did not hold a copy of the specific risk assessment requested. Following a review, where the Council maintained its position that it did not hold the specific risk assessment, Mr Humphries remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Humphries' request for information in accordance with Part 1 of FOISA by giving him notice under section 17 of FOISA that it did not hold a copy of the risk assessment requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 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 January 2009, Mr Humphries wrote to the Council requesting the following information:
  - (i) "A copy of any guidelines held by the Council which would be given to risk assessors charged with the responsibility of carrying out a risk assessment with regard to pupil safety and the separation of pupil traffic from vehicular traffic in the Council's new build schools"
  - (ii) "A copy of the risk assessment – in relation to pupil safety and the separation of pupil traffic from the vehicular traffic for St Andrews Academy – carried out prior to the decision to approve plans for the new build St Andrews Academy."



2. The Council responded on 22 January 2009 by supplying copies of the Council's general risk assessment for schools and the Green Travel Plan for the school in question. It also notified Mr Humphries in terms of section 17 of FOISA that it did not hold a copy of the specific risk assessment he sought.
3. On 18 February 2009, Mr Humphries wrote to the Council requesting a review of its decision.
4. The Council notified Mr Humphries of the outcome of its review on 19 March 2009. The Council upheld its original decision, confirming that it did not hold the specific risk assessment requested.
5. On 11 April 2009, Mr Humphries 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 Humphries 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 contacted the Council on 21 May 2009, 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 details of the searches and search methodology used in coming to the conclusion that it did not hold the information requested by Mr Humphries.
8. During the investigation, the Council informed the Commissioner that although it maintained it did not hold a copy of the specific risk assessment at the time Mr Humphries made his request, it had decided (in response to the concerns raised by Mr Humphries) to conduct a risk assessment in relation to the car park at St Andrews Academy. The Council carried out this risk assessment and a copy was provided to Mr Humphries in the course of the investigation. This decision, however, must focus on whether the Council held the information requested by Mr Humphries at the time it received his request.



## Commissioner's analysis and findings

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

### Section 17 of FOISA (Notice that information is not held)

10. Section 17(1) of FOISA requires that where a Scottish public authority receives a request for recorded information it does not hold, then it must give the applicant notice in writing to that effect.
11. In order to determine whether the Council dealt with Mr Humphries request correctly, the Commissioner must therefore establish to his satisfaction whether, at the time it received Mr Humphries request, the Council held any information which would fall within the scope of that request, in addition to that identified and provided at that time.
12. With this in mind, the investigating officer asked the Council for details of the steps it had taken to establish what information it held in relation to the request, considering both manual and electronic sources and providing an explanation of the search methodology used.
13. In its response to the investigating officer, the Council confirmed that in consideration of possible sources of information relevant to Mr Humphries request, it had considered both manual and electronic records.
14. The Council confirmed that manual and electronic searches were made within each of its service areas which it considered might have held the information requested (the Health & Safety Section of Corporate Services and Education & Leisure Services), identifying specific members of staff contacted about its existence. It confirmed that the officers in question had carried out both manual and electronic searches to clarify whether they held the information requested. Following these internal searches, the Council concluded that it did not hold the risk assessment requested by Mr Humphries. It advised that the Green Travel Plan provided to Mr Humphries was the only document located which approximated to the description of a specific risk assessment for the school in question.
15. The Council added that on establishing it did not hold the risk assessment requested by Mr Humphries, it decided (in the spirit of providing advice and assistance in terms of section 15 of FOISA, noting that neither of these entities were in fact subject to FOISA) to contact the contractor who built the school and the company which managed it, with a view to establishing whether either held a risk assessment of the description requested. Both of these entities, the Council advised, confirmed that they did not hold the information in question.



16. Mr Humphries' belief that a specific risk assessment existed derives in part from a response to an enquiry he made of Her Majesty's Inspectorate of Education (HMIE). However, while HMIE did confirm the existence of a risk assessment to Mr Humphries, it appears from HMIE's communications with him that it understood the assessment to be included in the Green Travel Plan for the school. As indicated above, that document was provided to Mr Humphries by the Council in response to his request.
17. Having considered the submissions received from both the Council and Mr Humphries, including his correspondence with HMIE, the Commissioner is satisfied that the Council did not hold the risk assessment requested at the time Mr Humphries' request was received. In the light of these submissions, he has concluded that the Council took all reasonable steps in the circumstances to identify and locate the information requested and was correct to inform Mr Humphries that it did not hold it.
18. As indicated above, the Council decided to carry out a specific risk assessment in relation to the car park at St Andrews Academy in response to the concerns raised by Mr Humphries. This assessment was completed on 7 March 2009, prior to the Council's response to Mr Humphries' request for review on 19 March 2009. In the circumstances, it appears to the Commissioner that it would have been consistent with the Council's duty to provide advice and assistance under section 15(1) of FOISA for it to have advised Mr Humphries of the existence of this subsequent assessment.

## DECISION

The Commissioner finds that Renfrewshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Humphries.

## Appeal

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Should either Mr Humphries or Renfrewshire 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**  
**11 September 2009**



## 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.

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##### 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.

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