

Edinburgh Trams – Information Commissioner’s decision

✘ A recent decision from the Scottish Information Commissioner involves an application by Edinburgh resident, Stephen Vass, to the Information Commissioner asking for a review of his initial requests for information under the Freedom of Information Scotland Act to trams developer, **tie**.

The initial request is worth reading in itself....

1. On 21 January 2010, Mr Vass wrote to tie requesting the following information relating to the Edinburgh tram project in the following terms [requests numbered according to tie’s response of 22 February 2010]:

Regarding the Russell Road retaining wall, I’m talking about the entire embankment all the way to Baird Drive and beyond if it goes beyond there [with reference to an earlier question as to whether the wall required concrete piling along its entire length [request 1]

Did the latest adjudication refer only to Russell Road or is it applicable along the entire length of the embankment? [request 2]

How have things been left with Carillion? What was the total amount that it was paid? [request 3]

Was it [Carillion] paid a settlement fee when it left the project? [request 4]

Is there any ongoing negotiation about how much it [Carillion] should be paid? [request 5]

Why did it [Carillion] leave the project before the utility work was completed? [request 6]

How much are Clancy Docwra and Farrens being paid for their work? [request 7]

What is the timetable for the rest of the adjudications? [request 8]

Which is next and when will it take place? [request 9]

The four adjudications to date (net of anything commercially sensitive) [request 10]

The contracts with Farrens, Clancy-Dowcra, Carillion and the BSC consortium (net of anything commercially sensitive) [request 11].

Mr Vass specifically asked that requests 3 – 7, 10 and 11 be dealt with as requests under FOISA.

The summary of the decision shows that most of Mr Vass's requests were rejected on the grounds of commercial confidentiality:-

Summary

*Mr Vass requested from tie Limited (**tie**) information about contracts and adjudications. tie responded by providing some information, but withheld the majority of the information it held under sections 33 and 36 of FOISA. Following a review, Mr Vass remained dissatisfied and applied to the Commissioner for a decision.*

*Following an investigation, in the course of which tie acknowledged that it should have dealt with the requests under the EIRs (The Environmental Information (Scotland) Regulations 2004) and applied what it considered to be relevant exceptions, the Commissioner found that **tie** had been entitled to withhold the contracts Mr Vass had requested on the basis that the relevant request was manifestly unreasonable and the remaining information (including the*

contractual adjudications) was excepted from disclosure on the basis that disclosure would (or would be likely to) cause substantial prejudice to commercial confidentiality. Finding that tie should have provided more to Mr Vass by way of advice and assistance, the Commissioner required tie to provide such advice and assistance with a view to enabling him to narrow down his request.

Although some of the requests were rejected on legal grounds, these parts of the [Information Commissioner's decision](#) are also worth reading.

35. The Commissioner is aware of the high level of public interest that exists in relation to the tram project, particularly in Edinburgh, but also across Scotland. Where a major infrastructure programme of this type is being carried out, it is inevitable and appropriate that the public will be keen to understand how public monies are being spent and whether value for money can be demonstrated. Clearly, there is a public interest in being able to ascertain whether this is the case, and in informing public debate on these issues.

36. At the same time, the Commissioner also recognises that there is a considerable public interest in tie being able to obtain and deliver the best contracts at the best price, securing performance of the contractual obligations of the project (and to that end maintaining effective working relationships between the parties), with a view to the project being completed and the Edinburgh tram system becoming operational. Having accepted that the withheld information is the subject of a legally binding duty of confidence, the Commissioner must also recognise a strong public interest in the maintenance of confidences.

Part of the defence lodged by tie to one of the requests was that the photocopying and scanning would cost around £1,000 to produce. This excuse was given due consideration by the

Information Commissioner who replied that:-

46. The Commissioner acknowledges that, in common with all other Scottish public authorities, tie is subject to a considerable volume of other demands on its time and resources, in addition to complying with requests for information under FOISA and the EIRs. Compliance with such requests should be considered as an element of the authority's core business, however, and the Commissioner will not accept lightly arguments that such compliance, in any given case, represents an unreasonable diversion from compliance with other core responsibilities. In this case, however, having considered the arguments set out in paragraph 40 above, the Commissioner is persuaded that (even if the question of redaction were to be left out of account) dealing with Mr Vass's request 11 in the form he requires would demand a disproportionate amount of tie's time and divert an disproportionate quantity of its resources away from other core operations. Consequently, the Commissioner accepts that the demands created by compliance with this particular request would, in the view of any reasonable person, be excessive.

Have any of you lodged Freedom of Information requests with **tie**? Have you lodged any Freedom of Information requests with any other public bodies in Edinburgh?

Would you like to tell us about them?