

Decision Notice



Decision 198/2010 Mr F and the City of Edinburgh Council

Information relating to an accident

Reference No: 201000632

Decision Date: 3 December 2010

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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Summary

Mr F requested from the City of Edinburgh Council (the Council) information relating to an accident involving his grandchild while at school. The Council responded by providing some information, but withholding the majority of the information requested in accordance with section 14(2) of FOISA and the exemptions in sections 25(1) and 38 of FOISA. Following a review, Mr F remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr F's request for information in accordance with Part 1 of FOISA, by incorrectly determining that several of Mr F's questions were not valid requests for information, by failing to inform him in accordance with section 17(1) of FOISA that information was not held and by incorrectly applying section 14(2) and the exemptions in sections 25(1), 35(1)(g) and 36(1) and section 38(1) to withhold most of the information requested by Mr F. As the Council subsequently provided Mr F with all of the relevant information during the course of the investigation, the Commissioner did not require it to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2) (Effect of exemptions); 8(1) (Requesting information); 14(2) (Repeated requests); 15 (1) (Duty to provide advice and assistance), 17(1) (Information not held); 25(1) (Information otherwise available); 35(1)(g) and (2) (Law enforcement); 36(1) (Confidentiality) and 38(1) (Personal information)

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

Background

1. On 18 November 2009, Mr F's grand-daughter was injured in an accident that occurred while she was using a wood-working machine during a craft and design lesson at her school. Mr F subsequently attended a meeting with the headmaster during which he indicated that he would be asking further questions in order to gain a better understanding of relevant issues he had identified as a result of the accident.



2. On 26 November 2009, Mr F wrote to the headmaster requesting information relating to the accident. The request took the form of a series of 25 questions primarily seeking health and safety related information regarding the woodworking machine. Mr F did not cite FOISA in his request, nor did he have any anticipation that the Council would regard it as a request for information under FOISA. Mr F's request is reproduced in full in Appendix 2 to this decision. Appendix 2 forms part of this decision.
3. The Council responded on 23 December 2009, indicating that it was not aware of any legitimate right of access Mr F had to the information he had requested other than under FOISA and indicating that it had therefore dealt with his request in compliance with FOISA.
4. The Council provided Mr F with copies of two policy documents relating to the reporting of accidents. However, the Council withheld most of the information requested, having concluded that it was exempt from disclosure in terms of sections 25(1) and 38 of FOISA. The Council's response did not make clear which exemption(s) within section 38 were considered to be applicable. Additionally, as Mr F had previously been provided with a copy of a risk assessment during a meeting with the headmaster, the Council considered his request for a copy of all relevant risk assessments to be a repeated request in accordance with section 14(2) of FOISA. The Council also indicated that a number of Mr F's questions did not relate to recorded information held by the Council and therefore fell outside the scope of FOISA.
5. On 23 December 2009, Mr F wrote to the Council questioning why his request had been dealt with in terms of FOISA. He indicated that he found this approach unhelpful, and that he had been hoping for a more informal approach. Mr F requested that the Council review its decision to withhold information, and asked it to clarify which of his questions related to information not held in recorded form by the Council.
6. The Council notified Mr F of the outcome of its review on 28 January 2010. The Council's response:
 - provided further explanation of its application of section 14(2) and the exemptions contained in section 25(1) and 38(1) of FOISA, although it still did not make clear which exemption(s) in section 38 were considered to apply;
 - indicated that as eight of Mr F's questions, either wholly or in part, contained requests for documents or records rather than recorded information, it considered that these questions fell outwith the scope of FOISA;
 - indicated that it considered a further 10 of Mr F's questions to be questions, seeking a yes/no answer or an opinion, and not requests for recorded information and therefore also fell outwith the scope of FOISA; and
 - indicated that information produced following the accident would have been produced in accordance with civil law and statute and was therefore exempt information in accordance with the exemptions contained in sections 35(1)(g) and 36(1) of FOISA.



7. On 22 March 2010, Mr F 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.
8. The application was validated by establishing that Mr F 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

9. On 8 April 2010, the Council was notified in writing that an application had been received from Mr F and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted the Council, 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 justify its reliance on any provisions of FOISA it considered applicable to the information requested and why it considered many of Mr F's questions to fall outwith the scope of FOISA.
11. The Council provided comments in response to this request and to further questions raised during the investigation.
12. During the investigation, the Council disclosed further information, and provided additional explanations about the matters of interest, to Mr F. The information provided ultimately went beyond the scope of his requests, although some information relating to third parties was removed. Mr F confirmed that he was content with the Council's decision to provide this information subject to the redaction of personal data of third parties. This redacted information has therefore not been considered any further in this decision.
13. The Commissioner notes that the information provided to Mr F included the personal data of his grand-daughter. The Commissioner is aware that this was supplied only to Mr F, following clarification that he was acting as a representative of his family. The Commissioner does not consider that this disclosure was made by the Council in terms of FOISA, and has not considered in what follows whether the information about Mr F's grand-daughter should have been made available publicly in terms of FOISA.



Commissioner's analysis and findings

14. 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 F and the Council and is satisfied that no matter of relevance has been overlooked.
15. The Commissioner is aware that there has been an ongoing exchange of correspondence between Mr F and the Council following Mr F's application for a decision and that further information and explanations have been provided to Mr F. However, the Commissioner has to consider the circumstances surrounding the Council's handling of Mr F's request at the point where it issued its response to his request for review.

Validity of requests

16. The Commissioner has first considered whether each of Mr F's requests for information were valid in terms of section 8 of FOISA, since the Council's responses to him contended that some were not.
17. Section 8 of FOISA specifies that a request for information for the purposes of FOISA is one which:
 - is made in writing or another permanent form capable of subsequent reference,
 - states the name of the applicant and an address for correspondence, and
 - describes the information requested.

Requests for copies of documents or records

18. In its response to his request for review, the Council informed Mr F that it considered eight of his questions (2, 3, 4, 5, 7, 8, 9 and 19) to be invalid as they sought copies of documents or records and did not request recorded information held by the Council. The Council has indicated that it reached this view in the light of the Opinion expressed by the Court of Session in *Glasgow City Council –v- Scottish Information Commissioner [2009] CSIH73*¹.
19. In the Commissioner's guidance on validity of information requests in the light of the Opinion², which was published on 27 January 2010, he states (at paragraphs 3.1, 3.4 and 3.5):

"FOISA provides a right to obtain information and not a right to obtain copies of specific documents. However, this does not mean that a request for a copy of a document is automatically invalid, as long as it is reasonably clear from the request that it is the information recorded in the document that the applicant wants. If it is not reasonably clear, the public authority can contact the applicant to obtain clarification.

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>

² <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



[...]

Therefore where an applicant has asked for a copy of a document and it is reasonably clear in the circumstances that it is the information recorded in the document which the applicant wants, the public authority should respond to the request as a request properly made under FOISA. A reference to a specific document is a commonplace way of describing the information sought and can be of assistance to an authority in identifying and locating the information. Such a reference can also benefit the authority by limiting the scope of the information request, e.g. to that contained in a minute of a certain date.

If it is not reasonably clear to a public authority what information the applicant wants, and the public authority reasonably needs further detail to identify and locate the information, the public authority must tell the applicant what other information it needs."

20. The Commissioner has considered the terms of the relevant information requests and the content of both the Opinion and his own guidance. In particular, the Commissioner is mindful of the Court's views regarding the identification of information being requested contained in paragraph 45 of the Opinion and upon which his own guidance is based.
21. He notes that the statutory requirement, under section 8(1)(c) of FOISA, is confined to a description of the information requested. He takes the view that the purpose of the description is to allow the public authority to identify and locate the information and that the purpose of the reference in FOISA to "information" is to relieve the applicant from specifying particular documents, since he or she cannot be expected to know in what form information is held. The principal objective of the whole FOISA regime is to make information accessible, provided it can be identified and located at a cost that is not excessive, and provided it does not fall within one of the statutory provisions (such as that in section 14) or statutory exemptions.
22. Where an applicant has made a request for a copy of a document, and it is reasonably clear in the circumstances that it is the information recorded in the document which the applicant wants, the public authority should respond to the request as a request properly made under FOISA.
23. In its submission to the Commissioner, the Council explained that it now considered that the questions fell outwith the scope of FOISA as they were closed questions that did not specifically ask for information held in recorded form, although they did relate to legislative and procedural areas where records might be expected to exist.
24. The Commissioner has considered the eight requests and agrees that some, but not all, do ask for copies of records, or suggest that a response might be provided via the provision of relevant records. However the Commissioner considers that, in the context of the overall request, the information requested by Mr F in these eight questions should have been obvious to the Council and that all eight questions should have been regarded as requests properly made under FOISA.



25. The Commissioner finds that the Council failed to comply with Part 1 and particularly section 1(1) of FOISA by failing to provide a response to all eight questions, identified in paragraph 18, in accordance with that Part of FOISA. However, as the Council has clarified in subsequent correspondence with Mr F and the Commissioner that it does not hold information in relation to seven of the questions, and that he had previously been supplied with copies of the risk assessments referred to in his eighth question, the Commissioner does not require the Council to take any action however will comment further on information not held below.

Questions - not requests for recorded information

26. The Council informed Mr F that it considered a further ten of his requests (13, 14, 15, 17, 20, 21, 22, 23, 24 and 25) to be invalid as they took the form of questions and did not amount to requests for recorded information. The Council did not take any steps to clarify with Mr F the nature of the information he was seeking or offer any advice to him in order that he could frame his questions more clearly to describe the information he was seeking.
27. In his guidance on the validity of information requests mentioned in paragraph 19 above, the Commissioner also states, at paragraph 3.6
- The public authority must also remember that it has a duty to provide reasonable advice and assistance to the applicant. Public authorities may find it useful to refer to the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (commonly known as the "Section 60 Code"), which provides guidance on this point; paragraph 20 of the Section 60 Code states that it is important that the applicant is contacted as soon as possible, preferably by telephone, fax or email.*
28. The Council clarified in subsequent correspondence with the investigating officer that it now considered that the nine of the questions fell outwith FOISA as they related to areas where there would not be the same expectation (as was the case with the questions mentioned in paragraph 17 above) that records and recorded information would exist. The Council also considered that the remaining question (17) had been answered by provision of a copy of the risk assessments by the school prior to the submission of Mr F's request.
29. The Commissioner is of the view that questions 20 and 25 did not seek recorded information, but rather sought the opinion of the head teacher to whom the original request was directed. He therefore accepts that the Council correctly identified that these questions did not meet the requirements of section 8(1)(c) of FOISA.
30. The Commissioner is satisfied, however, that the Council should have been able to identify without difficulty the information being requested by Mr F in the remaining eight of the ten questions identified in paragraph 26 above, whether or not it held such information. He does not consider there to be any justification for the Council's subsequent explanation that it considered the questions posed by Mr F to be invalid, simply because it did not perceive there to be an expectation that relevant records or recorded information might exist.



31. Accordingly, the Commissioner finds that the Council failed to comply with Part 1 and particularly section 1(1) of FOISA by failing to provide a response to questions 13, 14, 15, 17, 21, 22, 23 and 24 of Mr F's request. The Commissioner notes that the Council has subsequently provided some of the information requested or alternatively, in the absence of recorded information, an explanation of the circumstances to Mr F in relation to the questions identified above. The Commissioner therefore does not require the Council to take any further action regarding these failures.

Consideration of section 14 – Repeated request

32. Section 14(2) of FOISA indicates that where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless a reasonable period of time has passed. This section in FOISA relates to requests for information made to an authority in accordance with the provisions of FOISA, and in particular in accordance with the requirements of section 8.
33. In request 4, Mr F asked the Council to provide him with relevant risk assessments. The Council's response indicated that section 14(2) was applicable to this request, on the basis that the information had already been supplied to him.
34. Mr F has not disputed the Council's position that he had been provided with a copy of a risk assessment during a meeting at the school prior to submitting his request to the Council. However, the Commissioner understands that no request for information in terms of FOISA had been made for that information, and so that risk assessment was not provided to Mr F in response to a request under FOISA. In these circumstances, the Council was wrong to rely on the provisions in section 14(2) in responding to request 4, as it was the first written request for the information conforming to the requirements of FOISA. Accordingly, the Commissioner finds that the Council erroneously assessed this to be a repeated request and wrongly applied section 14(2) to the request, and in so doing it acted in breach of Part 1 of FOISA.
35. The Commissioner would note that the Council was entitled to take this earlier provision of a copy of the risk assessment into account when dealing with Mr F's request for information. In the circumstances of this case, it appears to him that the appropriate way for the Council to have dealt with the request for risk assessments would have been to indicate that the information was already reasonably accessible to Mr F, and so it was exempt in terms of section 25(1) of FOISA.
36. As Mr F was provided with a copy of the relevant risk assessment, the Council does not require the Council to take any further action.

Consideration of section 17 - Information not held

37. Where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.



38. The Council did not give notice to this effect either in response to his initial request or his request for review. Rather, as outlined in paragraphs 16 to 31 above, the Council erroneously indicated that several of Mr F's requests fell outside the scope of FOISA, or were invalid by virtue of seeking records rather than information. However, in further explanations provided to Mr F and subsequent correspondence with the investigating officer, the Council confirmed during the investigation that it did not hold some of the information requested. In particular the Council indicated that it did not hold the information requested in requests 2, 3, 4, 5, 7, 8, 9 and 19 (which were rejected as invalid because the Council assessed that they sought copies of documents) and requests 13, 14, 15, 21, 22, 23 and 24 (which were rejected as invalid because the Council assessed that they sought yes/no answers rather than recorded information).
39. Since the Council did not provide Mr F with notice that it did not hold the information sought by these requests, the Commissioner finds that the Council failed to comply with Part 1 of FOISA by failing to provide such notice in accordance with section 17(1).
40. The Commissioner notes that the Council has subsequently provided an explanation of the circumstances to Mr F in relation to these questions. The Commissioner therefore does not require the Council to take any further action regarding these failures.

Consideration of exemptions

41. As noted above, the Council's responses to Mr F's request and subsequent request for review indicated that a number of exemptions applied to the information he had requested. In particular, it referred to exemptions in sections 25(1), 35(1)(g), 36(1), and 38(1). The full text of each of these provisions is set out in Appendix 1.
42. The Council's responses did not make clear which exemption was being applied to which parts of the information requested by Mr F. They also did not indicate which exemption in section 38(1) was being applied, although a reference to third parties in its response to Mr F's request for review suggests that section 38(1)(b) was the one considered to be relevant. The Council also failed to make clear which of the purposes mentioned in section 35(2) was relevant for its application of section 35(1)(g).
43. As noted above, Mr F has indicated that he did not dispute the Council's decision to remove personal data of third parties within the information supplied during the investigation. Consequently, this information has not been considered in this decision.
44. During the investigation of this case, the Council withdrew its previous reliance upon each of these exemptions, and it made no submissions in support of its application of the exemptions. Accordingly the Commissioner can only conclude that the Council incorrectly applied each of these exemptions when withholding relevant information to Mr F.
45. The Commissioner therefore finds that the Council failed to comply with Part 1 of FOISA, and section 1(1) of FOISA, by withholding information from Mr F. However, as the Council has, in subsequent correspondence, provided Mr F with the information requested or indicated that it does not hold the information, he does not require the Council to take any further action.



Duty to provide advice and assistance

46. During the course of this investigation, due in no small part to Mr F's persistence in seeking clarification of the Council's position and the extent of the information held by it, the Council provided Mr F with the information he originally requested under FOISA or an explanation of relevant circumstances where the requested information was not held. As noted, the extent of the information eventually supplied exceeded the scope of Mr F's original request.
47. While the Commissioner welcomes the steps taken by the Council during the investigation, he notes that the Council could and should, in accordance with its duty to assist applicants contained in section 15 of FOISA, have provided more assistance to Mr F when it initially dealt with his request. In particular, he considers that, if the Council perceived Mr F's information requests to be deficient for the purposes of section 8(1) of FOISA, it should have offered advice on how to formulate a request that would meet the relevant requirements.
48. The Commissioner also considers that the resolution that was achieved during the investigation of this case could have been achieved at a much earlier stage had the Council engaged in meaningful dialogue with Mr F when his request was received.
49. For these reasons, the Commissioner concludes that the Council failed to comply fully with the duty in section 15(1) of FOISA in its handling of Mr F's information request.



DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr F.

The Commissioner finds that the Council was not obliged to respond to two of Mr F's requests (numbers 20 and 25) in terms of Part 1 of FOISA because they requested opinion and not recorded information, and therefore did not conform to the requirements of section 8 of FOISA.

However, the Commissioner finds that:

(i) by incorrectly assessing that 16 of the questions in Mr F's request (2, 3, 4, 5, 7, 8, 9, 13, 14, 15, 17, 19, 21, 22, 23 and 24) were not valid requests for information in accordance with section 8 of FOISA and thereafter not providing a response to these questions;

(ii) by failing to issue notice in accordance with section 17(1) of FOISA that it did not hold the information requested in 15 of the questions in Mr F's request (2, 3, 4, 5, 7, 8, 9, 13, 14, 15, 19, 21, 22, 23 and 24);

(iii) by erroneously applying the provisions in section 14(2) of FOISA and the exemptions in sections 25(1), 35(1)(g), 36(1) and 38(1) of FOISA to withhold information and

(iv) by failing to provide appropriate advice and assistance to Mr F,

the Council failed to comply with Part 1 of FOISA, and in particular sections 1(1) (in the case of (i) and (iii) above), section 17(1) (in the case of (ii)) and section 15(1) (in the case of (iv)).

Given that the Council has subsequently provided Mr F with either the information requested or appropriate notice that the information is not held in response to the requests listed at (i), (ii) and (iii), the Commissioner does not require the Council to take any action in response to these failures.



Appeal

Should either Mr F or the 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
3 December 2010



Appendix 1

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

- (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and
 - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
 - (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.

...

14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

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).



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.

25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

35 Law enforcement

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

...

(g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);

...

(2) The purposes are-

- (a) to ascertain whether a person has failed to comply with the law;
- (b) to ascertain whether a person is responsible for conduct which is improper;
- (c) to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;



- (d) to ascertain a person's fitness or competence in relation to-
 - (i) the management of bodies corporate; or
 - (ii) any profession or other activity which the person is, or seeks to become, authorised to carry on;
- (e) to ascertain the cause of an accident;
- (f) to protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration;
- (g) to protect the property of a charity from loss or mismanagement;
- (h) to recover the property of a charity;
- (i) to secure the health, safety and welfare of persons at work; and
- (j) to protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

38 Personal information

- (1) Information is exempt information if it constitutes-
 - (a) personal data of which the applicant is the data subject;
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
 - (c) personal census information; or
 - (d) a deceased person's health record.
- (2) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-



- (i) any of the data protection principles; or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress); and
- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.
- (3) The second condition is that, by virtue of any provision of Part IV of that Act, the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (4) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to that Act are to be disregarded.
- (5) In this section-
 - "the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;
 - "data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;
 - "health record" has the meaning assigned to that term by section 1(1) of the Access to Health Records Act 1990 (c.23); and
 - "personal census information" means any census information-
 - (a) as defined in section 8(7) of the Census Act 1920 (c.41); or
 - (b) acquired or derived by virtue of sections 1 to 9 of the Census (Great Britain) Act 1910 (c.27),which relates to an identifiable person or household.
- (6) In section 8(7) of the Census Act 1920 (penalties), in the definition of "personal census information", at the end there is added "but does not include information which, by virtue of section 58(2)(b) of the Freedom of Information (Scotland) Act 2002 (asp 13) (falling away of exemptions with time), is not exempt information within the meaning of that Act".



Appendix 2

Text of request submitted by Mr F to the City of Edinburgh Council

The text of Mr F's request was included in a more extensive item of correspondence addressed to the headmaster of the school where the accident occurred.

...

We also believe under the Occupiers Liability (Scotland) Act 1960 the occupier owes a duty of care to all persons entering onto his/her premises. The occupier being defined as the person (or body) "occupying or having control of land or other premises". As I understand it this falls to you as person in charge.

- 1) However I would be grateful if you can confirm this.

...

The Provision and Use of Work Equipment Regulations 1998 (PUWER) requires users of work equipment to carry out risk assessment and provide work equipment that is suitable for the intended task and can be used without putting persons at risk. The regulations cover any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not) – effectively it is anything used at work.

- 2) Can you advise whether the machine equipment complies with the current PUWER legislation by provision of all relevant records?

...

The regulations make it an offence to allow work equipment to leave an employer's undertaking, or if obtained from another undertaking, be used, unless it is accompanied by physical evidence that the last inspection has been carried out.

- 3) Can you therefore provide up to date records and documentation in regard to the required inspections?

Risk assessments of the classroom will also be required, and if that risk assessment indicates for example that a wall mounted emergency stop is necessary due to the special circumstances within the classroom environment, then the school / college will need to satisfy themselves that the emergency stop allows compliance with PUWER. The risk assessment will also need to adequately address the risk of kick-back and classroom management.

- 4) Can you provide up to date records and documentation in regard to those required risk assessments?



At today's meeting I concluded that we do not appear to have some formal procedures in place therefore can you advise me on the following:

- 5) Whether the machine is CE certified and whether you can provide the necessary CE certificate? (CE marking is a requirement of European legislation and a sign that the equipment or product meets appropriate standards).
 - 6) The make and model of equipment and any manufacturer's recommendations you might have.
 - 7) The condition of the equipment, i.e. machine history by provision of maintenance records.
 - 8) Whether the equipment was electrically tested, this may be achieved by the provision of records.
 - 9) Any consideration of siting position of the machine, this may also be achieved by provision or risk assessment records.
 - 10) Accident reporting process – has this Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) accident been reported to the enforcing authorities (HSE)? If so, what was the process used, when was it done and by who? Can you provide details?
 - 11) Accident investigation – was this carried out by a competent person trained to investigate such matters?
 - 12) What were the injuries recorded, conclusions, remedial action plan and were Safe Systems of Work and Risk Assessments updated as a result?
 - 13) PPE – what if any Personal Protective Equipment was provided? E.g. masks, goggles, gloves.
 - 14) Information of signage – i.e. what, if any, signage was provided?
 - 15) Whether we had, and applied, a Safe System of Work and whether this was reviewed and recorded?
 - 16) Whether the staff or employees have all been trained to the standards specified in the health and Safety Training Standards in Design and Technology?
 - 17) Whether all relevant Risk Assessments are up to date and recorded?
- ...
- 18) What the First Aid arrangements in the school were?
 - 19) Equipment user training – What does this consist of? – Are records available?



The BS we received on the day of our meeting at the school (BS 4163:2007) appears to be highlighted at section 4, paragraph 6, an area which refers to student training and uses terminology such as “fully instructed” in the use of and in the hazards associated.

20) Are we content that a “demonstration” of this is appropriate – is this not familiarisation?

21) Pre Flight check – Daily tests? – Are they carried out and recorded?

22) Supervisory numbers (technicians or teachers to students) – What are the ratios?

23) How many students were present at the time of the accident? How many supervisory staff?

24) Was the work area controlled and managed?

We also have to say that we were somewhat surprised to discover from the school that the machine equipment was now in use again and noted that it required some maintenance prior to that, and were wondering if they or you at that point considered isolation until such times that the matter was fully investigated (perhaps by the enforcing authorities HSE) and concluded.

25) We would therefore be grateful for some rationale to your decision making process in this?