

Crown Office and Procurator Fiscal Service

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Response and Information Unit



Mr Simon Williams

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Fax:

Your ref:
Our ref: R009895

8 April 2015

Dear Mr Williams,

FOI REQUEST

Thank you for your e-mail of 9 March 2015 under the Freedom of Information (Scotland) Act 2002 (FOISA) in which you seek the following information:

"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act.

The information that I am seeking is a full copy of the final Lothian & Borders Police Investigation Report in relation to the City of Edinburgh Council, in particular into the Property Conservation Department which deals with Statutory Notices and which is now in the public domain.

Could you also please make me aware of any other investigations into CEC carried out over the past 5 years."

I have made enquiries into your request and outline the outcome of such below.

A single police report was submitted in relation to a number of allegations against Edinburgh City Council, which included allegations relating to money laundering and corruption. Criminal proceedings remain live at this time.

I consider that the final police report is exempt from release in terms of Section 34(1)(a)(i) of FOISA as this information is held by a Scottish Public Authority, namely the Procurator Fiscal at Edinburgh, for the purposes of an investigation which the Procurator Fiscal had a duty to conduct to ascertain whether Edinburgh City Council should be prosecuted for an offence. I also consider that this information is exempt from release under sections 35(1)(a), (b) and (c) of FOISA as I consider that the release of such information would, or would be likely to, prejudice substantially, the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice.



These exemptions are not absolute and I have therefore considered whether the public interest favours disclosure of the information, notwithstanding the exemptions. I consider that there is a strong public interest in maintaining the confidentiality of information submitted by the police to Procurators Fiscal. The courts have traditionally placed great emphasis on assertions on confidentiality in relation to information contained in police reports. The confidentiality of such information ensures that the agencies responsible for the investigation of alleged crimes can report to the Procurator Fiscal in a manner which is free and frank. Further, as criminal proceedings remain live, I consider the release of the information into the public domain could jeopardise the accused's right to a fair trial and prejudice current proceedings. I do not consider that this would be in the public interest.

For the reasons outlined above I do not intend to provide you with the police report.

You also ask if there have been any other investigations into Edinburgh City Council in the past 5 years.

Whilst initial investigations are a matter for the police and not the Procurator Fiscal, I can confirm that Edinburgh City Council has been the subject of one further report to the Procurator Fiscal by the police in the past 5 years. This related to a charge under the Health and Safety at Work Act 1974.

COPFS uses a live operational case management system, specifically designed to receive criminal and death reports from the police and other specialist reporting agencies and to manage the cases for prosecution purposes. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes. Accordingly, the COPFS case management system does not accurately record statistics relating to prosecutions of individual employees of Edinburgh City Council in their capacity as employees. Therefore, in order to identify such we would have to consider each individual case manually. Section 12(1) of FOISA does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request exceeds a specified financial threshold, which is currently £600. I consider that to conduct a manual search of this nature would exceed the current limit in terms of section 12 (1) of FOISA.

I hope this is helpful.

If you are dissatisfied with the way in which your request under the Freedom of Information (Scotland) Act 2002 has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please write to the Disclosure Section, Policy Division, Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA or by e-mail to foi@copfs.gsi.gov.uk.

The review will be undertaken by staff not involved in the original decision making process.

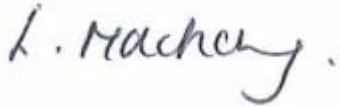
If our decision is unchanged following a review and you remain dissatisfied with this, please note that although generally under section 47(1) of FOISA there is a right of appeal to the Scottish Information Commissioner, where the information requested is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland, under section 48(c) no application can be made as respects a request for review made to the Lord Advocate. The information you have



requested appears to fall into that category, although ultimately it would be for the Commissioner to decide whether that was the case should you refer the matter to her.

In circumstances where section 48(c) does not apply and the Commissioner accepts an appeal, should you subsequently wish to appeal against that decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely,



Linsay Mackay
Response and Information Unit