

# Decision Notice



Decision 231/2013 Mr P Gregson and the City of Edinburgh Council

Equality impact assessment

Reference No: 201301361

Decision Date: 22 October 2013

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

On 4 April 2013, Mr Gregson asked the City of Edinburgh Council (the Council) for information on how the Staff Code of Conduct obtained a score of “0” when its impact on equality and human rights was assessed. The Council explained how the rating was reached, but stated that it did not hold any relevant, recorded information. Following an investigation, the Commissioner accepted this and found that the Council had dealt correctly with the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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 4 April 2013, Mr Gregson wrote to the Council about a report recommending that the Council should adopt a new Code of Conduct for its staff<sup>1</sup>. Mr Gregson noted that the report made no mention of an Equalities and Rights Impact Assessment (EQIA) being carried out, but gave the Equalities relevance score as “0”. He asked the Council for information that would help him ascertain what EQIA was undertaken in relation to the report, including how the score of “0” was reached in relation to Equality impact.
2. The Council responded on 2 May 2013. It explained how the Staff Code of Conduct was approved. It stated that, as no EQIA had been carried out, the Council did not hold the information requested by Mr Gregson.
3. On 3 May 2013, Mr Gregson emailed the Council requesting a review of its decision, as he considered that the Council had not answered his question about how an Equality impact assessment score of “0” had been reached. He expressed concerns about whether the requirements of the Human Rights Act of 1998 (the HRA) had been taken into account.

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<sup>1</sup> [http://www.edinburgh.gov.uk/download/meetings/id/36051/item\\_no\\_8-anti-bribery\\_policy\\_procedure\\_and\\_revised\\_employee\\_code\\_of\\_conduct\\_-\\_153k\\_-\\_2012-08-07](http://www.edinburgh.gov.uk/download/meetings/id/36051/item_no_8-anti-bribery_policy_procedure_and_revised_employee_code_of_conduct_-_153k_-_2012-08-07)



4. The Council notified Mr Gregson of the outcome of its review on 31 May 2013. The Council attempted to provide the information missing from its previous response by explaining how the score of “0” had been reached. The Council explained that, under the previous system of assessment, a short check had been carried out to see if a full assessment was required, in relation to the HRA. The Council described the factors which had been taken into consideration in carrying out the short check. The Council told Mr Gregson that an assessment was made which concluded that no infringement of the HRA had resulted from Council policies, and therefore the score for the Equality Impact was “0”. The Council commented that it had revised its EQIA Guidance and this would now be used to review the Staff Code of Conduct.
5. On 7 June 2013, Mr Gregson emailed 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 Gregson made a request for information to a Scottish public authority and 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 subsequently contacted the Council on 3 July 2013, 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. The Council was asked to confirm whether it held any recorded information that would fall within the scope of Mr Gregson’s request and for details of the searches it had undertaken in order to locate and retrieve any relevant information. The Council responded on 25 July 2013.
8. During the investigation, the Council was asked for more information about the searches it had conducted in order to establish whether it held any information covered by Mr Gregson’s request.

## Commissioner’s analysis and findings

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9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Gregson and the Council. She is satisfied that no matter of relevance has been overlooked.



10. In its submissions to the Commissioner, the Council explained that an Employee Relations Officer (“A”) had carried out the initial short check to see whether a full EQIA assessment was required. The assessment indicated that, whilst the Staff Code of Conduct had a relevancy to an individual’s right to individual, family and social life and an individual’s right of expression, these were mitigated and justified through describing the extent of conduct required to infringe the policy (will not be acted upon unnecessarily) and the need to protect the reputation and financial integrity of the Council. Once the mitigation and justification were taken into account, the Staff Code of Conduct was scored “0” in terms of relevance to equalities and human rights legislation as no part of the relevant legislation was at risk of breach.
11. The investigating officer asked whether there were any notes, correspondence or minutes in which the “0” rating was discussed. The Council explained that, while the overall assessment score must be recorded within the Equalities Section of any subsequent Committee report, there is no requirement for a formal note or record of the assessment to be made when carrying out a short check (as was done in this case).
12. The Council stated that two employees (“A” and “B”) were known to have discussed the assessment, but no records of this discussion had been found. The Council confirmed that “A” had carried out a search of his emails, computer hard drive and shared drive, and provided a list of the key words used in those searches. “A” had also requested that another employee (“C”) should carry out a similar search of his archived emails, using the same search terms. (Following an IT refresh in May 2013, the original archive of “A”’s emails was lost; the Commissioner understands that the search of “A”’s emails was based on the email archive restored on 9 May 2013.)
13. The Council explained that both “A” and “B” had left the Council and the information contained within their email archives and computers could not be retrieved by the Council. It is Council policy to disable all email accounts and mailboxes when staff leave its employment.
14. The investigating officer raised additional questions with the Council about the possibility of retrieving deleted information, given that no search of “B”’s emails had been possible. However, based on the detailed submission received from the Council, the Commissioner accepted that it would be time-consuming and expensive to even attempt to restore “B”’s email archive, and that there was no guarantee that any such attempt would be successful, as the way in which most employees store their emails might prevent their recovery. Taking into account the fact that no relevant emails were found during the search of “A”’s email archive, and given that the short check process described previously does not require a record of decision-making process to be created, the Commissioner found it would be disproportionate to require the Council to attempt the restoration of “B”’s email archive on the slight chance that some relevant information would be found.
15. Having considered all relevant submissions, the Commissioner accepts that, by the end of the investigation, the Council had taken adequate, proportionate steps to establish that it did not hold any information which would show why the Code of Conduct received a “0” rating in relation to its impact on equalities and human rights.



16. The Commissioner is therefore satisfied that the Council was correct to notify Mr Gregson, in terms of section 17(1) of FOISA, that it did not hold information falling within the scope of his request.

## DECISION

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

## Appeal

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Should either Mr Gregson or the City of Edinburgh Council wish to appeal against this decision, they have the right to 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.

**Margaret Keyse**  
**Head of Enforcement**  
**22 October 2013**



## 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

##### 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.
- ...