

# Decision Notice



Decision 213/2010 Councillor Alan O'Brien and North Lanarkshire Council

Consultation on School closure

Reference No: 201001462

Decision Date: 20 December 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
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## Summary

Councillor Alan O'Brien requested from North Lanarkshire Council (the Council) information relating to the consultation to close St Francis of Assisi Primary School. The Council responded by providing information in relation to each element of Councillor O'Brien's request. Following a review, Councillor O'Brien remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Councillor O'Brien's request for information in accordance with Part 1 of FOISA, by correctly advising him that no further information, beyond that already supplied, was held.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement)

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 22 March 2010, Councillor O'Brien wrote to the Council requesting the following information relating to the consultation to close St Francis of Assisi Primary School:
  - a. All written and electronic material relating to the feasibility study to combine St Francis Primary School and Westfield Community Centre, including options of potential capital receipt from sale of Westfield Primary football pitch.
  - b. All written and electronic material relating to claims that the relevant Diocese did not support a joint campus involving St Francis and Westfield Primary Schools
  - c. All written and electronic material relating to any consultation between the Council's Transport Department and Learning and Leisure concerning transport/traffic issues relating to this proposal. This included any reference to Croy Railway Station traffic situations and child safe walking routes.



2. The Council acknowledged Councillor O'Brien's request on 20 April 2010 but also advised him that the Executive Director of Learning and Leisure Services of the Council had provided a full response to his enquiry on 19 April 2010.
3. On 27 April 2010, Councillor O'Brien wrote to the Council stating that he had not been provided with a "full response" to his request. He also drew the Council's attention to the fact that he had not been provided with details of his rights to request a review or to subsequently refer the matter to the Commissioner.
4. On 7 May 2010, the Council wrote to Councillor O'Brien acknowledging that there had been some confusion over communications and apologised. The Council then provided responses to all three elements of Councillor O'Brien's original request. In response to part (a) of the request, the Council supplied an analysis of the shared campus option and initial drawings of the proposals of relocation, alongside further explanations as to why this option was not taken forward. In respect of part (b) of his request, the Council supplied Councillor O'Brien with a communication received from the Archdiocese of Glasgow. In response to part (c), the Council referred Councillor O'Brien to certain extracts from the consultation report and an internal communication which had been redacted under section 38(1)(b) (Personal information) of FOISA.
5. On 11 May 2010, Councillor O'Brien wrote to the Council requesting a review of its decision. In particular, Councillor O'Brien drew the Council's attention to the following points:
  - In respect to part (a) of his request, he stated that he had not sought the conclusions of the feasibility study to combine the School with the Community Centre as supplied, but rather specific material to demonstrate that the study had been conducted as promised.
  - Similarly in respect of part (b) of his request, Councillor O'Brien stated that he had not sought the conclusions on the viability of the shared campus, but the information which illustrated that the Diocese would not support a joint campus.
  - With regard to part (c) of his request, Councillor O'Brien advised the Council that he did not seek the conclusions of the consultation material, but copies of the material which enabled the Council to come to the conclusions reached in the consultation.
6. The Council notified Councillor O'Brien of the outcome of its review on 4 June 2010. The Council advised Councillor O'Brien that it held no further information in respect of his requests, but provided him with further explanations relating to the subject matter of his requests.
7. On 22 July 2010, Councillor O'Brien wrote to the Commissioner, stating that he was dissatisfied with the outcome of Council's review in respect of parts (a) and (c) of his request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Councillor O'Brien 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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9. On 30 August 2010, the Council was notified in writing that an application had been received from Councillor O'Brien, and was given the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA).
10. The Council was also asked to respond to specific questions about the case and to explain the steps taken to locate any relevant information falling within the terms of parts (a) and (c) of Councillor O'Brien's information request.
11. The Council responded to this request on 16 September 2010, and provided further comments and information in response to follow up questions on 5 October 2010 and 19 November 2010.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Councillor O'Brien and the Council and is satisfied that no matter of relevance has been overlooked.
13. The issue to be addressed in this case is whether the Council holds information, beyond that already supplied, which would satisfy the terms of Councillor O'Brien's requests. In each case, the Council has indicated that it does not hold information beyond that already supplied.
14. The Council has provided background information to assist the Commissioner's understanding of the subject matter of Councillor O'Brien's requests.
15. In November 2009, the Council submitted proposals to its Learning and Leisure Services Committee to consult with all relevant groups and individuals on the possibility of closing or amalgamating four primary schools and two nurseries.
16. The Council stated that it followed the current requirements for consulting on proposed school closures as set out in the Education (Publication and Consultation etc.) (Scotland) Regulations 1981. However, the Scottish Parliament was considering a Bill which proposed significant changes to the existing arrangements and the procedures followed in this school closure consultation took account of the new legislation. This was done to ensure that the Council would be able to take a decision on the proposal even if the new legal requirements were implemented during the process.

### Part a – written and electronic communications regarding the feasibility study

17. In response to part (a) of Councillor O'Brien's request, the Council supplied three costing documents, alongside three initial plan drawings.



18. Within his submissions, Councillor O'Brien stated that he would have expected to receive, in response to his request, documentation reflecting specifics on meetings, including dates and attendees that relate to the feasibility study the Council claimed to have taken place. Failing this, Councillor O'Brien sought explanation of what form the feasibility study took or acknowledgement that no such study actually took place.
19. The Council explained that the proposal under consultation with respect to St Francis of Assisi Primary School was that it be closed and its catchment area reallocated to Holy Cross and St. Helen's primaries. It was only during the consultation period, the Council states, that Councillor O'Brien suggested the possibility of combining St. Francis Primary School and Westfield Community Centre.
20. The Council informed the Commissioner that the initial work related to this feasibility study was conducted as brainstorming meetings resulting in officers being tasked to provide costings, etc. for the options raised. These costings, the Council stated, were used to determine the feasibility of the proposal and were provided to Councillor O'Brien as part of the response to his FOISA request.
21. When asked whether any minutes, notes or correspondence/communications were held relating to the "brain storming" sessions, the Council stated that no further information, than that provided to Councillor O'Brien, was held.
22. When queried regarding the searches undertaken to locate the information falling within the scope of Councillor O'Brien's request, the Council advised that it had maintained a paper file in relation to the proposed closure of St. Francis of Assisi Primary School. This file, it advised, contains all the information held by the service in relation to the consultation process and includes all papers and correspondence between officer of the Council and consultees, including outside bodies where applicable. The existence of the paper file, stated the Council, mitigated the need to check electronic files.
23. The Council explained that there were six consultations running concurrently; it was therefore essential to have robust systems in place to ensure all information was collected and stored together since responses from the public could come to the Council by many routes. This, it stated, was the reason behind the creation and maintenance of paper files.
24. Following further correspondence with the investigating officer on this point, the Council investigated and confirmed that no emails or electronic files relating to the feasibility study or proposed closure were held in addition to that held in the paper file.
25. The Council also clarified that the feasibility study did not involve a series of meetings, but one short brainstorming session with officers, then tasked with sourcing the information that was provided to Councillor O'Brien. Furthermore, the Council explained that Councillor O'Brien's request refers to information initiated during the consultation process, when the system of using a paper file was well developed and there was no possibility of e-mails or other documents or correspondence not being printed off and included in the paper file.



### Part c

26. In response to part (c) of Councillor O'Brien's request, the Council supplied an extract from the consultation report.
27. By way of explanation of the limited information provided to Councillor O'Brien, the Council stated that responsibility for road issues within the Council rested in its Environmental Service Department. The Council advised that transportation issues were addressed in the final report submitted to the meeting of Learning and Leisure Service Committee held on 9 March 2010. In response to this element of Councillor O'Brien's request, the Council provided the relevant excerpts from this report. The Council explained, within its submissions to the Commissioner, that it was only following the Council decision on the proposed closure that full discussions on transport and safe walking routes took place. The decision was ratified by the Council on 25 March 2010, a number of days after Councillor O'Brien's request.

### Conclusion

28. Having considered the submissions and explanations he has received, the Commissioner is satisfied that adequate steps were taken by the Council to determine whether it held further information requested by Councillor O'Brien. In the circumstances, he is satisfied that the Council did not hold any further information to that already supplied in respect of parts (a) and (c) of his request. Consequently the Commissioner is satisfied that the Council was correct to advise Councillor O'Brien that it held no further information, in addition to that already supplied to him, in relation to his request. The Commissioner is therefore satisfied that the Council fully complied with section 1(1) of FOISA.



## **DECISION**

The Commissioner finds that North Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in providing all the information it held with respect to parts a and c of Councillor O'Brien's request.

## **Appeal**

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Should either Councillor O'Brien 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**  
**20 December 2011**



## 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.