

# Decision Notice

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**Decision 184/2014 Mr Alan Campbell and South Lanarkshire Council**

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**Biggar Primary School**

Reference No: 201400665

Decision Date: 26 August 2014



Scottish Information  
Commissioner

## Summary

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Mr Campbell asked South Lanarkshire Council (the Council) for the Education Service Brief submitted to the architects who drew up the plans for Biggar Primary School. The Council responded provided some information to Mr Campbell, but not the Project Brief he was looking for. Following an investigation, the Commissioner found that the Council had provided all the information it held.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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

## Background

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1. On 13 November 2013, Mr Campbell wrote to the Council requesting the following information about Biggar's new primary school:  
*"Can you please provide me with a copy of the Education Service Brief which was submitted to the architects who drew up the plans for the school?"*
2. The Council contacted Mr Campbell on 14 November 2013 to clarify his request. The Council explained that it held several documents that together would form "the overall brief for the educational requirements of our new build schools." These documents were:
  - (i) the Internal Accommodation Schedule (which detailed the number of classrooms required and size plus all other required internal accommodation);
  - (ii) background reference documents that detailed other specifications for areas of the school, both internal and external; and
  - (iii) any current building regulations and other statutory legislation that underpinned these requirements.
3. Mr Campbell responded on 14 November 2013 and asked for the internal accommodation schedule and other background reference documents. He believed that this information would allow him to confirm whether all legislative requirements had been met, regarding the size of classrooms or the site.
4. The Council responded on 9 December 2013, stating that it would provide Mr Campbell with all the information it held in relation to his request. The Council provided the Biggar Primary School Accommodation Schedule and three CDs of documents.
5. On 14 February 2014, Mr Campbell wrote to the Council to ask for "P2T2 Volume 3, Appendix 4 (Biggar Primary School)", which he understood to include the Education Briefing document, but which had not been included in the Council's response to his request.
6. On 17 February 2014 Mr Campbell again wrote to the Council and explained that he had received only part of Appendix 4 (the Schedule of Accommodation) but he needed the other

parts too. He listed the four sections of Appendix 4. On 19 February 2014, he reiterated his request for the “whole document”, and explained again why he believed that the “Operational Requirements” section of Appendix 4 would specify to the architects how many pupils had to be accommodated by the new school.

7. The Council replied on 20 February 2014. It explained that there was no “P2T2 Volume 3, Appendix 4 (Biggar Primary School)”, and that it had included (in error) appendices prepared for two other schools. The Council explained that it had no written record showing confirmation of the pupil roll figure between the Council and its Framework Partner. The Council provided the “notice to proceed” which had been issued to the Framework Partner, and gave an explanation of how the pupil roll for Biggar Primary School had been estimated.
8. Mr Campbell wrote again to the Council on 21 February 2014 seeking the Project Brief.
9. On 24 February 2014, Mr Campbell wrote to the Council requesting a review of its decision. Mr Campbell reminded the Council that he had requested all the information that the Council had given the architects to enable them to draw up plans, and stated that:

*“The key document which will determine whether or not the school complies with Scottish Law is ‘The Project Brief’, which is Volume 3, Appendix 4 of the contract documents. It consists of 4 sections:*

*(1) The Preamble/ Introduction*

*(2) The Operational Requirements*

*(3) The Consultation and Briefing Notes*

*(4) The Educational Requirements and Schedule of Accommodation.”*

Mr Campbell stated that this document was noted in the list of client requirements, which specified the four sections it must contain. He said that the architects needed this to draw up plans, and he did not accept that this information was not held by the Council.

10. The Council notified Mr Campbell of the outcome of its review on 24 March 2014. The Council stated that it held no further information that fell within Mr Campbell’s request. It stated that it had never held a Project Brief, in the appendix form Mr Campbell had requested, and that only limited information was now passed to contractors in relation to the design/build of primary schools. The Council again explained that in providing Mr Campbell with information, it had mistakenly provided project briefs for two other schools.
11. On 27 March 2014, Mr Campbell 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.
12. The application was validated by establishing that Mr Campbell 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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13. 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. The Council was asked about the searches it had

undertaken to identify information covered by Mr Campbell's request, and why it was satisfied that it held no other relevant information.

## **Commissioner's analysis and findings**

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

### **Section 1(1) of FOISA – General entitlement**

15. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case.
16. The Council stated that it had provided all the information it holds which is covered by Mr Campbell's request. Mr Campbell questioned this, particularly in relation to the lack of any information showing that the architects were provided with a figure for pupil numbers for the new school. The question for the Commissioner is whether the Council complied with section 1(1) of FOISA in responding to Mr Campbell's request, or whether it held any further recorded information that falls within his request.
17. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
18. Mr Campbell set out a number of points to support his belief that more information should be held. Firstly, he argued that the Project Brief (and, particularly, the part which deals with Educational Requirements) is the key document in terms of showing whether the new school would meet legal requirements. Secondly, he commented that architects have professional liability insurance which requires that they have a full Project Brief in place before drawing up plans. To protect them against any potential lawsuits which might occur, architects need to show that the plans they produce comply with the Project Brief they were given. Thirdly, he pointed out that the key figure is not the school roll, which will fluctuate, but the maximum capacity of the school building.
19. The Council was asked how the Council had identified any information falling within the terms of Mr Campbell's request, and how it holds such information.
20. The Council explained that the information about the school was held on an internet-based extranet called 4Projects, and therefore relatively easily identified. The Council explained that all information issued for projects was held on this system under project specific files, and common information, such as performance requirements, was held on this system in a common file.
21. The Council provided details of the officials who had been involved in searching for information covered by Mr Campbell's request, or who had been consulted about it.
22. The Council reiterated that it never held a Project Brief for the new Biggar Primary School in the form requested. It explained that Biggar Primary School was being delivered through a Framework Agreement, unlike the two schools for which Project Brief documents had (in

error) been provided: these two schools were being delivered under different contractual arrangements. The Council provided the Commissioner with an explanation of the differences between these arrangements.

23. The Council commented that the Project Brief is not a “key” document [for projects delivered under a Framework Agreement]. It stated that the designers have a schedule of accommodation which is used to form the initial plans, together with a set of full technical requirements. All outstanding information was provided to the project team through the scheme design process as they requested it. This was stated within the “notice to proceed”, a copy of which had been provided to Mr Campbell.
24. The Council stated that the development of the project scheme does not involve a formal brief format. Any requests from the Council for the brief are provided, usually verbally, at the many consultation meetings held between the Design and Build Constructor and Council staff. The Council stated that the briefing ends with drawings, a price and a programme. After this point, a planning application is submitted.
25. The investigating officer asked the Council how it knew that information about pupil numbers had been passed to the architects when there was no record of this action. The Council stated that two staff from its Education Resources Department recalled discussions involving the contractor at a meeting on 3 March 2013. It confirmed that there was no record of these discussions, stating that a search had been carried out of records from the Council’s Housing and Technical Resources Education Resources and also the records of the Contractor.
26. Having considered all the relevant submissions, Commissioner accepts that the Council has taken adequate and proportionate steps to establish the information it held which fell within the scope of Mr Campbell’s request. In reaching this conclusion, the Commissioner has taken into account the following:
  - (i) the information falling within the request is held by the Council in a way that the Council describes as specific, identifiable and searchable;
  - (ii) the actual searches undertaken (twice) by the Council to assess the information it held;
  - (iii) those involved in searching for the information had experience and knowledge of the subject; and
  - (iv) the Council has explained why, in terms of the contractual process, no Project Brief was created for the new Biggar Primary School.
27. The Commissioner is satisfied, on the balance of probabilities, that Mr Campbell has been provided with all of the information held by the Council which falls within the scope of his request, and that the Council complied with Part 1 of FOISA in responding to his request.
28. The Commissioner’s remit in carrying out this investigation extended only to the consideration of whether the Council actually held the requested information. She cannot comment on whether a public authority should have held any, or more, information about a particular event or process.

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

## **Appeal**

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Should either Mr Campbell or South Lanarkshire 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**26 August 2014**

## Appendix 1: Relevant statutory provisions

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### 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.

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**