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**From:** Nick Smith  
**Sent:** 13 October 2010 16:28  
**To:** Nick Smith; Alastair Maclean  
**Cc:** Carol Campbell  
**Subject:** RE: Advance Copy of BSC Letter

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**From:** Nick Smith  
**Sent:** 13 October 2010 14:39  
**To:** Alastair Maclean  
**Cc:** Carol Campbell  
**Subject:** RE: Advance Copy of BSC Letter

It is difficult to argue against their logic on some of the issues but this is a very cleverly drafted letter aimed at deflecting attention and showing that they are the aggrieved party in light of a potential breach termination.

They are happy to release adjudication decisions if tie are similarly happy. I would recommend against this. These are highly complex issues and without the factual context or the full contract terms it is possible that the issues could be misinterpreted and spin added. It is fair to say that a few decisions have gone against tie, whether on bad advice or just a roll of the dice it is difficult to say. However, release would mean we get every Edinburgh resident as an adjudicator and may also require release of legal advice under FOI if we are not careful. That is not to say that we do not want release as it is not in our favour. I just don't think it advances our position.

There is also the possibility that BSC has breached the terms of the agreement by making this info available to Councillors. tie's lawyers should be asked for their view on how tie should respond.

For discussion:

"Councillors

You will all have received today correspondence from the tram consortium in advance of tomorrow's Council meeting. In light of the current dispute and the potential mechanisms for resolving the dispute, the consortium is attempting to protect its position as much as it can. This letter is part of the protection mechanisms being employed.

Extensive legal advice has been sought by tie in relation to all disputed matters. Council officers have also sought independent legal advice to fully protect the Council's position as project guarantor. Having discussed the matter with the Head of Legal and Administrative Services it is not recommended that tie agree to the formal adjudication decisions be released at this time. To be clear this is not because they reflect badly upon tie. This simply because these decisions are highly complex and need to be read against the full factual background and the full terms of the contract, all of which should not be released at this time in order to protect both tie's and the Council's respective positions.

It is imperative that the dispute is resolved by both parties following the appropriate contractual mechanisms. Accordingly, I recommend that no response be made to this letter or other contact

be made by Councillors. Instead, an appropriate response will be sent by tie as counterparty to the tram contract".

Kind regards

Nick

Nick Smith  
Principal Solicitor - Commercial, Procurement & Finance  
Legal Services Division  
City of Edinburgh Council  
Level 3, Waverley Court  
East Market Street  
Edinburgh EH8 8BG

(t) [REDACTED]

*Please note that I am not in the office on a Monday*

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**From:** Alastair Maclean  
**Sent:** 13 October 2010 13:58  
**To:** Nick Smith  
**Subject:** FW: Advance Copy of BSC Letter  
**Importance:** High

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**From:** Sandra Elgin  
**Sent:** 13 October 2010 13:24  
**To:** Alastair Maclean  
**Subject:** FW: Advance Copy of BSC Letter  
**Importance:** High

Alastair,

For your attention.

Sandra

Sandra Elgin  
Chief Executive's PA/Secretary  
The City of Edinburgh Council  
Waverley Court  
4 East Market Street  
EDINBURGH  
EH8 8BG

Tel No: [REDACTED]  
Fax No: [REDACTED]

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**From:** Maureen Child  
**Sent:** 13 October 2010 13:15  
**To:** Tom Aitchison  
**Subject:** FW: Advance Copy of BSC Letter  
**Importance:** High

Tom

Given that this is dropping into 58 Councillors mailboxes, it would be helpful for all of us to know how NOT to respond?

Maureen

Councillor Maureen Child | Labour Elected Member | Portobello/Craigmillar (Ward 17) | City of Edinburgh Council | City Chambers | High Street | Edinburgh | EH1 1YJ | Tel [REDACTED]

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**From:** Richard.Walker@civil.bilfinger.co.uk [mailto:Richard.Walker@civil.bilfinger.co.uk]

**Sent:** 13 October 2010 13:05

**To:** Elaine Aitken; Ewan Aitken; Robert Aldridge; Jeremy Balfour; Eric Barry; David Beckett; Angela Blacklock; Michael Bridgman; Deidre Brock; Gordon Buchan; Tom Buchanan; Steve Burgess; Andrew Burns; Ron Cairns; Steve Cardownie; Maggie Chapman; Maureen Child; Joanna Coleman; Cammy Day; Jenny Dawe; Charles Dundas; Paul Edie; Nick Elliott-Cannon; Paul Godzik; George Grubb; Norma Hart; Stephen Hawkins; Ricky Henderson; Lesley Hinds; Allan Jackson; Alison Johnstone; Colin Keir; Louise Lang; Jim Lowrie; Gordon Mackenzie; Kate MacKenzie; Marilyne MacLaren; Mark McInnes; Stuart McIvor; Tim McKay; Eric Milligan; Elaine Morris; Joanna Mowat; Rob Munn; Gordon Munro; Bill Cook; Alastair Paisley; Gary Peacock; Ian Perry; Cameron Rose; Jason Rust; Conor Snowden; Marjorie Thomas; Stefan Tymkewycz; Phil Wheeler; Iain Whyte; Donald Wilson; Norman Work; Dave Anderson; Donald McGougan; Tom Aitchison

**Cc:** Flynn.Michael@siemens.com

**Subject:** Advance Copy of BSC Letter

**Importance:** High

Dear Councillors

Please find attached an advance copy of a letter that will be issued by post today.

Kind regards

**Richard**

Richard Walker B.Tech. Hons. C.Eng. MICE. FCIHT.  
Managing Director

Bilfinger Berger  
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