

STRICTLY PRIVATE AND CONFIDENTIAL
BY DELIVERY

received 18 October 2017

Gordon McNicoll
Edinburgh Tram Inquiry
Floor 1, Waverley Gate
2-4 Waterloo Place
Edinburgh
EH1 3EG

Dear Mr McNicoll,

**Edinburgh Tram Inquiry
S21 Notice – Inquiries Act 2005 (“the Act”)**

I refer to your letter of 29 September 2017 enclosing a notice in terms of S21 of the Act (“the Notice”) requesting certain documents from the Council and to the Council's letter dated 5 October 2017 in respect of the Notice. The Council comments as follows in response to the Notice. Since Annexes A and B of the notice are in substantially the same terms, simply relating to different organisations, A and B are combined and considered together below.

1. All documents showing or tending to show the identity of the City of Edinburgh Council's Monitoring Officer for Tie Ltd/Transport Edinburgh Ltd between 2002 and 2011

Monitoring Officers Post-May 2008

In May 2008, the Council entered into new Operating Agreements with tie Ltd and TEL. The tie Ltd Operating Agreement created the role of “Tram Monitoring Officer” and the TEL Operating Agreement created the role of “Company Monitoring Officer”.

The Tram Monitoring Officer was to be “the Director of City Development or their appointed nominee” per Clause 3.5 of the tie Ltd Operating Agreement.

The Company Monitoring Officer for TEL was to be “the Director of City Development or the Director of Finance” per Clause 3.5 of the TEL Operating Agreement.

The Tram Monitoring Officer

The Council understands that the Tram Monitoring Officer for the entirety of the period in question was Marshall Poulton. Reference is made to a letter dated 1 April 2010 from Dave Anderson, then Director of City Development, to Richard Jeffrey at tie Ltd entitled “Tram Monitoring Officer”, which refers to Mr Poulton as the Tram Monitoring Officer. Reference is further made to the Edinburgh Tram Project Status Report presented to the Full Council on 20 August 2009, which

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refers to "a new multi-stakeholder Traffic Management Review Group being chaired by the Tram Monitoring Officer (the Head of Transport)" in paragraph 3.45. Mr Poulton held the role of Head of Transport from 30 April 2008 under 31 August 2013.

The Company Monitoring Officer

The Council has conducted an extensive search for documents in respect of the identity of the Company Monitoring Officer post-2008. This has involved a search of all relevant Council databases. Various officers of the Council have been spoken to where it is felt they could assist in the search. Despite these searches, the Council has been unable to locate documentation directly showing the identity of the Company Monitoring Officer post-2008. However, the Council has located a report made to the Policy & Strategy Committee on 1 December 2008 which refers to the Tram Monitoring Officer making regular attendances at TEL board meetings. It may be the case that the Tram Monitoring Officer and the Company Monitoring Officer were thus the same person.

Monitoring Officers Pre-May 2008

Despite the searches referred to above, the Council has been unable to locate documentation showing or tending to show the identity of tie Ltd and TEL's monitoring officers prior to 2008

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 1 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

2. All quarterly (or other) reports produced by Tie Ltd/TEL to said Monitoring Officer between 2002 and 2011

Despite the searches referred to above, the Council has been unable to locate any such reports.

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 2 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

3. All bi-annual (or other) reports made to the Council by said Monitoring Officer(s) on the performance of said company between 2002 and 2011

Despite the searches referred to above, the Council has been unable to locate any such reports.

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 3 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

4. All draft annual accounts provided by Tie Ltd/TEL to the Council between 2002 and 2011

Despite the searches referred to above, the Council has been unable to locate any draft accounts. However we have enclosed tie's statutory accounts.

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 4 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

5. All annual Business Plans produced by Tie Ltd/TEL Ltd for the approval of the Council between 2002 and 2011 (together with the date each plan was approved by the Council)

The Council has enclosed tie Ltd annual business plans for the following years:

- 03/04, Approved 26/06/03
- 04/05, Approved 29/04/04
- 05/06, Approved 02/06/05
- 06/07, Approved 04/05/06
- 07/08, Approved 08/03/07
- 08/09
- 09/10

Despite the searches referred to above, we have been unable to determine when the FY08-09 and FY09-10 plans were approved by the Council. We have also been unable to locate any business plans for TEL.

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 5 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

6. All annual self-assessment questionnaires on corporate governance provided by Tie Ltd / TEL to the Council between 2002 and 2011

Despite the searches referred to above, the Council has been unable to locate any such questionnaires.

Accordingly, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 6 of Annexes A and B of the Notice other than in respect of the documents and information referred to above.

7. Documents in relation to bonuses and salaries

As set out in the Council's letter of 5 October 2017, the documents relating to paragraph 7 of Annexes A and B to the Notice respectively fall into 4 categories. Categories 3 and 4 are addressed in the Council's letter of 5 October 2017. The documentation in relation to Categories 1 and 2 is as set out below.

Category 1: the Council's own files relating to the subject matter of the Inquiry for the period between 2002 and 2011

The Council has undertaken searches of its IT systems and the documents held digitally on its Tram Sharepoint. Thus far, searches of Council IT systems for the terms "bonus", "salary", "salaries", "tie compensation", and "tel compensation" have yielded no documents relevant to the Notice.

Searches of the Tram Sharepoint have yielded more results; by way of illustration, various terms and results are detailed below:

- "bonus": 1,961 results
- "tie bonus": 2,977 results
- "salary": 7,092 results
- "tie salary": 3,984 results
- "salaries": 4,728 results
- "tie director compensation": 4,785 results
- "tel director compensation": 2,378 results

- "tie bonus structure": 829 results
- "tel bonus structure": 378 results
- **Total: 29,112 results**

It is clear that documents will have to be reviewed further to determine whether they are relevant to the Notice.

In light of the number of results returned by the searches, in terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply with the Notice and/or that it is not reasonable in all the circumstances to require it to do so in respect of paragraph 7 of Annexes A and B of the Notice, in particular in terms of the time limit referred to in the Notice.

We are assessing the results of the searches in order to ascertain how long it would take to review the searches to identify the documents which are relevant to the paragraph 7 of each of the Annexes A and B and whether such a review would be feasible, and will revert to you in a couple of days in this respect.

Category 2: documents held by Pinsent Masons LLP as a consequence of their solicitor/client relationship with tie Limited and the Council relating to the subject matter of the Inquiry for the period between 2002 and 2011

The relevant documents falling within category 2, together with an index, are on the enclosed encrypted memory stick in the folder entitled "*Pinsent Masons Documents*". The password to the memory stick is "Edinburgh1".

The memory stick also includes the documents referred to above in respect of paragraphs 1 to 6, as set out in the Appendix to this letter.

If you have any further questions or queries please do not hesitate to contact me.

Yours sincerely,



Matthew Clarke
Senior Solicitor

Appendix:

The following documents are enclosed on the memory stick provided, password "Edinburgh1":

In the folder entitled "TMO Identity"

- tie Ltd Operating Agreement ("tie Operating Agreement.pdf")
- The TEL Operating Agreement ("TEL Operating Agreement.pdf")
- Letter from Dave Anderson to Richard Jeffrey dated 1 April 2010 ("Tram Monitoring officer.pdf")
- Edinburgh Tram Project Status Report dated 20 August 2009 ("ETP Stat Rep 200809.pdf")
- 1 December 2009 Report to the Policy and Strategy Committee referring to TMO attendance at TEL Board Meetings ((Report - Composition of the Board of Transport Edinburgh Limited (TEL).pdf")

In the folder entitled "tie Business Plans":

- Tie Business Plan 03-04
- Tie Business Plan 04-05
- Tie Business Plan 05-06
- Tie Business Plan 06-07 pt 1

- Tie Business Plan 06-07 pt 2
- Tie Business Plan 07-08
- Tie Business Plan 08-09 draft V9
- Tie Business Plan 09-10 DRAFT v5 (Final)

In a zipped folder entitled "TIE Ltd":

- TIE Ltd Accounts 2003
- TIE Ltd Accounts 2004
- TIE Ltd Accounts 2005
- TIE Ltd Accounts 2006
- TIE Ltd Accounts 2007
- TIE Ltd Accounts 2008
- TIE Ltd Accounts 2009
- TIE Ltd Accounts 2010
- TIE Ltd Accounts 2011

In a zipped folder entitled "Transport Edinburgh Ltd"

- Transport Edinburgh Ltd - Dormant Company Accounts 2004
- Transport Edinburgh Ltd - Dormant Company Accounts 2005
- Transport Edinburgh Ltd - Dormant Company Accounts 2006
- Transport Edinburgh Ltd - Dormant Company Accounts 2007
- Transport Edinburgh Ltd - Dormant Company Accounts 2008
- Transport Edinburgh Ltd - Dormant Company Accounts 2009
- Transport Edinburgh Ltd - Dormant Company Accounts 2010
- Transport Edinburgh Ltd - Dormant Company Accounts 2011