

STRICTLY PRIVATE & CONFIDENTIAL
Gordon McNicoll
Solicitor to the Edinburgh Tram Inquiry
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5th October 2017

Dear Mr McNicoll

**Edinburgh Tram Inquiry
Section 21 Notice – Inquiries Act 2005 ("the Act")**

Thank you for your letter of 29 September 2017 enclosing a notice under section 21 of the Act ("the Notice").

In accordance with clause 21(2)(b) of the Act, the Council considers that it is those "*documents in [its] custody or under [its] control*" to be relevant to the Notice.

The Council intends to produce the documents referred to in questions 1 to 6 in each of Annexes A and B insofar as they are in the Council's custody or under its control on or before Wednesday 18 October 2017.

The documents in the Council's custody or under its control relating to question 7 in each of Annexes A and B fall into 4 categories, each of which is addressed below.

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

These documents are being searched, and the relevant material that is identified will be produced to the Inquiry on or before 18 October 2017.

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

These documents are being searched, and the relevant material that is identified will be produced to the Inquiry on or before 18 October 2017.

Category 3: documents on Clearwell dated between 1 June 2006 and 30 November 2010

In terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply, nor is it reasonable in all the circumstances to require it to comply, with the Notice, so far as it relates to question 7 in each of the Annexes in respect of the documents held on Clearwell dated between 1 June 2006 and 30 November 2010.

As the Inquiry is aware, documents from tie Limited and the Council relating to the Trams project were collated by CYFOR Limited on behalf of the Council. Documents relating to the period 1 June 2006 to 30 November 2010 were uploaded onto a Clearwell document management platform. A brief summary of the document recovery process is set out in the appendix to this letter.

A search for the term "bonus" referred to at questions 7(a) and 7(c) in each of the Annexes yields 12,040 results on the Clearwell platform. A search for the term "salary" or "salaries" as referred to at question 7(b) in each of the annexes yields 17,718 results on the Clearwell platform. Searches of other terms might also be required. It is not possible to search this volume of documentation within the timescales set out in the Notice, nor would it be reasonable to require the Council to do so.

The entirety of the material on the Clearwell platform was provided to the Inquiry in February 2015 in order to enable the Inquiry to carry out its own searches in that material, and the Council does not propose to duplicate the searching that will no doubt already have been carried out by the Inquiry on Clearwell in respect of the subject matter of the Notice.

Category 4: unprocessed data held by CYFOR for the periods 1 January 2002 - 31 May 2006, and 1 December 2010 – 31 December 2011 (the "Unprocessed Period")

In terms of section 21(4) of the Act, the Council wishes to claim that it is unable to comply, nor is it reasonable to require it to comply, with the Notice so far as it relates to question 7 in each of the Annexes, in respect of the unprocessed data held by CYFOR in relation to the Trams project for the Unprocessed Periods.

As referred to in the appendix of this letter, CYFOR holds data falling outside the Clearwell date parameters of 1 June 2006 to 30 November 2010.

Enquiries have been made with CYFOR, who have indicated that on the basis of their initial investigations, they estimate that there are 227,825 (228 GB) unprocessed documents for the Unprocessed Periods. CYFOR would be able to upload these documents onto a searchable Relativity platform. They estimate that the upload would take 4 days, and their quotation for the associated cost is £65,445 plus VAT. We enclose copies of CYFOR's document count and quotation. They have stressed that the figures are approximate, and liable to change as data is processed.

It is not possible to search this volume of documentation within the timescales set out within the Notice, nor would it be reasonable to require the Council to do so.

However, in order to assist the Inquiry, the Council is prepared on a voluntary basis to give access to the Inquiry to the material in this category once it has been processed by CYFOR, subject to reserving all rights in respect of privilege relating to that material.

In light of the significant costs associated with processing as referred to above, we would be grateful for the Inquiry's proposals in respect of how these costs are to be met as between the Inquiry and the Council.

Please do not hesitate to contact me should you have any questions regarding the above.

Yours sincerely

A black rectangular redaction box covering the signature of Matthew Clarke.

For and on behalf of the City of Edinburgh Council

Matthew Clarke
Senior Solicitor

Appendix

- 1 Steps were taken on behalf of the Council in conjunction with forensic IT specialists CY4OR Ltd, to secure and collate electronically held documentation in a readily searchable form on the Clearwell database platform.
- 2 The personnel at the Council and tie likely to have been involved in relevant events were identified, following discussions with the Council. These included administrative or secretarial staff who may have issued e-mails on behalf of executives.
- 3 The relevant time envelope was identified as being from 1 June 2006 to 30 November 2010.
- 4 Electronic drawing files such as Primavera and AutoCAD were not included in the exercise. They were considered unlikely to be relevant to the exercise being carried out, and their significant data volumes would have added a disproportionate cost to the exercise.
- 5 Data falling outside these parameters was retained securely in its raw form, but was not processed and is therefore not presently accessible on the Clearwell system. If required, it ought to be capable of being processed and made searchable on Clearwell.
- 6 Information from mobile telephones or personal digital assistant handsets (such as BlackBerries) was not included.
- 7 Around 2TB (or 2000 GB) of electronic data was captured with the assistance of CY4OR.