



Scottish Information  
Commissioner

**Decision 092/2007 Mr Ian McCulloch and Glasgow Cultural Enterprises**

***Information about two murals commissioned by Strathclyde Regional Council***

**Applicant: Mr Ian McCulloch  
Authority: Glasgow Cultural Enterprises  
Case No: 200601981  
Decision Date: 26 June 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## **Decision 092/2007 Mr Ian McCulloch and Glasgow Cultural Enterprises**

***Information about two murals commissioned by Strathclyde Regional Council, including their ownership and re-location – information not held***

### **Relevant Statutory Provisions and other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 17(1) (Information not held); 20(1) (Requirement for review of refusal etc.); 21(4) (Review by Scottish public authority).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

### **Facts**

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Mr McCulloch sought information from Glasgow Cultural Enterprises (GCE) about two murals which were originally commissioned from him by Strathclyde Regional Council to hang in the Glasgow Concert Hall. GCE provided some information to Mr McCulloch but advised him it did not hold other information covered by his request.

After investigating, the Scottish Information Commissioner found that GCE had carried out extensive searches which were sufficient to establish that no additional information relevant to Mr McCulloch's request was held by GCE.

### **Background**

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1. GCE is a company set up and wholly owned by Glasgow City Council to run the Glasgow Concert Hall, among other functions. As such, it is a publicly owned company in terms of section 6 of FOISA and therefore a Scottish public authority in terms of section 3(1)(b) of FOISA.



2. On 21 March 2006 Mr McCulloch wrote to GCE with a request for the following information:
  - a) Minutes of meetings and other relevant papers relating to the setting up of GCE as a limited company (period c. January 1988 – April 1988).
  - b) Minutes of meetings and other relevant papers of GCE relating to the gift of two mural paintings to the Concert Hall by Strathclyde Regional Council to mark Glasgow's year as European City of Culture in 1990 (period c. April 1989 – December 1990).
  - c) Minutes of meetings of GCE and other relevant papers relating to the decision to remove the gifted mural paintings from the Concert Hall and relocate them in the Tramway (period December 1990 to December 1991 and following).
  - d) Minutes of meetings of GCE and other relevant papers relating to the location of the mural paintings subsequent to their removal from the Tramway during its renovation.
  - e) Information about the current ownership, location and condition of the mural paintings.
3. GCE replied on 18 April 2006. It stated that it held some but not all of the information requested, and provided Mr McCulloch with papers relating to the setting up of GCE.
4. GCE advised Mr McCulloch that in relation to his question about the current ownership, location and condition of the mural paintings (see paragraph 2(e) above), it was believed that the paintings were lent to GCE by Strathclyde Regional Council but remained the property of Strathclyde Regional Council until that body was dissolved and Glasgow City Council was formed in 1995. GCE assumed that ownership of the mural paintings would then have passed to Glasgow City Council as successor body and suggested that Mr McCulloch should address his request for information about the location and condition of the murals to Glasgow City Council, who might also be able to confirm their legal ownership.
5. GCE advised Mr McCulloch that it did not hold any other information relating to his request.
6. On 6 June 2006 Mr McCulloch requested a review of this response, in relation to his request for information about the presentation and removal of the paintings.



7. Mr McCulloch advised GCE that his own researches (in the archives of Strathclyde Region) had unearthed several minutes of meetings of the Board of GCE for the period covered by his request, in which the paintings were mentioned. Minuted discussions included the arrangements for the removal and replacement of the murals. Mr McCulloch therefore asked GCE to try once more to locate the information he had requested relating to the presentation and removal of the mural paintings. He particularly requested the minutes of 17 March 1989, 7 December 1990 including paragraph 6.4, 1 February 1991, 7 June 1991, 12 June 1991 and 2 August 1991.
8. After searching again, GCE wrote to Mr McCulloch on 6 July 2006 to advise him that it had located, and enclosed, copies of the minutes of the meetings of the Board on 12 June 1991 and 2 August 1991. However, it advised that the remaining minutes sought by Mr McCulloch were missing from GCE's files.
9. GCE also provided Mr McCulloch with some additional information which it believed was covered by his request, and advised him that it had requested a search within the Glasgow City Council archives for copies of the minutes he had requested; however, no information had been received from Glasgow City Council.
10. Mr McCulloch applied to me for a decision on 14 December 2006, believing that neither his initial information request nor his request for a review had been satisfactorily concluded. He included an account of events relating to the known history of the paintings and his own involvement as the commissioned artist.
11. Mr McCulloch's application was validated by establishing that he had made a request for information to a Scottish public authority (GCE) and had applied to me only after requesting a review of that authority's response.

## **The Investigation**

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12. A letter was sent to GCE on 5 January 2007, informing it that an appeal had been received and that an investigation into the matter had begun and seeking comments from GCE in terms of section 49(3)(a) of FOISA.
13. GCE replied on 25 January 2007, advising that it had not withheld any information from Mr McCulloch, and that Glasgow City Council had failed to trace any additional relevant information. GCE confirmed that it could add nothing to its original reply to Mr McCulloch in relation to the ownership, location and condition of the mural paintings, as it did not hold any information on these matters.



14. GCE was asked to provide additional information regarding its records management procedures and the searches carried out in connection with Mr McCulloch's request. GCE was also asked to comment on copies of letters from 1991 and 1995 (provided by Mr McCulloch) which stated that the mural paintings were at that time owned by GCE.
15. GCE responded to these points in a letter dated 20 March 2007.

## **The Commissioner's Analysis and Findings**

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16. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr McCulloch and GCE and I am satisfied that no matter of relevance has been overlooked.

### ***Adequacy of the searches carried out by GCE***

17. Section 1(1) of FOISA states:

"A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority."

GCE believe that Mr McCulloch has been provided with all information relating to his request which is currently held by GCE. The key question for me to consider in this decision is whether the searches carried out by GCE were sufficient to identify any information covered by Mr McCulloch's request and to substantiate the claim that no additional relevant information remained to be considered when responding to his request.

18. In terms of record-keeping, GCE has advised the investigating officer that it does not have a formal records management policy or a document retention schedule indicating the records retained for specified periods. GCE relies on its Company Secretary, Glasgow City Council, for the retention of papers considered by the Board. Although Glasgow City Council has a records management policy, this dates from 2001 and so is of limited relevance to Mr McCulloch's request for papers preceding that date by several years.
19. Enquiries by the Company Secretary have established that in the early 1990s the Town Clerk's Office did not have a formal file management system in place, which now makes it almost impossible to locate any files from that period still present in the basement of the building. The Company Secretary also discovered that a large number of files relating to the early days of GCE Ltd were inadvertently destroyed during a heating system installation a number of years ago.



20. In searching for information covered by Mr McCulloch's request, GCE was unable to draw upon any in-house knowledge of the records from the early 1990s, as none of the key officials had joined the company until many years later.
21. The Company Secretary provided a detailed description of the search procedure he had followed in establishing what information was held in relation to Mr McCulloch's request. He first made inquiries about the general files pre-dating local government re-organisation. This was followed by a manual trawl of the records passed to him when he took over GCE company secretarial duties in 2004. He consulted the officer previously responsible for these duties, who provided him with more boxes of files which were also checked. However, these documents were found to post-date the events to which Mr McCulloch's requests referred, with the exception of the minutes of the inaugural meeting of GCE Ltd.
22. The Company Secretary also consulted the senior archivist at the Mitchell Library, who advised that with the exception of a very small amount of information which was withheld as being exempt from disclosure under FOISA (in relation to a separate request), all information on the topic located within the City Archives had already been released to Mr McCulloch.
23. Thirdly, the Company Secretary described a search carried out by Glasgow City Council staff for legal files from the former Regional Council as recorded on a database which is still used to record transfers to the Archives. The Company Secretary requested a search of this database using a number of key terms relating to Mr McCulloch's request. This search retrieved some files, but none relating to the period covered by Mr McCulloch's request.
24. The Company Secretary noted that this search was carried out for the purposes of double-checking and to ensure his search was as thorough as possible: any files retrieved by this search would be held by the City Council rather than GCE Ltd, in terms of FOISA.
25. After discussion with the senior archivist at the Mitchell Library, the Company Secretary was able to confirm that most of the papers held there consisted of copies of board papers only, and did not include any correspondence. Nor was any correspondence included among the papers referred to in paragraph 21 above. The Company Secretary commented that most Council departments would keep correspondence files for between three and seven years, and it would be unlikely for general correspondence from the period covered by Mr McCulloch's request to have been retained.
26. As noted in paragraph 14 above, GCE was asked to comment on the contents of two letters held by Mr McCulloch, dating respectively from 1991 and 1995, which indicated that the mural paintings were at that time owned by GCE.



27. GCE was unable to comment on this point beyond confirming that a search had been made for any papers related to the murals, and all information found had been provided to Mr McCulloch.

### **Conclusion**

28. It is clear to me that GCE has made considerable efforts to establish whether information covered by Mr McCulloch's requests is still held either by the company itself or elsewhere within the local authority records. The retrieval of some relevant information has naturally caused Mr McCulloch to question why other information could not be provided. It has not been possible to determine exactly when or how the missing information was destroyed, but on the evidence of the extensive and thorough searches carried out by GCE I am satisfied that it does not now (and did not at the time it dealt with Mr McCulloch's request) hold any additional information relating to Mr McCulloch's request.
29. I note that the initial response to Mr McCulloch wrongly indicated that certain minutes, which were later provided, were not held. It is clear that the initial search for information relating to Mr McCulloch's request was not adequate, and to that extent GCE initially failed to fully comply with the provisions of FOISA. However, FOISA makes provision for applicants to request a review of a public authority's initial response, and for the public authority to substitute a different decision at that time (section 20(1) and section 21(4)(b) – see Appendix for full details). I am satisfied that GCE has now complied fully with the provisions of FOISA in relation to Mr McCulloch's request.

### **Decision**

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I find that Glasgow Cultural Enterprises acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McCulloch.



## **Appeal**

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Should either Mr McCulloch or Glasgow Cultural Enterprises 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 of receipt of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**26 June 2007**





## APPENDIX

### 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.

##### **17 Notice that information is not held**

- (1) Where
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

##### **20 Requirement for review of refusal etc.**

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

##### **21 Review by Scottish public authority**

- (...)
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
  - (b) substitute for any such decision a different decision; or
  - (c) reach a decision, where the complaint is that no decision had been reached.