



Scottish Information  
Commissioner

**Decision 083/2006 – Mr Najem Al Hasan,  
Expressplans.com, and South Lanarkshire Council**

*Various requests for information relating to South Lanarkshire  
Council's building control function*

**Applicant: Mr Najem Al Hasan, Expressplans.com**

**Authority: South Lanarkshire Council**

**Case No: 200502216**

**Decision Date: 18 May 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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KY16 9DS



## **Decision 083/2006 Mr Najem Al Hasan, Expressplans.com, and South Lanarkshire Council**

***24 requests for information relating to South Lanarkshire Council's building control function submitted via a questionnaire – appeal made in relation to the handling of seven requests – settlement attempted – applicant disputed the accuracy of the settlement response***

### **Facts**

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Mr Hasan, acting on behalf of Expressplans.com, submitted a questionnaire containing 24 separate requests for information to South Lanarkshire Council (the Council). The Council responded to 12 requests, but refused to provide a full response in relation to the remainder. Mr Hasan requested that the Council review its handling of the case in relation to seven of those requests, and subsequently made an application to the Commissioner.

During the course of the Commissioner's investigation, the Council issued a response to all seven disputed requests, in an attempt to settle the case. Mr Hasan, however, requested that the investigation be continued, on the grounds that he was dissatisfied with both the Council's handling of the requests and the accuracy of the information provided.

### **Outcome**

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The Commissioner found that the Council's settlement response in relation to the seven disputed requests represented a reasonable and appropriate response to those requests. The Commissioner therefore found that generally the Council had complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the requests.

The Commissioner also found, however, that the Council had committed technical breaches of sections 16(1), 19 and 21(10) of FOISA in its handling of Mr Hasan's information requests.



## Appeal

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Should either the Council or Mr Hasan wish to appeal against this decision, there is a right of 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 notice.

## Background

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1. Mr Hasan, acting as a representative of the architectural practice Expressplans.com, submitted 24 information requests to the Council on 17 February 2005. These 24 requests were made in the form of a questionnaire, and related to various aspects of the Council's building control function. A full copy of Mr Hasan's questionnaire is included as an Appendix to this Decision Notice.
2. The Council's response of 21 March 2005 provided information in relation to 12 of Mr Hasan's 24 requests (Questions 1-3, 12-13, 17-22 and 24). With regard to the remainder, the responses provided were as follows:

Questions	Response
Question 4	No response provided
Questions 5-11	<i>"Information may be obtained from public registers. Information not recorded in this format. PIs* indicate 60% [of applications] responded to in under 15 days."</i>
Question 14	<i>"Information may be obtained from public registers. Information not recorded."</i>
Question 15	<i>"3558 Applications received. Information not available. Vast majority lack information."</i>
Question 16	<i>"PIs indicate 96% approved within 6 days of all info being received. Information not held: In the main, applications are approved ASAP after info is received."</i>
Question 23	<i>"Information not recorded: Outstanding items/works would be referred to applicant for completion."</i>

\*PIs – Performance Indicators

3. On 16 April 2005 Mr Hasan requested that the Council review its decision not to provide information. It should be noted that, in this correspondence, Mr Hasan stated that he only wished the Council to review its decision in relation to Questions 5-11.



4. The Council's response to this request came in the form of a brief email, dated 6 May 2005. This email stated the following:  
  
*"The request for information is exactly as it suggests. The information requested in Q5-11 is not available in that format. This type of information would require a specific report(s) to be created for our Computer System. The FOI Act requires us to provide information held by ourselves. The requested information is not held."*
5. Mr Hasan submitted an application for decision to me on 1 July 2005. The case was assigned to an investigating officer.

## The Investigation

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6. Mr Hasan's appeal was validated by establishing that he had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
7. Mr Hasan's appeal to me was made in relation to his dissatisfaction with the Council's handling of Questions 4-11 and Question 14. Mr Hasan was, however, subsequently informed that I would only be able to consider his dissatisfaction in relation to Questions 5-11 at this time, as his request for review was made only in relation to those 7 questions. As a result, the authority had not, therefore, been given the opportunity to review its decision in relation to Questions 4 and 14.
8. On 11 July my investigating officer contacted the Council for its comments in relation to the case, as required in terms of section 49(3) of FOISA.
9. On receipt of this correspondence, the Council contacted my investigating officer by telephone. In this communication, the Council stated that Mr Hasan's request for review had not been appropriately recognised as such by the officer handling the request. The Council informed my investigating officer that it had in place a comprehensive process for the handling of FOISA reviews but that, as a result of the failure to appropriately identify the request for review, this process had not been followed in this case. Consequently, the Council stated that no formal review had been carried out. The Council informed my investigating officer that it intended to conduct a full review of Mr Hasan's requests as part of its response to my Office. The Council also indicated that the likely outcome of this review would be a move towards settlement of this case.



10. The Council conducted this review on 27 July 2005. Following completion, the Council contacted Mr Hasan to inform him that it believed the initial processing of his information requests to be flawed, and inconsistent with the requirements of FOISA. The Council concluded that the information it held in relation to Questions 5-11 of Mr Hasan's questionnaire should be disclosed. The Council stated that a computer programme was being written in order to generate the reports required to extract the information. As a result, the Council stated that the information would be made available to Mr Hasan, at no cost, by 4 August 2005.
11. A response in relation to Questions 5-11 was sent by the Council to Mr Hasan on 4 August 2005.
12. On 10 August 2005, my investigating officer contacted Mr Hasan to confirm whether he was satisfied with the information provided and, if so, whether it was his intention to withdraw his application to me. Mr Hasan informed my investigating officer at this time that no response had been received from the Council. Mr Hasan also stated that, regardless of the information supplied, he intended to continue to pursue his application to me, on the grounds that he believed that his requests had been mishandled by the Council.
13. My investigating officer then contacted the Council to confirm that the response had been appropriately dispatched to Mr Hasan. During these communications, it emerged that the Council's response had been sent to Expressplans.com's Glasgow address, as opposed to Mr Hasan's preferred Livingston address. A copy of the Council's response was subsequently forwarded to Mr Hasan by my investigating officer.
14. On receipt of this response, Mr Hasan contacted my investigating officer to further confirm his intention to pursue his application. In this correspondence, Mr Hasan stated that he believed the information provided by the Council to be 'highly inaccurate', and requested that the accuracy of the information provided form part of my consideration of this case.

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

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15. Mr Hasan's has indicated in his submissions to this Office that he is dissatisfied with the Council's response to his information requests for two key reasons. These can be summarised a follows:
  - The manner in which his information requests were handled by the Council



- The accuracy of the information provided in response to Questions 5-11

I will discuss each of these issues in turn below.

### ***The Council's handling of the information requests***

16. It is clear, from a review of this case, that the Council's handling of Mr Hasan's information requests fell short of the requirements of FOISA in a number of significant ways.
17. Firstly, in responding to Mr Hasan's initial requests, the Council failed to issue a formal refusal notice in relation to those requests where information was withheld, as required by section 16(1) of FOISA (or alternatively, as appropriate, a notice that the information was not held in terms of section 17 of FOISA. In doing so, the Council also failed to notify Mr Hasan of which, if any, of the FOISA exemptions were being applied to the refused information.
18. I also have concerns with regard to the Council's response to Mr Hasan's request for review. As described at paragraph 4 above, this response consisted solely of a short statement reiterating the position set out in the Council's initial response, with nothing to suggest that the matter had been reconsidered by the Council. Subsequent correspondence with the Council has indicated that no formal review of the request was undertaken, and that this arose as a result of the failure of the staff involved to recognise the request as a formal requirement for review under section 20 of FOISA.
19. It should also be noted that neither the Council's response to Mr Hasan's initial requests, nor its response to his request for review, contained details of Mr Hasan's rights of review and appeal, as required by sections 19 and 21(10) of FOISA.
20. In its submissions to this Office, the Council has fully acknowledged that significant errors were made with respect to its handling of Mr Hasan's information requests. The Council pointed out, however, that it had developed extensive procedures ensure the appropriate handling of requests under FOISA (copies of which were supplied to my investigating officer). The Council stressed that the errors in its handling of Mr Hasan's requests arose directly as a result of key personnel within the relevant Council department not being fully aware of either the obligations placed upon them by FOISA, or the internal processes and procedures established by the Council to ensure that these obligations were fulfilled.



21. The Council informed my investigating officer that it was instigating measures to address the issues which led to these failings, and stated that additional targeted training would be undertaken to reinforce awareness of both FOISA and the Council's internal procedures within relevant services, in order to ensure that errors of this nature could be prevented in future.
22. The Council also pointed out that a full formal review of the request was carried out once its review panel became aware of the request, and that this review resulted in the disputed information being released in full to Mr Hasan. The Council also claimed that, had Mr Hasan's request for review been identified as such on receipt and the appropriate procedures followed, the issue may well have been fully resolved prior to Mr Hasan's application to me.
23. Having reviewed the circumstances of this case it is clear to me that the Council breached the following sections of FOISA in its handling of Mr Hasan's information requests:
  - Section 16(1) – Failure to issue a formal refusal notice
  - Section 19 – Failure to inform Mr Hasan of his right to seek a review of the initial refusal of requested information and subsequently to appeal to me
  - Section 21(10) – Failure to inform Mr Hasan of his right of application to me in relation to the response to his request for review, and of his subsequent right of appeal to the Court of Session on a point of law.
24. I am satisfied, however, that the Council has since taken appropriate steps to address the issues faced in the handling of Mr Hasan's information requests. I do not, therefore, require the Council to take any remedial action in relation to these failures.
25. Finally, Mr Hasan has also stated in his submissions to this Office that he is dissatisfied with the fact that the Council's response to Questions 5-11 was sent to a Glasgow address for Expressplans.com, as opposed to his preferred Livingston address. Mr Hasan has argued that his questionnaire explicitly pointed out that replies should be sent to the address in Livingston (or to an email address provided), and that the company's Glasgow address is simply a registered address which is not used by the company for correspondence.
26. The Council has stated, however, that the correspondence from Mr Hasan which enclosed the questionnaire contained two addresses for Expressplans.com, one (the Livingston address) within the body of the text, and a second (the Glasgow address) attached as a 'footer' on the headed notepaper which was used. The Council pointed out that the Glasgow address was prefaced with the text 'Central mailing address' and, as a result, the Council took this address to have precedence over the Livingston address.



27. Having considered this issue, I am satisfied that the Council acted in good faith in responding to Mr Hasan at the Glasgow address provided. As noted by the Council, Mr Hasan's covering letter did indeed contain two mailing addresses, one of which, the Glasgow address, was described as Expressplans.com's 'Central Mailing Address'. As a result, I consider it entirely reasonable for the Council to have issued its response to that address.

***The accuracy of the information provided***

28. In his correspondence with this Office, Mr Hasan stated that he believed the information provided by the Council on 4 August 2005 in response to Questions 5-11 to be 'highly inaccurate'. Mr Hasan therefore requested that this investigation consider and assess the accuracy, or otherwise, of the information supplied.
29. In disputing the accuracy of the information provided, Mr Hasan has indicated that the responses supplied by the Council in relation to Questions 5-11 were inconsistent with Mr Hasan's own experience of the Council's Building Warrant system.
30. Specifically, Mr Hasan stated that he had previously been informed by the Council that it takes, on average, 8 weeks to assess an application. However, the Council's response indicated that 55% of applications were approved within 0-8 weeks of receipt. As a result, Mr Hasan noted with surprise that the Council's response suggested that a majority of applications appear to have been 'approved before they have been properly assessed'.
31. Questions 5-11 of Mr Hasan's questionnaire seek information on the number of Building Warrant Applications approved within a specific period of their being 'registered'. Both 'approved' and 'registered' are defined within the Glossary of Terms accompanying Mr Hasan's questionnaire (attached as an appendix to this decision), with 'registered' being defined as:

*"The formal acceptance of a "valid" application, also the date payment is taken for the application and/or when an application is given a unique reference number by the Local Authority."*

Mr Hasan suggested that the Council's response in relation to Questions 5-11 may have been provided from the date on which the Council 'validated' the application, as opposed to the date on which the application was 'registered'.





32. It should be noted that I have previously expressed concerns about the ambiguous nature of the wording of this definition of 'registered' in a previous Decision Notice (Decision 062/2006 - Mr Najem Al Hasan, Expressplans.com and North Ayrshire Council) . Mr Hasan indicated, however, in a submission to this Office during the investigation, that the key definition of 'registered' in which he was interested was the date on which payment was accepted in relation to the application.
33. The Council has, in its submissions to this Office, provided explicit assurances that the information supplied to Mr Hasan was generated using the 'registration' date, as opposed to any other date, as suspected by Mr Hasan. The Council has stated that it only 'registers' applications for Building Warrants when it considers that the application is complete. The Council added that that a completed application comprises the following:
- A completed application form
  - A fee based on the value of the work indicated on the application form
  - A plan or plans showing the proposal(s)

The Council also stated that the application is given a unique reference number when it is registered and, should an application be submitted without any of the three points outlined above being met, the application would not be registered at that time.

34. The Council also asserted that all information provided to Mr Hasan in response to Questions 5-11 was extracted from its computer system and presented to Mr Hasan as extracted and, as such, represented an accurate response to Mr Hasan's information requests based on the information held.
35. Having considered fully the circumstances of this case, I am satisfied that the information supplied in response to Questions 5-11 of Mr Hasan's questionnaire represents an reasonable and appropriate response to those requests. I am satisfied that the 'registration' date used by the Council is consistent with the definition provided by Mr Hasan, and also that the information provided accurately reflects that information held by the Council which can be provided in response. Beyond that, I cannot of course comment on the accuracy or otherwise of the information held by the Council.
36. As a result, I consider that the Council has fulfilled its obligations under Part 1 of FOISA in relation to this aspect of Mr Hasan's information requests.



## Decision

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I find that the information supplied by South Lanarkshire Council (the Council) during the course of my investigation in response to the disputed information requests represented a reasonable and appropriate response to those requests. As a result, I find that the Council generally complied with Part 1 of FOISA in dealing with those requests.

I also find, however, that the Council committed technical breaches of the following sections of FOISA in its handling of Mr Hasan's information requests:

- Section 16(1) – Failure to issue a formal refusal notice
- Section 19 – Failure to inform Mr Hasan of his right to seek a review of the initial refusal of requested information and thereafter to apply to me for a decision
- Section 21(10) – Failure to inform Mr Hasan of his right of application to me in relation to the response to his request for review, or of his subsequent right of appeal to the Court of Session on a point of law.

I am satisfied, however, that the Council has since taken appropriate steps to address the issues faced in the handling of Mr Hasan's information requests. I do not, therefore, require the Council to take any remedial action in relation to these failures.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**18 May 2006**



**APPENDIX:**

**Questionnaire submitted by the Mr Hasan to North Ayrshire Council**

**Questionnaire**

Please answer the following questions in the space provided. Any words highlighted in ***bold and italics*** is further explained in the Glossary to eliminate doubt of their meaning.

1. How many employees were permanently employed by the Building Control Section directly responsible for assessing and issuing Building Warrant applications in the calendar year 2003? (I.e. not administration staff).

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2. How many employees were permanently employed by the Building Control Section directly responsible for assessing and issuing Building Warrant applications in the calendar year 2004? (I.e. not administration staff).

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Between the period 1<sup>st</sup> January 2004 to 31<sup>st</sup> December 2004:

3. How many Building Warrant Applications were received by this Local Authority?

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4. How much fee income did these Building Warrant Applications generate for the Local Authority?

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5. How many Building Warrant Applications were ***approved*** within 4 calendar weeks of them being ***registered?***

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6. How many Building Warrant Applications were ***approved*** between 4 and 8 calendar weeks of them being ***registered?***

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7. How many Building Warrant Applications were **approved** between 8 and 12 weeks of them being **registered**?

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8. How many Building Warrant Applications were **approved** between 12 and 16 calendar weeks of them being **registered**?

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9. How many Building Warrant Applications were **approved** between 16 and 20 calendar weeks of them being **registered**?

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10. How many Building Warrant Applications were **approved** between 20 and 26 calendar weeks of them being **registered**?

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11. How many Building Warrant Applications were **approved** over 26 calendar weeks of them being **registered**?

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12. How many Building Warrant applications were **refused**?

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13. How many **refused** Building Warrant Applications were the subjects of an appeal heard by a Sheriff?

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14. How many Building Warrant applications were **registered** and **approved** without the need for a "**Plan Assessment/Crit/First Report**" letter, i.e. the proposals as submitted fully complied with the Building Standards (Scotland) Regulations.

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15. How many Building Warrant applications were **registered** but subsequently could not be assessed for compliance with the Building Standards (Scotland) Regulations due to a lack of information?

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16. From your answer to question 15 above, how many of these applications were then **approved** once the information requested by Building Control was furnished in support of the Building Warrant Application?

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17. How many "**Letter of Comfort**" requests did this Local Authority receive?

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18. How many "**Letter of Comfort**" were issued by this Local Authority?

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19. How much fee income was generated for the Local Authority by issuing "**Letter of Comfort**"?

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20. How many cases were referred to the Procurator Fiscal where individuals/organisations had carried out works without obtaining a Building Warrant prior to commencing the works.

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21. How many cases were referred to the Procurator Fiscal where individuals/organisations had occupied or used a building without having obtained a **Completion Certificate**?

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22. How many **Completion Certificates** were issued?

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23. How many **Completion Certificates** did the Local Authority refuse to issue?

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24. Please supply us with the standard letter issued by this Local Authority to inform the Applicant/Agent of non compliance – i.e. the cover letter sent with the "**Plan Assessment/Crit/First Report**"

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## **Glossary**

**“approved”** – The formal issuing of a Building Warrant – i.e. the date on the approved set of plans returned to the Applicant.

**“registered”** – The formal acceptance of a “valid” application, also the date payment is taken for the application and/or when an application is given a unique reference number by the Local Authority.

**“refused”** – The rejection of a previously **registered** application for whatever reason.

**“Plan Assessment/Crit/First Report”** – Correspondence from the Local Authority/Building Control/Building Control Officer requesting clarification, further information and/or indicating non compliance with the Building regulations.

**“Letter of Comfort”** – Letter issued by the Local Authority after works have been carried out by an individual/organisation without the necessary Warrants in place.

**“Completion Certificate”** – Certification issued by the Local Authority confirming the works specified in the Building Warrant Application have been done in accordance with the Building Regulations as far as can be ascertained.