



Scottish Information
Commissioner

**Decision 091/2006 – MacRoberts Solicitors and
East Renfrewshire Council**

*Request for a list of all domestic properties and a list of all non
domestic properties.*

**Applicant: MacRoberts Solicitors
Authority: East Renfrewshire Council
Case No: 200501676
Decision Date: 1 June 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 091/2006 – MacRoberts Solicitors and East Renfrewshire Council

Request for a list of all domestic properties and a list of all non domestic properties – withheld on the basis of section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA) – information otherwise accessible

Facts

MacRoberts Solicitors (MacRoberts) submitted two information requests to East Renfrewshire Council (the Council) for a list of all domestic properties and a list of all non domestic properties. The Council did not disclose this information to MacRoberts on the basis that the information was available via the publication scheme of the Assessor for Renfrewshire Valuation Joint Board (the Assessor), and was therefore exempt under section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA) as it was information that was otherwise accessible. The decision was upheld by the Council on review and MacRoberts applied to the Commissioner for a decision.

Outcome

The Commissioner found that the Council had applied the exemption under section 25 of FOISA correctly in withholding the information, and as a result, that section 1(1) of FOISA was applied correctly. The Commissioner therefore found that there was no breach of Part 1 of FOISA.

The Commissioner found that the Council did not provide the applicant with full details of their right to request a review of the Council's decisions, contrary to section 19 of FOISA.



Appeal

Should either MacRoberts or the Council 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 the receipt of this notice.

Background

1. MacRoberts made two separate requests to the Council on 28 February 2005, one for a list of all domestic properties and one for a list of all non domestic properties. Both of these requests are being considered in this decision notice.
2. The information requests that were submitted by MacRoberts clearly stipulated that they did not require any details of the owner/proprietor/occupier of the premises. MacRoberts also indicated the preference that this information should be provided to them in electronic form, failing which in hard copy.
3. The Council responded to MacRoberts on 1 April 2005, indicating that it was refusing to release the information on the basis that it was exempt from disclosure under section 25 of FOISA.
4. MacRoberts sought a review of the Council's decisions in relation to both requests in emails dated 14 April 2005.
5. The Council responded on 26 April 2005. It upheld its original decisions to withhold the information on the basis of the exemption under section 25 of FOISA.
6. On 3 May 2005, MacRoberts applied to me for a decision as to whether the Council had breached Part 1 of FOISA in withholding the information. The case was subsequently allocated to an investigating officer.



The Investigation

7. The two applications submitted by MacRoberts were validated by establishing that valid requests had been made to a Scottish public authority under FOISA, and had been appealed to me only after requesting that the authority review its decisions.
8. This case was investigated alongside seven other similar appeals from MacRoberts regarding refusals by other local authorities in Scotland to provide copies of lists of domestic properties and lists of non domestic properties.
9. A letter was sent by the investigating officer to the Council on 10 April 2006, asking for its comments on MacRoberts applications in terms of section 49(3)(a) of FOISA. The Council was asked to provide, amongst other items, details of the information that has been withheld and a sample of the lists of information which were withheld. The Council was also asked to provide a detailed analysis of its use of the exemption under section 25 of FOISA.

Submissions from the Council

10. As mentioned above, the Council has relied on the exemption under section 25 of FOISA to justify withholding the information that has been requested by MacRoberts.
11. I will consider the Council's reasoning for relying on this exemption further in the section on Analysis and Findings below.

The Commissioner's Analysis and Findings

12. In its response to my Office, the Council advised that it did not wish to make separate submissions in relation to this case. I do note from the copies of the letters that have been forwarded to me by MacRoberts that the Council was relying on the exemption under section 25 of FOISA for withholding the information, on the basis that the information is otherwise accessible as defined in section 25 of FOISA.



13. The exemption under section 25 of FOISA exempts information which the applicant can reasonably obtain other than by requesting it under section 1(1). The exemption under section 25 is an absolute exemption; this means that where a public authority finds that the information that has been requested falls within the terms of section 25 of FOISA then the information is exempt from disclosure. There is no requirement for the public authority to consider the terms of the public interest test in this case.

The application of section 25 – information otherwise accessible

14. The exemption under section 25 of FOISA states:

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- (2) For the purposes of subsection (1), information –
- (a) may be reasonably obtainable even if payment is required for access to it;
 - (b) is to be taken to be reasonably obtainable if-
 - (i) the Scottish public authority which holds it, or any other person, is obliged by or under any enactment to communicate it (otherwise than by making it available for inspection) to; or
 - (ii) the Keeper of the Records of Scotland holds it and makes it available for inspection and (in so far as practicable) copying by, members of the public on request, whether free of charge or on payment.
- (3) For the purposes of subsection (1), information which does not fall within paragraph (b) of subsection (2) is not, merely because it is available on request from the Scottish public authority which holds it, reasonably obtainable unless it is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.
15. In justifying its reliance on the exemption under section 25, the Council has indicated in its letters to MacRoberts that the information that MacRoberts are seeking is contained in the Council Tax Valuation List and the Valuation Roll. The Council indicates in its letters to MacRoberts in responses to their requests for information that both of these documents are available via the publication scheme for the Assessor.



16. The Council submits that the Valuation Roll is a public document which contains an entry for all non domestic properties in the Assessor's area, except those excluded by law. The Council has also submitted that the Assessor is responsible for the preparation and maintenance of the Council Tax Valuation List this is a list of domestic properties.
17. The Council has advised during communication with the investigating officer in the course of this investigation that it does hold the information that has been requested by MacRoberts. The Council states that this information is provided to it by the Assessor for the purposes of administering Council Tax and non domestic rates.
18. The Council has explained that the Assessor is an independent statutory officer who is appointed under section 27(2) of the Local Government etc (Scotland) Act 1994. The Council has also advised that both the Assessor and the Valuation Joint Board are separate Scottish public authorities designated under Part 3 Schedule 1 of the FOISA. Therefore, the Assessor is a Scottish public authority for the purposes of FOISA.
19. In its response to MacRoberts, the Council advised that the information requested by MacRoberts was available via the publication scheme of the Assessor. The Council provided MacRoberts with the address for the Assessor and the title of the documents that contain the information requested.
20. During communication with the Council in the course of this investigation, the Council submitted to the investigating officer that it did check the publication scheme for the Assessor to ensure that the information was available in it, prior to refusing MacRoberts requests. The Council explained that it did not contact the Assessor directly.
21. In order to determine whether the Council has relied on the exemption under section 25 correctly, I must be satisfied that the information which MacRoberts have requested is otherwise accessible.
22. In determining whether this is the case I have considered the information that is contained in the letters that the Council wrote in response to MacRoberts. I have also considered the information which was provided by the Council to the investigating officer during the course of the investigation. Finally I have considered the terms of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (the Section 60 Code) and the content of my own guidance note on the application of the section 25 exemption.



23. As expressed in my guidance note on the application of the exemption under section 25 of FOISA, it is my view that where a public authority receives a request for information which they hold but which has not been made available under their publication scheme, and is aware that the information is already available through another public authorities publication scheme, then it would be open to the authority to claim that the information is otherwise accessible. However, the public authority should check that the information is in fact available from the other authority before refusing an applicant's request on these grounds. From the information that I have received from the Council I am satisfied that the Council does hold this information. I am also satisfied that although the Council did not contact the Assessor directly, it did check the publication scheme to ascertain if the information was available from it prior to responding to MacRoberts. I am also satisfied that the Assessor is under a statutory obligation to prepare and maintain these lists.
24. As has been shown above, the Assessor is a Scottish public authority for the purposes of FOISA. Under section 23 of FOISA each public authority, as defined in FOISA, is required to adopt and maintain a publication scheme approved by me. The purpose of the scheme is to provide access to information that an authority readily makes available, without an applicant having to go through the formal process within FOISA.
25. Each publication scheme sets out the classes of information that are published by the authority, and for each class, detail the manner in which the information is made available, and whether a charge will apply.
26. Section 25(3) of FOISA creates the presumption that where information is made available in accordance with an authority's publication scheme, it is reasonably accessible, and so subject to an absolute exemption from release under the terms of Part 1 of FOISA. Instead, the information should be made available under the terms set out in the publication scheme.
27. In communication with the investigating officer during the course of the investigation, the Council did provide me with a website link to the Assessor's publication scheme. I am satisfied that the information which MacRoberts have requested is available via the publication scheme. Section 9d and 9e of the Assessor's publication scheme lists the information requested by MacRoberts under the headings of Valuation Rolls and Council Tax Lists. The publication scheme also indicates that there is a charge levied for obtaining these documents, although it does not specify exactly what the charge is.
28. I am satisfied that the information that has been requested is available from another authority's publication scheme. I am satisfied that this information is therefore exempt from release by virtue of section 25 of FOISA.



Decision

I find that East Renfrewshire Council (the Council) dealt with MacRoberts' requests for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). I find that the exemption in section 25 was relied upon correctly by the Council, and as a result, that section 1(1) of FOISA was applied correctly.

Kevin Dunion
Scottish Information Commissioner
1 June 2006