



Scottish Information  
Commissioner

**Decision 104/2006 – Mr Brian Smith and The  
Assessor for Tayside Valuation Joint Board**

*Request for all the domestic property information for all of the  
dwellings held by the Assessor for Tayside Valuation Joint Board.*

**Applicant: Mr Brian Smith**

**Authority: The Assessor for Tayside Valuation Joint Board**

**Case No: 200600083**

**Decision Date: 21 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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## **Decision 104/2006 – Mr Brian Smith and the Assessor for Tayside Valuation Joint Board**

***Request for all of the domestic property information for all of the dwellings held by the Assessor for Tayside Valuation Joint Board- withheld on the basis of section 35(1)(d) of the Freedom of Information (Scotland) Act 2002 (FOISA) – law enforcement; section 36(2) – confidentiality; section 38(1)(b) – personal information; section 12 – excessive cost of compliance.***

### **Facts**

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Mr Smith submitted an information request to the Assessor for Tayside Valuation Joint Board (the Assessor) for all of the domestic property information for all of the dwellings held by the Assessor. In this request, Mr Smith sought information about 13 separate aspects of each property. The Assessor provided Mr Smith with a refusal notice indicating that the information was held by him but was exempt under section 35(1)(d) (disclosure would, or would be likely to, prejudice substantially the assessment or collection of any tax or duty (or any other imposition of a similar nature) and section 36(2) (actionable breach of confidence) of the Freedom of Information (Scotland) Act 2002 (FOISA). This decision was upheld by the Assessor on review. Mr Smith then applied to the Commissioner for a decision. In subsequent correspondence with the Commissioner, the Assessor indicated that he also wished to rely on the exemption under section 38(1)(b) of FOISA, on the basis that the information is exempt as it is personal data. The Assessor also advised that he wished to rely on the terms of section 12 of FOISA to withhold the information on the basis that the cost of complying with the request for information is excessive.

### **Outcome**

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The Commissioner found that the Assessor had complied with Part 1 of FOISA in withholding the information requested from Mr Smith in that he was correct to withhold the information from Mr Smith on the basis that the cost of complying with the request would be excessive.



## Appeal

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Should either Mr Smith or the Assessor 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.

## Background

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1. On 16 May 2005, Mr Smith submitted an information request to the Assessor for domestic property information for all of the dwellings held by the Assessor. Mr Smith stated in his information request that for each dwelling he wanted details of classification, age, storeys, degree of attachment, apartments, area, central heating, extra sanitary fittings, double glazing, swimming pools, tennis courts, garages and other outbuildings.
2. The Assessor responded to Mr Smith on 14 June 2005 and provided him with a refusal notice, stating that he was withholding all the information from him. The Assessor cited the exemptions under section 35(1)(d) and section 36(2) of FOISA for withholding the information from Mr Smith.
3. Mr Smith submitted a request for review to the Assessor on 21 June 2006.
4. On 20 July 2005, the Assessor responded to Mr Smith's request for a review and upheld his original decision to withhold the information.
5. On 29 December 2005, Mr Smith applied to me for a decision as to whether the Assessor had breached Part 1 of FOISA in withholding the information. The case was subsequently allocated to an investigating officer.

## The Investigation

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6. Mr Smith's appeal was validated by establishing that he had made a valid information request to a Scottish public authority under FOISA and had appealed to me only after asking the Assessor to review his response to his request.



7. A letter was sent by the investigating officer to the Assessor on 16 January 2006. In this letter, the investigating officer asked the Assessor to comment on Mr Smith's application in terms of section 49(3)(a) of FOISA. The Assessor was also asked to provide, amongst other items, a copy of the information which had been withheld from Mr Smith and a detailed analysis of the exemptions that he had relied on in withholding the information from Mr Smith. The Assessor was also asked to provide a detailed analysis of its consideration of the public interest test in relation to these exemptions.

### **Submissions from the Assessor**

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8. In his submissions to my Office, the Assessor sought to rely on the exemptions under section 35(1)(d), section 36(2) and, additionally, section 38 for withholding the information from Mr Smith.
9. The Assessor also indicated that the cost of complying with Mr Smith's request would be £898.08 and that, under section 12 of FOISA, he was therefore not obliged to comply with the request as the cost of compliance was above the threshold set by the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
10. The Assessor has submitted that his response to Mr Smith in respect of the initial refusal to disclose information and the subsequent review decision were based on his reliance on the exemptions under sections 35 and 36 of FOISA. As a result, the cost of providing the information to Mr Smith was not considered at that time, and was only calculated in response to my Office's request for comments.
11. I will consider the Assessor's submissions further in the section on Analysis and Findings below.

### **Submissions from Mr Smith**

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12. Mr Smith provided detailed submissions to my Office in relation to the reliance of the Assessor of the exemptions in section 35 and 36 of FOISA. For reasons which will become clear below, I do not find it necessary to summarise Mr Smith's submissions in this decision.



## The Commissioner's Analysis and Findings

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13. In his response to my Office, the Assessor provided a sample of the information which Mr Smith has requested. The Assessor advised that to provide the information Mr Smith has requested would mean that he would have to provide full details for 198,000 dwellings in Tayside and that the cost of providing the information to him would be £898.08.
14. Although the Assessor did not indicate at the time that he responded to Mr Smith's request for information or to his requirement for review that he wished to rely on section 12 of FOISA, I am required to take section 12 into account in considering Mr Smith's application.

### The application of section 12 – Excessive cost of compliance

15. Section 12 of FOISA relates to excessive cost of compliance. This section provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of compliance will exceed the amount set out in the Fees Regulations. The limit set by the Fees Regulations is currently £600. Therefore, where a Scottish public authority finds that the cost of complying with a request exceeds £600, it does not have to comply with the request.
16. The projected costs that the public authority can take into account in relation to the request for information are the total costs, whether direct or indirect, which the public authority reasonably estimates it will incur in locating, retrieving and providing the information requested. The public authority may not charge for the cost of ascertaining whether it actually holds the information or whether or not it should provide the information.
17. In calculating the projected costs, the Fees Regulations have placed a cap on the maximum hourly rate that a public authority can charge for staff time. The maximum rate that can be charged is £15 an hour.
18. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) sets out how public authorities should calculate the projected costs.
19. The Assessor has advised that the cost of providing the information to Mr Smith would be £898.08 and provided me with a breakdown of the estimated costs.



20. During the investigation, the investigating officer clarified with the Assessor how particular costs were calculated and, in particular, why in one instance the Assessor was looking to charge the maximum hourly rate of £15 for one member of staff. In his response, the Assessor advised that the action of extracting this particular data from the database and setting up a report format and arranging printing would form part of the normal duties of the IT Manager and that if this task were to be performed by either of the other two members of staff within the IT section the task would take longer and would therefore be less cost efficient. Further, the Assessor advised the investigating officer that the hourly rate for the IT Manager did not include any central charges and was simply a breakdown of their hourly rate from their gross salary.
21. The investigating officer also sought clarification from the Assessor in relation to the cost detailed for the cost of a printer cartridge and whether this cost included any other charges. The Assessor advised that the cost detailed was purely the cost of the printer cartridge itself and no other charges had been taken into account.
22. In order to determine whether the Assessor was correct to apply the terms of section 12 to Mr Smith's request for information, I must be satisfied that the cost to the Assessor of locating, retrieving and providing the information would exceed £600.
23. In determining whether this is the case, I have taken into consideration the submissions made by the Assessor, as indicated above, particularly the cost breakdown that the Assessor has provided. I have also taken into account the requirements laid down in the Fees Regulations 2004 and the Section 60 Code.
24. I am satisfied that the cost of providing this information to Mr Smith would exceed the prescribed limit laid down in the Fees Regulations. I am satisfied that the costs that the Assessor has considered are reasonable and that they are costs which he is entitled to consider when estimating the projected costs of compliance. As a result, I am satisfied that the Assessor has relied on the terms of section 12 of FOISA correctly.
25. I am, however, concerned that the matter of costs was only raised after Mr Smith had made an application to me. If a public authority intends to refuse to deal with an information request on the grounds of excessive cost, then this should be raised with the person making the request at as early a stage as possible. This will then allow the applicant to narrow down their request to ensure that the request falls within the £600 limit set by the Fees Regulations.



26. As mentioned previously, the Assessor also relied on the exemptions under sections 35, 36 and 38 in withholding this information from Mr Smith. Since I have found that the Assessor relied correctly on the application of section 12 of FOISA, I cannot compel the Assessor to disclose the information to Mr Smith. As a result I have not considered the application of the exemptions under sections 35, 36 & 38.

## **Decision**

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I find that the Assessor for the Tayside Valuation Joint Board (the Assessor) dealt with Mr Smith's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). I find that the terms of section 12 of FOISA were relied upon correctly by the Assessor and, as a result, that section 1(1) was applied correctly.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**21 June 2006**