



Scottish Information
Commissioner

**Decision 135/2006 – Mr Najem Al Hasan,
Expressplans.com, and Stirling Council**

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

Applicant: Mr Najem Al Hasan, Expressplans.com

Authority: Stirling Council

Case No: 200501697

Decision Date: 14 July 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 135/2006 Mr Najem Al Hasan, Expressplans.com, and Stirling Council

24 requests for information relating to Stirling Council's building control function submitted via a questionnaire – appeal made in relation to the handling of 17 of those requests — Section 25 (Information otherwise accessible) – Section 12(1) (Excessive cost of compliance)

Facts

Mr Hasan, acting on behalf of Expressplans.com, submitted a questionnaire containing 24 separate requests for information to Stirling Council (the Council). The Council refused information in response to 17 of these requests, and Mr Hasan subsequently appealed to the Commissioner.

The Council argued in relation to the majority of the requests that the provision of a response to Mr Hasan would require it to analyse the raw data it held, and that it was not obliged by the Freedom of Information Scotland Act 2002 (FOISA) to undertake such analysis.

The Council also argued, in its submissions to the Commissioner, that section 25 of FOISA (Information otherwise accessible) and section 12(1) of FOISA (Excessive cost of compliance) could be applied in relation to some of Mr Hasan's information requests.

Outcome

The Commissioner found that the Council failed in relation to the sections 16(1) and 19 of FOISA in its handling of Mr Hasan's information requests.

The Commissioner also found that the Council failed to act in accordance with Part I of FOISA in its refusal to respond to the following 13 information requests contained within Mr Hasan's Questionnaire:

- Question 4; Question 5; Question 6; Question 7; Question 8; Question 9; Question 10; Question 11; Question 14; Question 17; Question 18; Question 19; and Question 22.



The Commissioner required the Council to provide Mr Hasan with a full and accurate response to each of the above requests.

The Commissioner also found that the Council was entitled to refuse to respond to Questions 15 and 16 on the grounds that section 12 of FOISA (Excessive cost of compliance) applied to the requested information, and Questions 3 and 12 on the grounds that the information fell under section 25 of FOISA (Information otherwise available).

Appeal

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

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 17 March 2005 provided information in relation to 6 of Mr Hasan's 24 requests (Questions 1, 2, 13, 20, 21 and 24). With regard to the remainder, the responses provided were as follows:

Questions	Response
Question 3	<i>"The separate pieces of data necessary for analysis to obtain the information requested is available from the Building Control register. This register is available for the public to view during normal office hours. The information is also available in the weekly building control schedules which are published in the Building Control service website at www.stirling.gov.uk. The specific information requested does not currently exist within any reports produced by the Service."</i>



Questions 4-11, 22	<i>"The separate pieces of data necessary for analysis to obtain the information requested is available from the Building Control register. This register is available for the public to view during normal office hours. The specific information requested does not currently exist within any reports produced by the service."</i>
Question 12	<i>"The separate pieces of data necessary for analysis to obtain the information requested is available from the Building Control register. This register is available for the public to view during normal office hours. The information is also available in the weekly building control schedules which are published in the Building Control service website at www.stirling.gov.uk."</i>
Questions 14-19, 23	<i>"The specific information requested does not currently exist within any reports produced by the service."</i>

3. On 19 April 2005 Mr Hasan requested that the Council review its handling of his information request. The Council responded to this request on 27 April 2005. In this response, the Council informed Mr Hasan that, although in some cases data is held from which the requested information could be calculated, the Council did not analyse the data in a way which produces reports providing the requested information. The Council went on to state that it was not required to carry out analysis to provide information requested under FOISA.
4. Following its review of Mr Hasan's request, the Council stated that its response would not be amended from its initial response of 17 March in relation to 15 of the requests. These were Questions 3-12, 14, 17-19 and 22. In relation to three of the requests, Questions 15,16 and 23, the Council amended its response as follows:

Questions	Response
Questions 15 and 16	<i>"We do not have data from which the requested information could be compiled on any timeframe"</i>
Questions 23	<i>"This information is not held"</i>

5. Mr Hasan submitted an application for decision to me on 4 May 2005. The case was assigned to an investigating officer.



The Investigation

6. Mr Hasan's appeal was validated by establishing that he had made a request for information to a Scottish public authority (the Council), 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 3-12, 14-19, and 22. In his application, Mr Hasan stated that he was dissatisfied with the Council's failure to provide a response to these 17 questions. Mr Hasan indicated his belief that the information should be easily accessible through the Council's systems, and that retrieval of the information would simply require the Council to refine its search criteria.
8. My investigating officer contacted the Council to seek its submissions in relation to this case in terms of section 49(3)(a) of FOISA.

Submissions from the Council

9. During the course of this investigation the Council have made various submissions to this Office. I will summarise the content of these below.
10. The Council first acknowledged that its responses to both Mr Hasan's initial request and his request for review were inconsistent with the requirements of FOISA, in that they did not include a statement of the reason for refusal under FOISA and, where an exemption was considered to apply, they did not refer to the specific exemption, nor set out why it applied. The Council also acknowledged that it failed to provide Mr Hasan with details of the appeals process under FOISA.
11. In its submissions, the Council reiterated its view that the information requested by Mr Hasan was not available within any existing reports. Nevertheless, the Council acknowledged that responses to Mr Hasan's request could be extracted from data held by the Council. The Council went on to argue, however, that FOISA does not require it to analyse data to obtain information which can be provided in response to requests and that the extraction of relevant data from its systems would constitute such analysis.
12. For the majority of the responses, therefore, the Council suggested that Mr Hasan access the raw data directly from available Council resources, and conduct his own analysis to determine the responses to his specific questions.



13. The Council provided further comment in relation to the 17 information requests which form the basis of Mr Hasan's application to me by grouping the remaining questions together. These 'group' responses are summarised as follows:

Group 1 (Questions 3, 5-12 and 22)

14. In relation to the questions falling within Group 1, the Council stated, in its initial submission to my Office, that the information was, in its view, otherwise accessible and therefore exempt under section 25 of FOISA. The Council reiterated its view that the requested information can be calculated from separate pieces of data contained within its Building Control Register (the Register), and that this register is available for public inspection. The Council provided an extract from its Register alongside its submissions.
15. In response to further questioning from my investigating officer, the Council indicated that it considered that section 25(1), read in conjunction with section 25(2)(b)(i) of FOISA, applied to the information requested under the Group 1 questions.
16. Section 25(1) is an absolute exemption which states that information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. Section 25(2)(b)(i) goes on to state that, for the purposes of section 25(1), information is to be taken to be reasonably obtainable if 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 members of the public on request, whether free of charge or on payment.
17. The Council argued that its Building Control Register (the Register) should be considered to be reasonably obtainable under the terms of section 25(1) read in conjunction with section 25(2)(b)(i), in that the Council is required by regulation 58(2) of the Building (Procedure) (Scotland) Regulations 2004 (the 2004 Regulations) to provide copies of documents contained within the Register on payment of a fee.
18. Regulation 58 of the 2004 Regulations deals with the right to inspect records held in relation to building standards, and provides rights of access to the Register itself. Regulation 58 states the following:

“Inspection of records and applications

(1) Subject to paragraph (3), Parts I and II of the building standards register shall be available for inspection by the public at all reasonable hours and without prejudice to that generality Part I shall be published on a website maintained by the relevant local authority.



(2) Subject to paragraph (3), the local authority shall on payment of the appropriate fee provide copies of any of the documents contained in Part II of the building standards register.

(3) Documents shall not be available for inspection in terms of paragraph (1) or for copying in terms of paragraph (2) in the cases to which paragraphs (4) and (5) apply.

(4) This paragraph applies to cases where disclosure or copying would raise security concerns but not where the owner of the building to which the documents relate has consented, in writing, to that disclosure or copying.

(5) This paragraph applies where the relevant building is a residential building unless the application is by an interested party and for the purposes of this paragraph "interested party" means any owner, occupier, tenant or prospective tenant."

19. The Council therefore argued that the data from which the responses to Mr Hasan's information requests could be extracted is contained within Part II of the Register, and that regulation 58(2) of the 2004 Regulations places an obligation upon them to communicate information contained within the Register on request. As a result, the Council argued that the requested information should be exempted under section 25(1) of FOISA.
20. The Council further stated that the data from which the requested information could be calculated was available in Part I of the Register, and that Part I of the Register is available for inspection on Council premises. The Council implied that this further supported its argument that Mr Hasan's requests in relation to the Group 1 Questions should be considered to be exempt under section 25(1) of FIOSA.
21. In relation to Questions 3 and 12, the Council also stated that the data from which relevant information could be extracted was available within the Council's weekly building control schedules, which are published on the Council's website.

Group 2 Questions (Questions 17-19)

22. In relation to the Group 2 questions, the Council's submissions stated that, during preparation of its response to my Office, it had emerged that the requested information in relation to these three questions may be extracted from an Excel spreadsheet which recorded details of 'Letters of Comfort'. However, the Council went on to argue that it does not produce any reports from this spreadsheet and that, therefore, it was again not required to analyse data to generate a response to Mr Hasan's requests.



23. In a later submission, the Council revised its position in relation to Questions 18 and 19, stating that the data from which the information could be extracted was not, on further investigation, contained within the aforementioned spreadsheet. The Council confirmed, however, that copies of Letters of Comfort were contained within a Microsoft Word electronic folder and that it would, therefore, be possible to calculate the number of letters issued within a specific time period. As there was a standard fee for the issue of such letters, it was also stated that the response to Question 19 could be extracted from the information contained in this folder.
24. In a further submission, the Council again revised this assessment, stating that the information required to respond to Question 18 was in fact available from the Excel spreadsheet described initially after all. In addition, the Council stated that there was not, in fact, a standard fee for the issue of Letters of Comfort, and the fee varied depending on the age of the building work to which a request for a Letter of Comfort relates. The Council stated, however, that the extraction of a response to Question 19 from Council systems was "*relatively straightforward*".
25. The Council's position remained, however, that it was not required to analyse data to retrieve the requested information.

Group 3 Questions (Questions 15 and 16)

26. The Council's response to Mr Hasan's request for review stated that the Council did not "*have data for which the requested information could be supplied on any timeframe*". In its submissions to my Office, the Council stated that this response should have been issued as a notice under section 17 of FOISA, informing Mr Hasan that the requested information was not held.
27. The Council went on to state, however, that it had since discovered that, while the requested information could not be retrieved from its database, it would be retrievable from individual application files. The Council proceeded to assert that the cost of retrieving the information from these files would exceed the upper cost limit prescribed by the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), therefore suggesting that responses to the Group 3 questions should be refused under section 12 of FOISA (excessive cost of compliance).



Group 4 Question (Question 4)

28. In relation to Question 4, the Council pointed out that it had previously responding to Mr Hasan by providing the same answer as to the Group 1 questions – namely that the requested information could be calculated from the data available in the Register. The Council's submission to my Office, however, stated that it had since been discovered that the fee information which might be provided in response to Question 4 was no longer contained within the Register.
29. The Council stated that fee information is now available through the Council's ledger system, and that the Council produces reports from this system for relevant managers on the basis of the financial year. The Council pointed out that a figure is not produced from the system based on the exact calendar year, as requested by Mr Hasan, and stated that it would require a query to be written by a member of the IT Team for this information to be extracted.
30. The Council again suggested, therefore, that it considered the retrieval of the relevant information from this system to require analysis of information, which it was not required to undertake under FOISA.

Group 5 Question (Question 14)

31. The Council's response to Mr Hasan's request for review again stated that the "*specific information does not currently exist within any reports produced by the service*", indicating that the Council's intention was again to suggest that the requested information was not held.
32. However, the Council once again stated that, in preparing its submission to my Office, it had identified information from which a response to the request might be extracted. Specifically, the Council stated that there is a field within its database from which the requested information could be calculated.
33. The Council again asserted, however, that it believed that it was not required to "*analyse data to produce information requested under the Act*".



The Commissioner's Analysis and Findings

34. Before proceeding to address the Council's response in relation to the specific information requests made by Mr Hasan, I wish to first address the general view taken by the Council, repeated throughout its communications with both Mr Hasan and my Office, that it is not required by FOISA to respond to the majority of Mr Hasan's information requests, for the reason that FOISA does not require it to *'analyse data to obtain information requested under the Act'*.
35. The general entitlement to information which FOISA provides is set out clearly and unambiguously in section 1(1) of FOISA. This states that:
- "A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority."*
36. The Council has acknowledged, in relation to each of the disputed questions, that it holds raw data from which the requested information can be extracted. Nevertheless, while it has not expressly argued that the information is not held, it has, in its submissions, referred to the extraction of the information as the *"creation of new information"*.
37. It is my view that the information requested by Mr Hasan in relation to the disputed requests is clearly held by the Council, for the reason that it holds the raw data from which the information can be extracted. As set out above, the Council have tentatively suggested that the extraction of the requested information might be considered to be the creation of 'new information'. I do not, however, accept that this is the case. Indeed, and as set out in paragraphs 31-33 of my previous Decision 066/2005, I consider that the extraction of information in such circumstances should be considered to be information retrieval, as opposed to the creation of new information and what is being asked for in this case is for the existing data to be presented in a particular digest (as provided for by section 11(2)(b) of FOISA).
38. I note the Council's view, expressed in a submission to this Office, that a 'digest' of the information in terms of section 11(2)(b) should be considered only to be a summary or brief synopsis of information. However it is my view that the definition of 'digest' goes beyond the narrow definition proposed by the Council, and should be considered to mean a systematic compilation of information, which may be in a condensed form. This encompasses the extraction and compilation of information required to respond to Mr Hasan's requests in relation to this case.



39. There will inevitably be circumstances under FOISA when requests which require the retrieval of information from raw data can legitimately be refused. For example, such circumstances may occur where, following careful consideration of a request, an authority is unable to determine a method by which the requested information may be extracted, due to the complex (or even conflicting) manner in which the various raw data is held. In addition, where an authority can identify an appropriate method, requests may also be legitimately refused where the cost of extracting information is found to exceed the upper limit of £600 prescribed by the Fees Regulations.
40. In this case, and following consideration of the submissions made by the Council, it is clear that, in relation to most requests, this is not the case. Indeed, the Council has demonstrated in its submissions that it is both aware of how the information may be extracted, and that, in most cases, this extraction can be done at relatively little cost. The Council has stated, for example, that the provision of a response to Question 17 would require no more than the tallying of the total number of entries within a spreadsheet. In relation to several other questions, the Council has indicated that the cost of providing a response would be in the region of £5 - £12, a figure which is clearly well within the upper cost limit of £600 for each request under the Fees Regulations.
41. I do not, therefore, accept the Council's view that the majority of the requested information falls outwith the scope of FOISA on account of it requiring information to be analysed, manipulated or created to respond to the requests.
42. I will now go on to consider in more detail the Council's responses in relation to each of the specific 'Groups' of requests, identified in paragraphs 14-33 above.

Group 1 (Questions 3, 5-12 and 22)

43. In relation to the Group 1 questions, the Council argued that the information which might be provided in response was exempt from release under FOISA, on the basis that section 25 of FOISA can be applied to the requested information.
44. The full text of section 25 of FOISA is as follows:

“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."*

45. As set out in paragraphs 14-21 above, the Council presented various arguments in relation to the application of section 25. Specifically, the Council argued that the information was exempt under section 25 because it was:

- Reasonably obtainable from Part II of the Register;
- Reasonably obtainable from Part I of the Register;
- In relation to Questions 3 and 12 only, reasonably obtainable from the Council's weekly building control schedules.

I will discuss the Council's arguments in relation to each of these assertions below.



Access through Part II of the Register

46. As set out in paragraphs 17-19 above, the Council argued that the information requested by Mr Hasan was available in Part II of the Register, and that regulation 58(2) of the 2004 Regulations placed a statutory obligation on the Council to communicate the requested information to members of the public on request. As a result, the Council argued that section 25(1), read in conjunction with section 25(2)(b)(i), should be considered to apply to the requested information.
47. I do not consider, however, that regulation 58(2) of the 2004 Regulations should be viewed as bringing the information requested by Mr Hasan within the scope of section 25(1) of FOISA.
48. Firstly, it should be noted that the 2004 Regulations did not come fully into force until 1 May 2005 (subject to the narrow transitional provisions set out in the Building (Scotland) Act 2003 (Commencement No 1, Transitional Provisions and Savings) Order 2004) and, as a result, regulation 58(2) was not in force at the time of the review of Mr Hasan's request, which was completed on 27 April, three days prior to the 2004 Regulations coming into effect.
49. Prior to 1 May 2005 (again, see the Building (Scotland) Act 2003 (Commencement No 1, Transitional Provisions and Savings) Order 2004), the duty to maintain a Register was contained within regulation 49 of the Building (Procedure) Regulations 1981 (the 1981 Regulations). The 1981 Regulations contain no direct equivalent to regulation 58(2) of the 2004 Regulations, and require authorities only to make their Registers available for inspection by the public.
50. As a result, it was not appropriate for the Council to consider regulation 58(2) of the 2004 Regulations when dealing with Mr Hasan's request and request for review, given that regulations which are not yet in force cannot be considered to place an obligation on an authority to communicate information.
51. Nevertheless, it will be appropriate for me to comment generally on the Council's application of regulation 58(2) of the 2004 Regulations, given that similar arguments may be presented by the Council in future in relation to requests made after 1 May 2005, and given that I am bound to consider the law as it now stands.



52. While it may indeed be the case that Part II of the Register contains the raw data from which the responses to the Group 1 questions can be extracted, it is clear, following review of both regulation 58 of the 2004 Regulations and the Council's submissions to my Office, that the methodology proposed by the Council would not provide access to the specific information requested by Mr Hasan. As a result, the information cannot be considered to be reasonably obtainable to Mr Hasan using this methodology.
53. The Group 1 questions submitted by Mr Hasan each sought details of the total number of occurrences of a specific activity within a stated time period. Question 3, for example, sought details of the total number of Building Warrants Applications received between 1 January 2004 and 31 December 2004, while Questions 5-12 sought access to the total number of those applications approved within a particular timescale. In order to ensure that an accurate response to his requests could be calculated, therefore, any methodology proposed by the Council would require Mr Hasan to have access to all of the raw data held by the Council from which accurate information could be extracted.
54. Part II of the Register is described by the Council as '*not being a 'register' in the normal use of the word*', but rather, comprises copies of the Building Warrant folders held in relation to each Building Warrant Application received. These folders typically contain copies of building warrants, completion certificates, principal drawings and specifications, and all other documents submitted to the local authority for registration in the Register.
55. It can be seen, however, from paragraphs (3) to (5) of regulation 58 of the 2004 Regulations (reprinted at paragraph 18 above) that there are restrictions imposed by the 2004 Regulations on the access to, and reproduction of, material contained within Part II of the Register. These restrictions will effectively mean that Mr Hasan would be unable to obtain full access to the records contained within Part II of the Register, and would therefore be unable to obtain access to the data required to calculate a response to the Group 1 questions. Indeed, as the Council has stated in its submissions to this Office, "*it is likely that, if Mr Hasan were to request information from Part II of the Register, the request would be refused*".
56. As a result, I find that the Council acted incorrectly in applying section 25(1) of FOISA, read in conjunction with section (2)(b)(i), to the requested information on the grounds that the information could be obtained from Part II of the Register under section 58(2) of the 2004 Regulations.



Access through Part I of the Register

57. The Council also stated in its submissions that the requested information could be accessed by Mr Hasan through Part I of the Register, which is available for inspection on Council premises. The Council argued that this also ensured that the requested information was otherwise accessible, and therefore exempt from release under section 25 of FOISA.
58. As set out in section 25 of FOISA, however, information which is available from a Scottish public authority will only fall within the scope of the exemption if one of the following criteria apply:
- The information is contained within an authority's publication scheme; or,
 - A holder of the information has a statutory obligation to communicate it (other than making it available for inspection) to members of the public on request or,
 - The information is held and made available by the Keeper of the Records of Scotland.
59. It is clear, following consideration of the Council's submissions, that none of the above criteria could be applied to the information available in Part I of the Register at the time of Mr Hasan's original request. Part I of the Register was not available through the Council's publication scheme at the time of the request, nor could it be accessed from the Keeper of the Records of Scotland. In addition, the Council was under no statutory obligation to communicate it, other than the obligation to make it available for inspection contained within regulation 50 of the 1981 Regulations. While regulation 58 of the 2004 Regulations now imposes a duty on the Council to publish Part 1 of the Register on its website, it is clear from regulation 58(3) that the duty to publish is subject to the restrictions contained in regulation 58(4) and (5). This again means that, without access to all of the data held by the Council, Mr Hasan would be unable to obtain access to the data required to calculate a response to the Group 1 questions.
60. I therefore find that the Council also acted inappropriately in refusing to respond to the Group 1 Questions, on the grounds that the requested information was exempt under section 25 of FOISA as a result of the accessibility of the relevant raw data from Part I of the Register.



Access through the weekly building Control schedules

61. In its submissions to my Office, the Council also stated that the raw data from which a response might be collated in relation to Questions 3 and 12 only was available from within the Council's building control schedules, which are published on the Council's website, and are listed within its publication scheme. The Council therefore again suggested that the information requests contained under Questions 3 and 12 could be legitimately refused under section 25 of FOISA.
62. The Council's building control schedules are issued weekly, and carry details of all Building Warrant Applications received, withdrawn or refused by the Council within that particular week. The Council suggested that Mr Hasan could obtain a response in relation to Questions 3 and 12 by accessing each of the building control schedules produced by the Council during the period over which he was interested. Mr Hasan would subsequently be able to assess and tally the total number of Building Warrant Applications received and refused over this period.
63. However laborious and time consuming it may be for Mr Hasan to carry this out compared to the relative ease with which the Council could do this work, it seems to me that the simple test to be applied is whether the information which is held by the Council is otherwise accessible. I regard information which is available on an authority's publication scheme to be otherwise accessible and so exempt information by virtue of section 25(3) of FOISA. This exemption is absolute and no other test applies. Accordingly the Council was entitled not to provide information in response to Questions 3 and 12.
64. In conclusion then, I find that the Council failed to act in accordance with FOISA in its refusal to respond to the information requests contained under Questions, 5-11 and 22 of Mr Hasan's Questionnaire. The Council acted correctly, however, in its refusal to provide access to Questions 3 and 12 for the reason that the requested information was exempt under section 25 of FOISA.

Group 2 Questions (Questions 17-19)

65. With regard to the Group 2 questions, the Council has acknowledged that it holds the raw data from which the requested information may be extracted. In addition, the Council has estimated that it would cost no more than £5-£10 to extract a response in relation to each of the Group 2 questions from its systems.



66. As discussed above at paragraphs 34 to 43 I consider the Council's response that it does not have to 'analyse data' to retrieve the requested information to be both inappropriate and inconsistent with the obligation which FOISA places upon the Council.
67. I therefore find that the Council failed to act in accordance with FOISA in refusing to provide a response to Questions 17-19 of Mr Hasan's Questionnaire.

Group 3 Questions (Questions 15 and 16)

68. In relation to the Group 3 questions, the Council stated that the raw data from which the information might be extracted was not contained within the Council's database, and that the only method of extraction was through a review of the individual application files contained within Part II of the Register.
69. With regard to Question 15, the Council stated that it held approximately 1,400 files for the period over which Mr Hasan was interested, and that it would take approximately 4 minutes to review each file to establish whether it fulfilled the criteria of Question 15. The Council therefore stated that it would take approximately 93 hours to carry out the work.
70. The Council asserted that any such review would have to be carried out by professional staff as opposed to administrative staff, as administrative staff would not have the technical experience required to accurately identify information within the file which would bring it within the scope of Question 15. The Council stated that the charge for staff time of reviewing these files would therefore be between £13.04 and £15 (£15 being the maximum hourly rate permitted under the Fees Regulations). The precise charge made would depend on the position on the relevant pay scale of the staff members involved.
71. The Council therefore estimated that it would cost between £1,212.72 and £1,395 to provide an accurate response to Question 15, an estimate which significantly exceeds the maximum cost of £600 prescribed by the FOISA Fees Regulations.
72. The Council stated that if Question 16 was processed separately, then the same calculations would apply.



73. Having considered the submissions made by the Council, I am satisfied that the information requested under Questions 15 and 16 is not available from within the Council's database. I am also satisfied that the methodology proposed by the Council to respond to each of these questions represents the appropriate route through which relevant information might be accessed, and I concur with the Council that staff with relevant technical experience would be required to extract the required information.
74. I am also of the view that, while the cost of responding to both of the Group 3 Questions would be likely to be reduced through the aggregation of the work required, the Council acted in accordance with FOISA in considering the individual questions separately when assessing whether the cost of responding to each question would exceed £600.
75. As a result, I find that the Council acted appropriately in suggesting (in its submissions to my Office) that the requested information should be refused on the grounds of section 12(1) of FOISA (excessive cost of compliance), although the Council should have raised this issue with Mr Hasan at a much earlier stage.

Group 4 (Question 4) and Group 5 Questions (Question 14)

76. In relation to both the Group 4 and Group 5 Questions, the Council stated, in its submissions to my Office, that, while it held raw data from which responses might be extracted, any such extraction would require queries to be written by a member of the Council's IT Team. The Council reiterated its view that it was not required to 'analyse' data to provide a response.
77. Following further questioning from my investigating officer, the Council indicated that it would take approximately 40 minutes to set up and test each query in relation to both Question 4 and Question 14, at a cost of between £10.71 and £11.55. This estimate was, however, based on a projected hourly rate of between £16.23 and £17.50, depending on the member of staff involved. As the Fees Regulations set the maximum cost which can be charged for staff time at £15.00, however, the cost to the Council which should be estimated in terms of the Fees Regulations would be £10 in relation to each query.
78. As discussed above, at paragraphs 34 to 43, I consider the Council's response that it does not have to 'analyse data' to retrieve the requested information to be inappropriate.
79. I therefore find that the Council failed to act in accordance with FOISA in refusing to provide a response to Questions 4 and 14 of Mr Hasan's Questionnaire.



The Council's general handling of the information request

80. In addition to the issues discussed above, it is also my view that the Council committed some key technical failings in its handling of Mr Hasan's information request. Specifically, this involved breaches of the following sections of FOISA, all of which have already been noted by the Council:

- Section 16(1) – Failure to issue a refusal notice in response to Mr Hasan's original requests;
- Section 19 – Failure to inform Mr Hasan of his right of appeal in the Council's response to his initial information requests.

Decision

I find that Stirling Council (the Council) failed in relation to the following sections of the Freedom of Information (Scotland) Act 2002 (FOISA) in its handling of Mr Hasan's information requests:

- Section 16(1) – Failure to issue a refusal notice in response to Mr Hasan's original requests;
- Section 19 – Failure to inform Mr Hasan of his right of appeal in the Council's response to his initial information requests.

I also find that the Council failed to act in accordance with Part I of FOISA in its refusal to respond to the following information requests contained within Mr Hasan's Questionnaire:

- Question 4; Question 5; Question 6; Question 7; Question 8; Question 9; Question 10; Question 11; Question 14; Question 17; Question 18; Question 19; and Question 22.

I therefore require the Council to provide Mr Hasan with a full and accurate response to each of the above information requests.

I am obliged to give the Council at least 42 days in which to supply Mr Hasan with this information. In this case, I require the Council to supply the information to Mr Hasan within 2 months of receipt of this notice.



It should be noted that previous applications for Decision have been made to me by Mr Hasan in relation to the accuracy of information supplied in response to his Questionnaire by other Scottish public authorities (see Decision Nos. 062/2006 and 083/2006), and specifically the issue of whether the information provided in those cases was consistent with the 'Glossary of Terms' contained within his original Questionnaire. The Council has, however, provided assurances in its submission to this Office of 21 December that the information contained within its Register from which information might be extracted in response to Mr Hasan's requests is equivalent to that information defined within Mr Hasan's Questionnaire.

Finally, I also find that the Council was entitled to refuse to respond to Questions 15 and 16 on the grounds that section 12 of FOISA (Excessive cost of compliance) applied to the requested information, and Questions 3 and 12 on the grounds that the information fell under section 25 of FOISA (Information otherwise available).

Kevin Dunion
Scottish Information Commissioner
14 July 2006



APPENDIX:

Questionnaire submitted by the Mr Hasan to Stirling 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).

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).

Between the period 1st January 2004 to 31st December 2004:

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

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

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

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



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

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

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

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

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

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

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

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.

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?



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?

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

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

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

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.

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**?

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

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

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**"



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.