



Scottish Information  
Commissioner

**Decision 191/2006 MacRoberts and the Keeper of  
the Registers of Scotland**

*Request for copy of Application Record*

**Applicant: MacRoberts Solicitors  
Authority: Keeper of the Registers of Scotland  
Case No: 200502126  
Decision Date: 26 October 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 191/2006 – David Flint, MacRoberts Solicitors and Registers of Scotland**

### ***Request for copy of Charges Section of all Title Sheets in the Land Register – information refused under section 25(1) (information otherwise accessible) of FOISA***

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

---

Freedom of Information (Scotland) Act 2002 sections 1(1) and (2) (General entitlement); section 8(1)(b) (Requesting information); sections 23(1) and (2) (Publication schemes) and section 25(1) (Information otherwise accessible)

Land Registration (Scotland) Act 1979 section 6(5) (The Title Sheet)

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

#### **Facts**

---

MacRoberts, a firm of solicitors requested a copy of the “the C section of the Application Register”, later clarified to be a copy of the Charges Section of all Title Sheets in the Land Register. The Keeper of the Registers of Scotland (the Keeper) refused to provide this information, citing section 25(1) with reference to 25(2)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA).

After an investigation, the Commissioner found that the Keeper had dealt with MacRoberts’ request for information in accordance with Part 1 of FOISA, by applying section 25 of FOISA to the information withheld.

#### **Background**

---

1. On 27 April 2005, MacRoberts requested a copy of the C section of the Application Register maintained by Registers of Scotland.



2. On 24 May 2005 the Keeper responded (having clarified on 5 May 2005 that the information MacRoberts required was the Charges Section of all Title Sheets in the Land Register) and stated that he did not consider MacRoberts' request as being valid in terms of section 8(1)(b) of FOISA as the application was made by MacRoberts on behalf of an unnamed client and therefore did not comply with section 8(1)(b) of FOISA .
3. The Keeper further stated that, even were the request valid, it was exempt information as the information was considered otherwise available in terms of section 25(1) of FOISA.
4. On 27 May 2005, MacRoberts requested a review of the Keeper's decision, contending that the application was valid and that the information sought was not covered by section 25(1) of FOISA.
5. On 15 June 2005, the Keeper responded to the request for review, upholding the original decision.
6. On 17 June 2005, the Scottish Information Commissioner received an application from MacRoberts for a decision as to whether the Keeper had dealt with his information request in accordance with FOISA.
7. The case was allocated to an investigating officer and the application validated by establishing that MacRoberts had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to their request.

## The Investigation

---

8. My investigating officer contacted the Keeper for his comments on the application in terms of section 49(3)(a) of FOISA and requested further information in relation to this case, in particular the information requested by MacRoberts. The Keeper responded on 20 July 2005.



## Submissions from Registers of Scotland

9. The Keeper submitted that he did not believe MacRoberts' application was valid in terms of section 8(1)(b) of FOISA in that he was acting "on behalf of a client" and that therefore neither Mr Flint (who made the application) nor MacRoberts could be considered the applicant. Rather, he contended, the true applicant was the unidentified client for whom Mr Flint and MacRoberts were acting as agents.
10. The Keeper added that, even were the request to be considered valid, he considered the information exempt under section 25(1) of FOISA as the information contained within Charges Section of the Title Sheets in the Land Register can be accessed by the public on payment of the appropriate fee and that this was detailed on the Registers of Scotland Publication Scheme.
11. The authority advised that the Land Register of Scotland opened in 1981 and from the outset was a computerised register, the main purpose of which was the creation and maintenance of Title Sheets of interests in land.
12. These Title Sheets consist of sections A – D and this includes the section in question – C – which details Charges: information on mortgages, repairs, grants and charging orders which affect the property.
13. Copies of particular sections can be ordered, so that section C of each Title Sheet could be ordered without having to order sections A, B or D.
14. The Keeper advised that he supplies this information in particular formats, including a paper format. Authenticated copies of Title Sheets (or parts of Title Sheets) are known as an "office copy" whereas non-authenticated photocopies of Title Sheets are known as "quick copies." Additionally business users can search the data held in the Land Register System via an online service called Registers Direct, view the current Title Sheet and print out copies of appropriate sections A - D, although these print outs are not authenticated.
15. The Keeper argued that this made information about the Charges Section of Title Sheets information which an applicant could reasonably obtain other than having to request it under section 1(1) of FOISA.



## The Commissioner's Analysis and Findings

---

16. I have considered the correspondence, submissions and information supplied to me by both parties.
17. This investigation considered whether MacRoberts' request was valid and whether the exemption claimed by the Keeper under section 25 of FOISA was applied correctly.

### ***Was MacRoberts' request valid in terms of section 8(1)(b) of FOISA?***

18. The Keeper asserted that MacRoberts' request is not valid in that MacRoberts made their request "on behalf of a client" and cited section 8(1)(b) of FOISA.
19. This section of FOISA does indeed stipulate that for a request to be valid it should state the name of the applicant and an address for correspondence.
20. Section 1(2) of FOISA defines the "applicant" as the person who makes a request. In this case, MacRoberts have made it clear that they are acting on behalf of an unnamed client. Where a solicitor has made it clear that he or she is acting on behalf of a named client then I will consider the "applicant" in that case to be the client. However, I do not agree that it is necessary for a firm of solicitors to give the name of their clients when making a request for information in order for the request to be valid. In terms of section 1(1) of FOISA, "a person" may make a request for information. The definition of "person" clearly includes a firm of solicitors. In such cases, I will, given the definition of "applicant" in section 1(2) of FOISA, consider the firm of solicitors to be the applicant. Clearly this will be relevant should an applicant wish to appeal against one of my decisions to the Court of Session. In the case of a named client, I consider that it is the named client who has the right of appeal. In the case of the applicant being the firm of solicitors, then it will be the firm of solicitors who will have the right of appeal.
21. I therefore consider MacRoberts' request to have been a valid request in terms of section 1(1) of FOISA.

### **Consideration of the application of section 25(1) – information otherwise accessible**

22. The Keeper stated that the information in question was exempt by virtue of section 25 of FOISA in that the information is otherwise accessible, even if payment is required for access to it.



23. Having checked the Registers of Scotland Publication Scheme (<http://www.the Keeper.gov.uk/foi/inforegisters.htm>) I can find no specific mention of the Charges Section or of Title Sheets. However, I am satisfied that, by virtue of the fact that information from the Land Register is available, a copy of the Charges Section of Title Sheets is also available in accordance with that Publication Scheme.
24. This is not inconsistent with the requirement of section 23 of FOISA, which imposes a duty on Scottish public authorities to adopt and maintain a public authority and to publish information in accordance with that scheme. Section 23(2)(a) requires only that a publication scheme must specify classes of information it publishes. As the Land Register itself is the class in this case, and the Title Sheets and Charges Section of a Title Sheet forms part of that class, the information is held to be available in accordance with the publication scheme.
25. Further, section 25(2)(b)(i) of FOISA states that information is taken to be reasonably obtainable if the Scottish public authority is obliged by or under any enactment to communicate it.
26. Section 6(5) of the Land Registration (Scotland) Act 1979 stipulates that the Keeper must provide a copy of the Title Sheet, part thereof or of any document referred to in the Title Sheet to anyone applying for it.
27. I take this to be sufficiently clear that the Charges Section of Title Sheets within the Land Register is information which is otherwise accessible
28. I am therefore satisfied that the authority correctly applied the exemption under section 25(1) with reference to 25(2)(a) of FOISA to the information requested.

## Decision

---

I find that the Keeper of the Registers of Scotland dealt with MacRoberts' request for information in accordance with Part 1 of FOISA, in that it applied section 25 of FOISA to the information withheld and consequently complied with section 1(1) of FOISA.



## **Appeal**

---

Should either MacRoberts or the Keeper wish to appeal against my 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 notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**26 October 2006**



## APPENDIX

### Relevant Statutory Provisions

#### Freedom of Information (Scotland) Act 2002

##### **1 General entitlement**

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the "applicant".

##### **8 Requesting information**

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
  - (a) ...
  - (b) states the name of the applicant and an address for correspondence; and
  - (c) ...

##### **23 Publication schemes**

- (1) A Scottish pa must-
  - (a) adopt and maintain a scheme (in this Act referred to as a "publication scheme") which relates to the publication of information by the authority and is approved by the Commissioner;
  - (b) publish information in accordance with that scheme; and
  - (c) from time to time review that scheme.
- (2) A publication scheme must specify-
  - (a) classes of info which the authority publishes or intends to publish;
  - (b) the manner in which information in each class is, or is intended to be, published; and
  - (c) whether the published information is, or is intended to be, available to the public free of charge or on payment.





## **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; ...
    - (ii) ...  
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.

## **Land Registration (Scotland) Act 1979**

### **6 The Title Sheet**

- (5) The Keeper shall issue, to any person applying, a copy, authenticated as the Keeper thinks fit, of any title sheet, part thereof, or of any document referred to in a title sheet; and such copy, which shall be known as an office copy, shall be accepted for all purposes as sufficient evidence of the contents of the original.