



Scottish Information
Commissioner

**Decision 090/2006 – MacRoberts Solicitors and
East Dunbartonshire Council**

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

**Applicant: MacRoberts Solicitors
Authority: East Dunbartonshire Council
Case No: 200501668
Decision Date: 1 June 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 090/2006 – MacRoberts Solicitors and East Dunbartonshire 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 Dunbartonshire 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 Dunbartonshire and Argyll & Bute 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 had been no breach of Part 1 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 receipt of this notice.

Background

1. MacRoberts made two separate requests to the Council on 7 March 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 4 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 27 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(1),(2) and (3) 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 has indicated that the information which MacRoberts are seeking is available elsewhere from the Assessor's publication scheme, and also for inspection in two of the Council libraries. As such, the Council was unwilling to disclose this 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 advised that the information that MacRoberts are seeking is contained in the Valuation Roll and the Council Tax Lists. The Council submits that both of these documents are prepared by the Assessor who is appointed by the Valuation Joint Board under section 27 of the Local Government etc (Scotland) Act 1994 to carry out this function.



16. The Council has explained that the Assessor reports to the Dunbartonshire and Argyll & Bute Valuation Joint Board and that it is a separate legal entity listed under Schedule 1 Part 3 of FOISA. Therefore, the Assessor is a Scottish Public Authority for the purposes of FOISA.
17. The Council has advised that the information that MacRoberts are seeking is available via the publication scheme of the Assessor (albeit that it is subject to a charge). The Council has also indicated that the information is available, for inspection only, at two local libraries in the Council area. The Council state that it is the Council, and not the Assessor, who has made the information available in the libraries. Therefore, the Council does hold copies of the information that MacRoberts have requested.
18. In its responses to MacRoberts, the Council advised them that the information that they were seeking was available via the publication scheme of the Assessor in the following formats: hard copy, microfiche or a pdf document on CD. The Council also advised MacRoberts what the charges for each of the documents would be. The Council notified MacRoberts of which libraries within the Council area held copies of these documents for inspection only. In its submissions to my Office, the Council has shown that it provided MacRoberts with the website address for the Assessor's website which provides access to the publication scheme.
19. In its submissions to my Office, the Council has concluded that the information sought by MacRoberts is covered by subsections (1), (2) and (3) of section 25 of FOISA. As this is an absolute exemption the Council has not considered the application of the public interest test.
20. 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.
21. In determining whether this is the case I have considered the submissions that have been made by the Council. I have also 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 exemption under section 25.



22. As expressed in my guidance note, it is my view that where a public authority receives a request for information which it holds but which has not been made available under its own publication scheme, and is aware that the information is already available through another authority's 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 submissions I have received from the Council, I am satisfied that the Council does hold the information that MacRoberts are seeking, as they make this available, for inspection only, in two local libraries. I am also satisfied that although the Council did not contact the Assessor's office directly in relation to these requests, the Council did satisfy itself that the information that had been requested was available via the Assessor's publication scheme. I am also satisfied that the Assessor is under a statutory obligation to prepare and maintain these lists and make them available to the public. I note that in its submissions to my Office, the Council has shown that it provided MacRoberts with the contact details of the Assessor by providing the website address. I also note that the Council had referred MacRoberts to the publication scheme, available via that address to obtain the information requested.
23. As has been shown in paragraph 16 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 this 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.
24. Each publication scheme sets out the classes of information that are published by the authority, and for each class, details the manner in which the information is made available, and whether a charge will apply.
25. 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.



26. In its submissions to my Office, the Council provided me with a 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. For the East Dunbartonshire area, the cost of obtaining this information is £18.90 for the Valuation Rolls and £289.80 for the Council Tax Lists. The publication scheme provides details of who an applicant should contact to request the information and states that the Assessor will endeavour to provide the requested information within 20 days, in printed copy or via email. I am satisfied that this information is therefore exempt from release by virtue of section 25 of FOISA. I am satisfied that the information is available from another authority's publication scheme.

Decision

I find that East Dunbartonshire Council dealt with MacRoberts' requests for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002. 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