



Scottish Information
Commissioner

**Decision 220/2007 Linacre Land Ltd and Perth and
Kinross Council**

*Information relating to the tender process for the redevelopment of
Perth City Hall*

**Applicant: Linacre Land Ltd
Authority: Perth and Kinross Council
Case No: 200601639
Decision Date: 20 November 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 220/2007 Linacre Land Ltd and Perth and Kinross Council

Information relating to the tender process for the redevelopment of Perth City Hall - some information withheld - Commissioner found that the Council had misapplied section 17 of FOISA and had misapplied the exemptions in sections 30(b)(ii) and 30(c) to some of the information withheld

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 17(1) (Notice that information is not held) and 30(b)(ii) and (c) (Prejudice to effective conduct of public affairs)

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

Facts

HBJ Gateley Wareing on behalf of Linacre Land Ltd (Linacre Land) made four separate requests for information relating to the tendering of the redevelopment of Perth City Hall from Perth and Kinross Council (the Council). The Council supplied Linacre Land with some information but redacted some information on the basis that section 30(c) of FOISA applied. In its responses to two of the requests, the Council also gave notice that it did not hold some of the information requested in accordance with section 17 of FOISA. Linacre Land was not satisfied with the Council's responses and in each case asked the Council to review its decision. The Council carried out reviews and, as a result, supplied Linacre Land with some additional information but maintained its original decisions in regard to the remainder of the requests. Linacre Land remained dissatisfied with these responses and applied to the Commissioner for a decision.

In the course of the investigation, the Council identified copies of a draft report that it had previously claimed was not held. It provided these to the applicant, but sought to withhold some content on the basis that it was exempt under the terms of section 30(b)(ii) or 30(c) of FOISA.

Following an investigation, the Commissioner found that in responding to one of the requests, the Council had misapplied section 17 of FOISA in providing notice that some of the information requested was not held. The Commissioner found that the



Council had correctly applied the exemption in section 30(c) to some of the information withheld, and so it acted in accordance with Part 1 of FOISA in withholding this information.

However, he found that the Council had breached the requirements of Part 1 and section 1(1) of FOISA by wrongly applying the exemption in section 30(b)(ii), and by wrongly applying the exemption in section 30(c) to some withheld information. The Commissioner required the Council to disclose further information to the applicant.

Background

1. In this decision, I will consider the handling of four separate but related information requests that were made to the Council. In this decision, I will refer to these as request 1, request 2, request 3 and request 4.
2. Linacre Land wrote to the Council on three occasions requesting copies of various minutes, reports and other information pertaining to the process by which the Council invited bids for the redevelopment of Perth City Hall, the manner in which the Council subsequently treated those bids and how it has taken forward the proposed development. These separate requests were made on 30 January (request 1), 9 March (request 2) and 17 May 2006 (request 3) respectively.
3. The Council wrote to Linacre Land in response to these requests on 23 February, 5 April and 13 June 2006 respectively. In response to each, the Council supplied Linacre Land with information sought, subject to certain redactions made on the basis that the exemption in section 30(c) of FOISA applied. In each case, the Council asserted that disclosure of the information redacted would be likely to prejudice substantially the effective conduct of public affairs because it related to incomplete transactions and it would reveal the Council's negotiating position in relation to these. In its responses to requests 1 and 2, the Council also notified Linacre Land that it did not hold some information requested in terms of section 17 of FOISA.
4. Linacre Land wrote to the Council requesting reviews of its decisions with respect to the three requests on 9 March, 17 May and 13 July 2006 respectively. In particular, Linacre Land submitted in each case that the Council had failed to provide it with all the information which fell within the scope of its requests. In relation to the first and second requests, Linacre Land also questioned the Council's reliance on section 30(c) of FOISA in withholding some of the information.



5. The Council wrote to notify Linacre Land of the outcome of its reviews on 5 April, 12 June and 10 August 2006 respectively. In each case, the Council maintained its original decision to withhold information under section 30(c) of FOISA. The Council also supplied further reasoning behind its application of section 30(c). Although the Council maintained its reliance on section 17 in regard to some of the information sought by request 1, the Council also identified additional information which fell within the scope of each request, which had not been supplied in the original responses. The Council apologised for this and supplied the additional information now identified. Additional documents that were provided following the Council's review of the third request were made available subject to some redactions, on the basis that the information redacted was exempt under section 30(c) of FOISA.
6. Within its responses to Linacre Land, the Council recognised that the exemption applied was "time-limited" and that once negotiations were complete to the satisfaction of the Council, a reassessment of the information withheld could be made.
7. Consequently, on 13 July 2006, Linacre Land wrote to the Council requesting all the information withheld by the Council under section 30(c) of FOISA as a result of these three earlier requests. The information sought in request 4 was unredacted (rather than redacted) versions of the following:
 - (a) Minutes from the Central Area Redevelopment Group (CARG) dated 16 August 2005 [request 1 and 4]
 - (b) Strategic Policy and Resources Committee Report dated 15 June 2005 [request 2 and 4]
 - (c) Strategic Policy and Resources Committee Report dated 2 November 2005 [request 2 and 4]
 - (d) Minutes from the CARG dated 25 January 2006 [request 3 and 4]
 - (e) Minutes from the CARG dated 5 May 2006 [request 3 and 4]
8. This new request (request 4) noted recent press reports that the Agreements for the relevant lease had been executed and that Linacre Land understood that the negotiations that the Council had previously believed would be prejudiced by disclosure of the exempted information were at an end.
9. On 4 August 2006, the Council wrote to Linacre Land in response to request 4. The Council informed Linacre Land, that although its application of the exemption under section 30(c) was time limited, the contract in question had not been fully concluded due to outstanding conditions and thus the information was still exempt under section 30(c) of FOISA.



10. Linacre Land wrote to the Council requesting a review of its decision on 30 August 2006. Linacre Land again highlighted recent reports in the press which alluded to the fact the lease had been executed and noted the apparent contradiction between the Council position as set out in its response of 4 October and that in press reports. Linacre Land asked for clarification on this point.
11. On 18 September 2006, the Council wrote to notify Linacre Land that, following its review, it maintained its original decision without amendment. In particular, the Council reiterated that its position - that the contract between the Council and the developer had not been concluded - remained unchanged.
12. On 10 October 2006, Linacre Land wrote to my Office, stating that it was dissatisfied with the outcome of the Council's reviews in relation to all four of its requests and applying to me for a decision in terms of section 47(1) of FOISA. In particular, Linacre Land asked me to consider whether the exemption in section 30(c) had been correctly applied when withholding parts of the documents listed in paragraph 7 above when responding to its requests 1, 2, and 3, and when it continued to withhold these in response to request 4. With respect to request 1, Linacre Land also submitted that it believed that versions of a draft report that the Council had claimed were no longer held, would be retained in electronic form.
13. The application was validated by establishing that Linacre Land had made its four requests for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its responses to each of those requests.

The Investigation

14. On 2 November 2006, the Council was notified in writing that an application had been received from Linacre Land and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Council was also invited to comment on the application in terms of section 49(3)(a) of FOISA. The Council responded with its comments and the information requested and the case was then allocated to an investigating officer.
15. The investigating officer subsequently contacted the Council, asking it to respond to specific questions on this case.



16. The Council provided my Office with two copies of each of the documents listed in paragraph 7 above, one in its original form and the other in redacted form as supplied to Linacre Land.
17. The Council referred me to the detailed arguments provided in correspondence with Linacre Land to explain its reasoning for the application of section 30(c) when responding to each of the requests.
18. The investigating officer requested additional details of the searches undertaken by the Council to determine that some of the information sought in request 1 was not held. As a result of further searches by the Council, additional documents were identified and supplied to Linacre Land. The Council redacted certain parts of these documents, however, on the basis that the information withheld was exempt under section 30(b)(ii) or section 30(c).
19. Following this disclosure, further submissions were provided to my Office by Linacre Land.
20. The investigating officer also contacted the Council periodically during the investigation to inquire as to the status of the information withheld given the Council's claim that the exemptions applied to withhold this information was time-bound.

The Commissioner's Analysis and Findings

21. In coming to a decision on this matter, I have considered all of the information and submissions that have been presented to me by both Linacre Land and the Council and I am satisfied that no matter of relevance has been overlooked.
22. My decision will consider whether the Council acted in accordance with Part 1 of FOISA in dealing with Linacre Land's requests for information. I would note that I am obliged to consider this application in the circumstances at the time of the original requests and requests for review. I appreciate that the circumstances surrounding the redevelopment of Perth City Hall may have moved on in the interim, but should make clear that I may not take such developments into consideration when determining whether the Council responded properly to each of these requests at the time that it did.



Background to the requests

23. The requests made by Linacre Land relate to the contract for the redevelopment of Perth City Hall. The Council explained that this contract was the subject of a tender exercise in 2005 and that there was a public consultation on the proposals that were short-listed in June 2005. In November 2005, the Council selected one company as the preferred developer and entered into detailed negotiation with the company. The details were eventually finalised and the missives signed.
24. However, in its submission to my office in November 2006, the Council explained that the contract with the preferred developer included a number of suspensive conditions. Consequently, the situation was still not concluded at the time of each of Linacre Land's requests and the potential remained for the preferred developer to pull out of the deal. The Council highlighted that should this happen it would be faced with either re-considering the original proposals, or re-tendering the contract.
25. In light of this the Council argued that disclosure of the fine details of any of the proposals before the contract is finally settled would compromise its negotiating position.

Issues to be considered in this case

26. In what follows I will first consider the Council's initial assertion that some of the information sought in Linacre Land's request 1 was not held.
27. I will then turn to consider the Council's application of the exemption in section 30(b)(ii) to certain information falling under the scope of this request that was identified in the course of my investigation.
28. I will finally turn to consider the Council's application of the exemption in section 30(c) to document extracts that the Council withheld when responding to Linacre Land's four requests.

Request 1 - Section 17- Notice that information is not held

29. Within its application to my Office, Linacre Land questioned the Council's reliance on section 17 of FOISA in response to its request for the following information in request 1:

A report prepared for presentation to the Council's Strategic Policy and Resources Committee [the Committee] at its meeting of 16 March 2005.



30. In its initial response to the applicant, the Council advised that no report was prepared for the Committee meeting of 16 March 2005. Following its review, the Council acknowledged that a draft of the report was produced, but explained that following further consideration at the time of writing, it was agreed that it was unnecessary to report to committee at that time, consequently a copy of the draft report was not kept. Thus the Council maintained its reliance of section 17 of FOISA.
31. During the investigation, the investigating officer requested evidence of the searches undertaken by the Council to determine that a copy of the draft report in question was not held at the time of the request.
32. As a result of this request and further internal enquiries carried out by the Council, it was able to locate three different versions of the report requested by Linacre Land (drafts 1, 2 and 3).
33. The Council supplied these drafts to Linacre Land. Drafts 1 and 3 were subject to redaction on the basis that:
 - a) section 30(b)(ii) of FOISA applied to certain marginal comments of draft 3, and
 - b) section 30(c) applied to parts of the main body text of drafts 1 and 3.The Council emphasised to Linacre Land that this report was not presented to the Committee and, therefore, the documents provided should only be considered as drafts with no official standing.
34. The investigating officer then provided Linacre Land with the opportunity to comment on these new submissions from the Council.
35. In its response, Linacre Land expressed dissatisfaction with the redactions made to the documents discovered during the course of my investigation. The application of the exemptions in sections 30(b)(ii) and 30(c) to the exempted information in drafts 1 and 3 will therefore be considered in what follows below.
36. From the details outlined above, it is clear that in responding to Linacre Land's request 1, the Council failed to act in accordance with Part 1 of FOISA by erroneously providing notice in terms of section 17 of FOISA that the report described in paragraph 29 of this decision was not held.
37. In a letter to the applicant, which was copied to my Office, the Council apologised for its failure to locate these draft documents during the original searches. The Council also acknowledged that in this instance its procedures failed and made assurances that it would be reviewing the circumstances of this case to ensure that such an occurrence can be avoided in future.



Request 1 - Section 30(b)(ii) - Prejudice to effective conduct of public affairs

38. As noted above, the Council redacted information contained in marginal comments from draft 3 on the basis that section 30(b)(ii) of FOISA applied. Section 30(b)(ii) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
39. The redactions made to this document consist of stylistic comments on the draft report. The Council argued that these comments reflect the thinking of the officer who made them and that release of such comments would severely restrain officers in their collaborative working.
40. As I have stated previously in cases where the exemption under section 30(b)(ii) has been applied, the standard to be met in applying the tests contained within this exemption is high. In applying this exemption the chief consideration is not whether the information constitutes opinion, but whether the release of the information would inhibit substantially the exchange of views.
41. Having reviewed the information withheld, I am not satisfied that the disclosure of comments of this nature would, or would be likely to, inhibit substantially the free and frank exchange of views in future. I am not satisfied that the release of innocuous, stylistic comments would be likely to result in the inhibition suggested by the Council.
42. I therefore find that the Council was incorrect in its application of section 30(b)(ii) to redactions made to draft 3, and failed to act in accordance with section 1(1) of FOISA by withholding these. I require the Council to provide a copy of this draft report with these parts restored.
43. All remaining redactions made to draft 3 and those made to all other remaining documents under consideration in this case were made by the Council on the basis that section 30(c) of FOISA applied. The application of this exemption will be considered below.

Requests 1, 2, 3, and 4 - Section 30(c) - Prejudice to effective conduct of public affairs

44. The Council redacted information from the following seven documents on the basis that the exemption in section 30(c) of FOISA applied.
 - (a) Minutes from the Central Area Redevelopment Group (CARG) dated 16 August 2005 [request 1 and 4]
 - (b) Strategic Policy and Resources Committee Report dated 15 June 2005 [request 2 and 4]



(c) Strategic Policy and Resources Committee Report dated 2 November 2005 [request 2 and 4]

(d) Minutes from the CARG dated 25 January 2006 [request 3 and 4]

(e) Minutes from the CARG dated 5 May 2006 [request 3 and 4]

(f) Draft report 1 prepared for presentation to the Council's Strategic Policy and Resources Committee at its meeting of 16 March 2005 [request 1]

(g) Draft report 3 prepared for presentation to the Council's Strategic Policy and Resources Committee at its meeting of 16 March 2005 [request 1]

The information redacted relates to financial packages proposed by developers, the Council's attitude and opinion about these offers and the detail of proposals submitted by developers which did not go forward to the public consultation. In document (g), the Council also redacted the weightings assigned to each of the appraisal criteria and the ranking of the bids received.

45. Before moving on, I would also note that the information contained under headings 4, 5, 6, 7 and 8 in document (e) have also been withheld. The Council was of the view that this information did not fall within the scope of the information sought by the applicant (i.e. information pertaining to the redevelopment of Perth City Hall), but given that Linacre Land specifically requested a full copy of the minutes of this date, I considered that the whole of this document falls within the scope of Linacre Land's request.
46. When approached by my Office, Linacre Land acknowledged that the information contained under these headings do not relate to the redevelopment of Perth City Hall. Linacre Land agreed that the content of these sections should not form part of my investigation, but indicated that they remained dissatisfied with the methodology of the Council in redacting this information without highlighting this to them.
47. Within submissions to my Office, the Council acknowledged that these redactions were not communicated to Linacre Land. The Council stated that it would amend its practices to avoid such errors in future.
48. As Linacre Land is content for the information detailed in paragraph 45 above to fall outwith the scope of this investigation, I shall not consider it further in this decision, and I shall turn to consider whether the exemption in section 30(c) was correctly applied to the remaining information withheld.



49. Section 30(c) of FOISA provides that information is exempt if its disclosure under FOISA would otherwise (than in terms of the exemptions elsewhere in section 30 of FOISA) prejudice substantially, or would be likely to prejudice substantially, the effective conduct of public affairs. Section 30(c) is a qualified exemption, which means that when it is judged to apply, its application is subject to the public interest test required by section 2(1)(b) of FOISA.
50. In order to decide whether the information requested should be disclosed, I must first consider whether it falls under the exemption section 30(c). Should it fall under section 30(c) of FOISA, I am then obliged to consider whether the public interest would be better served by the information being disclosed or the exemption being maintained.
51. The Council submitted that the information redacted relates to a specific incomplete transaction and that premature disclosure would put at risk the appropriate conclusion of the transaction and thus prejudice substantially or be likely to prejudice substantially, the effective conduct of public affairs.
52. The Council wishes to protect the way in which it conducts negotiations with third parties regarding its property interest with a view to obtaining best value and is concerned that release of the information would, or would be likely to, prejudice substantially the manner in which such negotiations are carried out.
53. Linacre Land submitted that section 30(c) of FOISA did not apply to the information withheld by the Council. In making this judgement, Linacre Land argued that at the time of its requests, negotiations were ongoing between the Council and its preferred developer. Linacre Land considered that these negotiations were at an advanced stage and would not have been prejudiced by giving the applicant access to the information regarding the initial proposals and bids made by all interested bidders.
54. I understand that the Council appointed its preferred developer in November 2005. The Council explained that the contract with the developer included a number of conditions related to planning permission. Planning permission was initially deferred and then finally granted at the beginning of November 2006, a year after the preferred developer was identified. The Council advised that the preferred developer was dissatisfied with the delay in granting planning permission and remains unhappy with some of the planning conditions imposed. The Council submitted that the potential remained for the preferred developer to pull out of the deal at the time when Linacre Land's four information requests were received and considered.
55. The first of these requests was submitted on the 30 January 2006 and the remaining requests were submitted to the Council over a relatively short time frame. Significantly, all requests were overlapping, with the fourth request being submitted on 13 July 2006 prior to the Council making its response to Linacre Land's request for a review of its third request.



56. Although I acknowledge that this contract was at an advanced stage, I am satisfied, given the explanation provided by the Council, that the contract with the preferred developer was not fully concluded at the time of each request, and that there did remain a possibility that it would not be concluded. I am also satisfied that this position remained the same when the Council considered each of Linacre Land's four information requests.
57. As the contract was not concluded at the time of the request, I accept that there remained a possibility at that time that it would not be completed, and that the Council may have had to reconsider other bids received, or re-tender the redevelopment project. I accept that to disclose information that revealed the financial details of bids made by various developers, or the Council's detailed assessments of the bids received, at the time of Linacre Land's requests, would have been likely to prejudice substantially the Council's position in any ongoing or future negotiations or re-tendering.
58. In the light of the above, I have accepted that, at the time of considering these requests, the Council correctly applied the exemption in section 30(c) of FOISA to much of the information that was redacted within the documents provided to Linacre Land. However, I have not been able to accept this in all cases. I set out my views on each item in turn below.
59. **Document (a)** – The redactions made to document (a) are restricted to financial details of bids for the redevelopment of Perth City Hall. I am satisfied that the position of the Council in obtaining best value could have been substantially prejudiced by the disclosure of this financial information before the tendering exercise was complete. I therefore accept that the exemption in section 30(c) was correctly applied to this information.
60. **Document (b)** – The information withheld within this document includes details of the redevelopment proposals made by a number of bidders, which were rejected at the outset of the tendering process and not taken forward for public consultation. Financial details (but not details of the development proposals) were also redacted from those bids taken forward to public consultation. Comments made by the Council about each bid under headings "considerations arising from appraisal" in respect of all bids were also withheld.
61. I accept that the exemption in section 30(c) was correctly applied within document (b) to financial details of the redevelopment proposals and the Council's appraisal comments (both for those proposals taken forward for public consultation and those rejected at the initial stage). However, I am not satisfied that the disclosure of the non-financial content (describing the proposed redevelopment) of those bids that were rejected at the outset could result in the harm as suggested by the Council.



62. By consulting on a number of development options, the Council has already made public details of a number of the development proposals put forward, and indicated by doing so that these were the ones that were most attractive to the Council. I do not accept that the Council's negotiating position or a future re-tendering would have been substantially prejudiced by the disclosure of the non-financial details of the other proposals made in response to Linacre Land's request. Therefore, I am unable to accept that this information is exempt under section 30(c) of FOISA.
63. **Document (c)** – The Council redacted financial information relating to the short-listed bids, some appraisal comments and the provisional Heads of Terms of Lease for the organisation identified as the preferred developer. For the reasons set out in paragraph 59 above, I accept that the Council correctly applied the exemption in section 30(c) to the information withheld within this document.
64. **Document (d)** – The first piece of information redacted from document (d) reports discussions concerning the Council's financial arrangements for funding external work on the City Hall. As this information relates to the Council's own financial arrangements rather than its negotiating position with a developer, I am not satisfied that disclosure of this information would be likely to have the substantially prejudicial effect on any negotiations or retendering claimed by the Council. I have concluded that the Council incorrectly applied section 30(c) to this information.
65. Similarly I note that the second redaction made to document (d) concerns a submission made to the Council with respect to another development. This information does not relate to the negotiations or any future tendering exercise with respect to Perth City Hall, and so I do not accept that disclosure would be likely to have the effect on that exercise that the Council has claimed. Consequently, I have again concluded that the Council incorrectly applied section 30(c) to redact this information.
66. **Document (e)** – The information withheld in this document at point 3(iv) concerns the funding arrangements for repaving works and the proposed contribution to this made by the Council and the developer. I understand that the sum paid by the developer would be agreed as part of the ongoing negotiations that were not concluded at the time of Linacre Land's request, and so I have found that the exemption in section 30(c) was correctly applied to this information at the time of Linacre Land's requests.
67. **Documents (f) and (g)** – The Council redacted information from these draft documents which again convey the financial packages offered by the various developers, the appraisal of these offers (including a ranking of offers) and the weightings of the appraisal criteria.



68. In line with my conclusions above, I am satisfied that the Council acted correctly in applying the exemption in section 30(c) to information relating to the financial packages offered by specific bids and appraisal comments from the Council. I am therefore satisfied that the Council acted correctly in its application of section 30(c) of FOISA to the majority of the information redacted from these documents.
69. However, with regard to the weightings for each criterion for assessment of the tender bids, I note that this information was provided to Linacre Land in response to an earlier request (within document (b)). Given that this information has already been made public by the Council, I cannot accept that the release of the information would have the substantially prejudicial effect argued by the Council and I therefore find that the Council was incorrect in its application of section 30(c) of FOISA to this information within documents (f) and (g).
70. Similarly, I do not accept that the Council correctly applied the exemption in section 30(c) to the ranking of the tender bids within documents (f) and (g). A similar ranking (although reflecting consideration of a larger number bids and supplementary submissions) was also provided to Linacre Land within document (b). I am again unable to accept that the exemption in section 30(c) of FOISA applies to this information within documents (f) and (g).

Public interest test

71. Having concluded that the exemption in section 30(c) was correctly applied to some of the information withheld within the documents provided to Linacre Land, I must go on to consider whether, in terms of section 2(1)(b) of FOISA, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information.
72. The Council has acknowledged that there is a public interest in the disclosure of information in connection with the Council's property transactions and that the public have a right to know about the Council's use of money and the management of its property resources. However, the Council argues that the public interest would not be served in this case were the Council to be restricted in the options open to it because of the premature release of specific details of the Council's negotiating position. As such, the Council argues that the public interest considerations of ensuring effective oversight of expenditure of public funds, and of ensuring that the public obtain value for money, are being met in maintaining the exemption.
73. Within its responses to Linacre Land the Council reiterate that the exemptions applied to these redactions are time-limited and once the negotiations are complete to the satisfaction of the Council, a reassessment of the information withheld could be made.



74. Linacre Land submitted that the public interest in maintaining the exemption in section 30(c) is outweighed by the public interest in demonstrating that the Council adopted an appropriate stance in evaluating the bids and that best value was obtained through the whole bidding process.
75. As stated earlier, I am obliged to consider the matters raised by Linacre Land in terms of the circumstances at the time of the Council's responses to the four requests. Given the timing of the applicant's requests, I am satisfied that the contract with the preferred developer, although at an advanced stage, remained incomplete and that the opportunity remained for the preferred developer to pull out of the contract. I have accepted that, at this stage, disclosure of certain information about the various bids received could undermine any future re-tendering or ongoing or future negotiations.
76. I have noted Linacre Land's comments and would note that I agree in general that there is a public interest in demonstrating that tendering processes and financial transactions by public authorities are conducted properly and that they secure best value. Disclosure in this case would allow scrutiny of the process and thinking followed by the Council in considering the various bids to redevelop City Hall.
77. However, I also recognise that while such processes remain ongoing, there will often be a legitimate public interest in withholding information that is central to them. This allows tendering and contractual negotiations to proceed in a fair manner for all parties.
78. Given the timing of Linacre Land's requests, I accept that the public interest in maintaining the exemption in section 30(c) (where correctly applied) outweighed the public interest in the disclosure of exempt information. I therefore conclude that the Council acted in accordance with Part 1 of FOISA by withholding the information that I have judged to be exempt.
79. However, I note that the Council acknowledged that the exemptions applied to these redactions are time-limited. Were Linacre Land now to submit a new request for information, this would allow consideration of these matters in the light of the time at which that was made.

Summary following consideration of exemptions

80. Given my findings above, I now require the Council to provide additional information to Linacre Land. I summarise my findings and any steps required in relation to each document below:

Document (a) [request 1 and 4] – **withheld information exempt from disclosure. No steps required.**



Document (b) [request 2 and 4] – **financial details of bids and appraisal comments exempt from disclosure. Disclose version with description of bids not taken forward for consultation (excluding financial aspect of bids) restored.**

Document (c) [request 2 and 4] - **withheld information exempt from disclosure. No steps required.**

Document (d) [request 3 and 4] - **withheld information not exempt under section 30(c) – provide unredacted version.**

Document (e) [request 3 and 4] - **withheld information exempt from disclosure. No steps required.**

Document (f) [request 1] - **financial details of bids and appraisal comments exempt from disclosure. Disclose version with weighting of appraisal criteria and ranking of bids restored.**

Document (g) [request 1] - **financial details of bids and appraisal comments exempt from disclosure. Remaining information withheld is not exempt. Disclose version with weighting of appraisal criteria, ranking of bids restored, and marginal comments restored.**

Decision

I find that Perth and Kinross Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to each of the four information requests made by Linacre Land Ltd.

With respect to request 1, I find that the Council wrongly notified Linacre Land, in terms of section 17(1), that certain information sought in request 1 was not held.

I also find that the Council incorrectly applied the exemption in section 30(b)(ii) information withheld in document (g), and so breached section 1(1) of FOISA by failing to supply this information.

With respect to each of requests 1, 2, 3 and 4, I find that the Council correctly applied the exemption in section 30(c) to some of the information that was withheld. The Council therefore acted in accordance with Part 1 of FOISA by withholding this information.



However, I have found that the Council misapplied the exemption in section 30(c) to some of the information withheld. By failing to provide this information, the Council breached the requirements of section 1(1) of FOISA.

I require the Council to supply the additional information set out in the paragraph 80 above to Linacre Land within 45 days after the date of intimation of this notice.

Appeal

Should either Linacre Land Ltd or Perth and Kinross 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 after the date of intimation of this notice.

Kevin Dunion
Scottish Information Commissioner
20 November 2007



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 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

[...]



30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

[...]

- (b) would, or would be likely to, inhibit substantially-
 - (i) [...]
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.