



Scottish Information  
Commissioner

**Decision 092/2006 – MacRoberts Solicitors and  
West Dunbartonshire Council**

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

**Applicant: MacRoberts Solicitors  
Authority: West Dunbartonshire Council  
Case No: 200501677  
Decision Date: 1 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
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## **Decision 092/2006 – MacRoberts Solicitors and West 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**

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MacRoberts Solicitors (MacRoberts) submitted two information requests to West 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**

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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**

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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

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1. MacRoberts made two separate requests to the Council on 21 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 the preference that the information should be provided to them in electronic form, failing which in hard copy. The requests also stated that in so far as any of the requested information contains personal data, the disclosure of which is exempted under section 38 of FOISA, the information can be provided with the personal data redacted.
3. The Council responded to MacRoberts on 31 March 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 letters dated 6 April 2005. MacRoberts indicated in these letters that they understood that the Council held the information that they were seeking on behalf of their client and that they believed that the section 25 exemption had not been applied properly.
5. The Council responded on 18 April 2005. It upheld its original decisions to withhold the information on the basis of the exemption under section 25 of FOISA.
6. On 5 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

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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 9 June 2005, asking for its comments on MacRoberts' applications in terms of section 49(3)(a) of FOISA.

### **Submissions from the Council**

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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**

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12. In its response to my Office, the Council has indicated that it does hold the information which MacRoberts are seeking. However, it also confirmed it was unwilling to disclose the 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 in this case.

### **The application of section 25 – information otherwise accessible**

14. The exemption under section 25 of FOISA states:

#### **25 Information otherwise accessible**

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- (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 an 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 available via the publication scheme for the Assessor. The Council confirmed that it holds the information but was unwilling to disclose it.
16. The Council has explained that the Assessor, which is part of the Dunbartonshire and Argyll & Bute Valuation Joint Board is a separate legal entity from the Council.
17. An Assessor is a Scottish public authority for the purposes of FOISA, it is listed under Schedule 1, Part 3 of FOISA.
18. The Council has advised that the information that MacRoberts are seeking is available via the publication scheme of the Assessor. The Council has also indicated that the information is available from the publication scheme in the format that MacRoberts has requested (albeit that it is subject to a charge).



19. The Council has submitted that in its response to MacRoberts requests for information, it had asked MacRoberts whether they would like the Council to transfer their requests to the Assessor. The Council submits, that it concluded from the wording of the request for review that it received back from MacRoberts that they did not require the requests to be passed on as they wanted the Council to deal with them themselves.
20. In its response to MacRoberts, the Council provided details of the website address for the publication scheme for the Assessor. The Council also advised MacRoberts that the cost for the information requested was detailed in the publication scheme.
21. 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.
22. 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 section 25 exemption.
23. In taking into consideration the submissions that have been made by the Council, I note that the Council informed MacRoberts that it held the information that they were seeking. I also note that the Council advised MacRoberts that the information was readily available via the publication scheme of the Assessor and that the Council offered to transfer the requests to the Assessor or for MacRoberts to contact the Assessor directly. I note that in its response to MacRoberts the Council provided the website address for the Assessor and stated that this website provides details of the publication scheme concerned.
24. As expressed in my guidance note on the application of the exemption under section 25 of FOISA, it is my view that where a public authority receives a request for information which they hold but which has not been made available under their 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 that I have received from the Council I am satisfied that the Council took steps to ascertain that the information was available from the Assessor prior to responding to MacRoberts to advise them that the information was available elsewhere.



25. As has been shown 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 the 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.
26. 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.
27. 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.
28. In its submissions to my Office, the Council provided me with a link to the Assessor's website and 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 West Dunbartonshire area, the cost of obtaining this information is £25.20 for the Valuation Rolls and £296.10 for the Council Tax Lists. The publication scheme provides details of who an applicant should contact to request the information and that the Assessor will endeavour to provide the requested information within 20 working days, this can be provided in printed copy or via email. I am satisfied that the information is available from another public authority's publication scheme. I am satisfied that the information is therefore exempt from release by virtue of section 25 of FOISA.



## **Decision**

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