



Scottish Information  
Commissioner

**Decision 095/2006 – MacRoberts Solicitors and  
Dundee City Council**

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

**Applicant: MacRoberts Solicitors  
Authority: Dundee City Council  
Case No: 200501872  
Decision Date: 1 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## **Decision 095/2006 – MacRoberts Solicitors and Dundee City 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 Dundee City 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 Tayside Valuation Joint Board (the Joint Board) 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 that section 1(1) of FOISA was applied correctly. As such, the Commissioner found that there had not been a 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, 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 format, 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 should be provided with the personal data redacted.
3. The Council responded to MacRoberts on 14 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 12 May 2005. It upheld its original decisions, noting that given the provisions of section 25 of FOISA the information that MacRoberts was seeking was otherwise accessible.
6. On 20 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. The Council was also asked to provide, amongst other items, a copy of the publication scheme for the Joint Board and details of how and at what cost this information can be obtained from the publication scheme. The Council was also asked to provide a detailed analysis of its use of the exemption under section 25 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 indicated that it holds the information that MacRoberts have requested. However, it is 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 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 held by it, but the Council does not provide access to this information via its publication scheme. The Council has stated that the Joint Board holds this information and makes this available via its own publication scheme.
16. The Joint Board is a separate legal entity from the Council and is included in the list of Scottish public authorities contained in Part 3 Schedule 1 to FOISA.
17. The Council has advised that the information that MacRoberts are seeking is available via the publication scheme of the Joint Board.
18. The Council has advised that it contacted the Joint Board to establish whether the information that MacRoberts was seeking was available and accessible on their publication scheme, when it received the requests from MacRoberts.
19. In its response to MacRoberts, the Council advised that the information they were seeking is available via the publication scheme of the Joint Board. Although the Council provided MacRoberts with a website link for the Joint Board's publication scheme, it did not advise MacRoberts which particular documents or publications they should access to obtain the information they were looking for.



20. In its responses to MacRoberts, the Council quoted an extract from my guidance note on the exemption under section 25 to support its reliance on this exemption. The Council quoted the following:
- “If 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 in fact available from another authority before refusing an applicant’s request on these grounds”.
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 has 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 exemption under section 25 of FOISA.
23. 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 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 public 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. I am also satisfied that the Council did contact the Joint Board to determine whether the information was available from their publication scheme or not, prior to refusing the applicants requests. I note that in its submissions to my Office, the Council has shown that it provided MacRoberts with the contact details of the Joint Board 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. Although I note that the Council did not specify to MacRoberts which classes of information they should be seeking access to within the publication scheme.
24. As has been shown above, the Joint Board 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.



25. 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.
26. 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.
27. In its submissions to my Office, the Council provided me with a link to the Joint Board's publication scheme. Having accessed this link, I found that the information which would satisfy MacRoberts requests was not in fact available on this publication scheme. However, in accessing the publication scheme for the Assessor for Dundee City Council, I found that the relevant information was contained within that publication scheme, and also that the cost of obtaining the necessary documents was also indicated. The relevant information which would satisfy MacRoberts requests is available under sections 9d and 9e under the headings of Valuation Roll and Council Tax Lists, both of these documents are available via the publication scheme in either printed format or on CD Rom. The cost of obtaining this information from the publication scheme would be £80 for the Valuation Roll and £760 for the Council Tax List. The publication scheme provides details of who the applicant should contact to request the information and states that the Assessor will endeavour to provide the requested information within 20 working days. As stated earlier the Council did not advise MacRoberts of which particular documents they should have been seeking access to from the publication scheme, and also it appears that the Council signposted MacRoberts to the wrong publication scheme for the information they were seeking.
28. In communication with the Council, it has accepted that in its response to MacRoberts it directed MacRoberts to the publication scheme for the Tayside Valuation Joint Board and that in fact the correct publication scheme should have been the Assessor's. The Council states in its submissions that it did contact the Assessor in April 2005 when it received the requests from MacRoberts and understood from the Assessor that the information was available from through the Tayside Valuation Joint Board's Publication Scheme. In its submissions the Council accept however that there are two Publication Schemes, that of the Board and that of the Assessor and it is the Assessor's which contains the information which was requested by MacRoberts. The Council has apologised for any confusion which may have resulted in respect of its signposting MacRoberts to the Joint Board's Publication Scheme.



29. Like the Joint Board, the Assessor is listed under Schedule 1 Part 3 of the Freedom of Information (Scotland) Act 2002 as a separate legal entity from the Council. Therefore the Assessor is a Scottish public authority for the purposes of FOISA.
30. As the Assessor is listed as a Scottish public authority it is also required under section 23 of FOISA to have a publication scheme.
31. Having accessed the Assessor's publication scheme, as indicated above, I am satisfied that the information that MacRoberts is seeking is contained within the scheme. I am therefore satisfied that this information is available from another public authority's publication scheme and is therefore exempt from release by virtue of section 25 of FOISA.

## **Decision**

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I find that Dundee City 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**