



Scottish Information  
Commissioner

**Decision 093/2006 – MacRoberts Solicitors and  
Highland Council**

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

**Applicant: MacRoberts Solicitors  
Authority: Highland Council  
Case No: 200501970  
Decision Date: 1 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
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KY16 9DS



## **Decision 093/2006 – MacRoberts Solicitors and Highland Council**

***Request for a list of all domestic 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 Highland 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 the Highlands and Western Isles 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 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 format, failing which in hard copy.
3. The Council responded to MacRoberts on 20 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 letters dated 3 May 2005.
5. The Council responded on 26 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 7 June 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 10 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 indicated that it holds the information that has been sought by MacRoberts. However, 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 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 Council Tax Valuation List and the Valuation Roll. The Council has stated that although it holds this information for the purposes of administering Council Tax, under paragraph 84 of the Local Government Finance Act 1992, responsibility for maintaining the information lies with the Assessor, not the Council.
16. The Council has explained that the Assessor reports to the Highland and Western Isles 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).
18. The Council has submitted that it had taken into consideration the content of the Code of Practice made under section 60 of FOISA, in entering into communication with the Assessor to ascertain whether there would be any problems if the Council were to release the information to MacRoberts. The Council state that the Assessor informed it that this information was already available in the public domain in hard copy or CD format for a fee.
19. The Council submits that it concluded, in light of this information from the Assessor, it would be correct to refuse to disclose the information.
20. In its responses to MacRoberts the Council quoted extracts from my guidance note on the section 25 exemption to support its reliance on this exemption. For example, 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 otherwise accessible”.

21. In its response to MacRoberts’ initial requests for information the Council provided the address and contact details for the Assessor. The Council also provided details of the costs of the publications concerned.
22. 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.
23. As indicated previously, the Council has submitted that it does hold the information that MacRoberts are seeking for the administration of Council Tax. However, the Council does not make this information available to the public in its publication scheme. In its submissions to my Office, the Council has advised that it was aware that this information was also held and maintained by the Assessor. The Council has also advised that in line with the recommendations laid down in the Section 60 Code, it entered into communication with the Assessor to determine if there would be any issues if it disclosed the information to the applicant. In doing so, the Council was informed that this information was readily available in hard copy of CD format for a fee via the Assessors publication scheme. I also note in the submissions from the Council that it has taken cognisance of the content of my briefing on the exemption under section 25 of FOISA and did in fact refer MacRoberts to the Assessor and recommend that MacRoberts contact them directly.
24. I am satisfied that the Council has acted appropriately in determining that the information which MacRoberts are seeking is available via the Assessor’s publication scheme. I am satisfied that in doing this the Council was correct to refer MacRoberts to the Assessor.
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 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 request 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 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 List. For the Highland Council area, the cost of obtaining this information is £270 for the Valuation Rolls and £890 for the Council Tax List. The publication scheme indicates that information will be provided by mail to applicants within 20 days. I am satisfied that the information is available from another public authority's publication scheme. I am satisfied that this information is therefore exempt from release by virtue of section 25 of FOISA.

## **Decision**

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I find that Highland 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**