



Scottish Information  
Commissioner

**Decision 094/2006 – MacRoberts Solicitors and Fife  
Council**

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

**Applicant: MacRoberts Solicitors  
Authority: Fife Council  
Case No: 200501675  
Decision Date: 1 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 094/2006 – MacRoberts Solicitors and Fife 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 Fife 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 Fife Assessor (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 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 stipulated the preference that the information should be provided to them in electronic format, failing which in hard copy. The requests also made it clear that in so far as 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 29 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 30 March 2005.
5. The Council responded on 26 April 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 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 also asked to provide, amongst other items, details of the information that has been withheld and a sample of the lists of the information which were withheld. 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**

---

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 indicated that it holds the Council Tax List which is part of 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 List and the Valuation Roll. As mentioned above, the Council has advised that it holds a copy of the Council Tax List, as this is provided to it by the Assessor to allow the Council to carry out its function of collecting Council Tax. The Council has stated that the Assessor, who is appointed by the Council, has a responsibility to carry out a number of statutory functions contained with the various Valuation (Scotland) Acts and that this includes the statutory function of compiling the Council Tax List and the Valuation Roll and maintaining these.



16. Under Schedule 1 Part 3 of FOISA, the Assessor is a separate legal entity from the Council. Therefore the Assessor is a separate 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 advised that it contacted the Assessor to establish whether the information that MacRoberts was seeking was available and accessible on their publication scheme when it received the requests.
19. In its responses to MacRoberts, the Council advised them that the information that they were seeking was available from the Assessor's publication scheme. The Council advised MacRoberts of the particular documents that they should request from the Assessor and provided MacRoberts with a website link for the Assessor's publication scheme.
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 on the exemption under section 25 of FOISA.



22. 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 part of the information that MacRoberts are seeking, as this is provided to them by the Assessor for the purpose of collecting Council Tax. I am also satisfied that the Council contacted the Assessor's office to determine whether the information was available from their publication scheme or not, prior to refusing MacRoberts' requests. I am also satisfied that the Assessor is under a statutory duty to prepare and maintain these lists. 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 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 Roll and Council Tax Lists. The cost of obtaining this information is £202.00 for a paper copy or copy on CD Rom of the Valuation Roll and £13.00 per 1,000 entries for the Council Tax Lists, where the cost of searches is £38.30 per hour. 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 working days. I am satisfied that the information is available from another public authority's publication scheme and is therefore exempt by virtue of section 25 of FOISA.

## **Decision**

---

I find that Fife Council (the 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**