



Scottish Information
Commissioner

Decision 175/2006 MacRoberts and Scottish Water

*Information relating to the status of connections to Scottish
Water's networks*

Applicant: MacRoberts
Authority: Scottish Water
Case No: 200501559
Decision Date: 19 September 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 175/2006 MacRoberts and Scottish Water

Information relating to the status of connections to Scottish Water's networks – whether the information is otherwise accessible – whether disclosure would, or would be likely to, prejudice substantially the commercial interests of any person

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002: section 25 (Information otherwise accessible); 33(1)(b) (Commercial interests and the economy).

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

Facts

MacRoberts, a firm of solicitors, asked Scottish Water to provide them with information relating to the status of connections to Scottish Water's networks. Scottish Water did not respond to MacRoberts' initial requests and refused to disclose the information requested in response to MacRoberts' requests for review. Scottish Water refused to disclose the information on the basis that the information was otherwise accessible through its publication scheme and that to disclose such information would, or would be likely to, prejudice substantially its commercial interests.

Following an investigation, the Commissioner found that Scottish Water was correct to withhold the information requested on the basis of the section 33(1)(b) exemption under the Freedom of Information (Scotland) Act 2002 (FOISA), on the grounds that disclosure would, or would be likely to, prejudice substantially the commercial interests of Scottish Water, especially in this area of its operations. However, the Commissioner found that the section 25 exemption under FOISA did not apply, since the information was not reasonably obtainable other than by requesting it under section 1(1) of FOISA. The Commissioner held that Scottish Water had therefore dealt with MacRoberts' requests for information in line with Part 1 of FOISA, subject to a breach of a technical requirement.



Background

1. On 21 February 2005, MacRoberts Solicitors, sent eight e-mails to Scottish Water, requesting information relating to the status of connections to Scottish Water's networks. The information requested was as follows:
 - a) A copy of the list of the household properties in respect of which Scottish Water collects an Annual Fixed Charges metered water charge (WAT68);
 - b) A copy of the list of the household properties in respect of which Scottish Water collects a Volumetric Charges metered water charge (WAT69);
 - c) A copy of the list of the household properties in respect of which Scottish Water collects a Property and Roads Drainage Charges metered water charge (WAT70);
 - d) A copy of the list of the non-household properties in respect of which Scottish Water collects a Property and Roads Drainage Charge (WAT71);
 - e) A copy of the list of the non-household properties in respect of which Scottish Water collects water charge Charges for properties with no water meters (WAT72);
 - f) A copy of the list of the non-household properties in respect of which Scottish Water collects water charge Charges for properties fitted with water meters (WAT73);
 - g) A copy of the list of the business properties in respect of which Scottish Water collects business water charges in relation to septic tanks (WAT74);
 - h) A copy of the list of the information contained in Scottish Water's "extensive database of up-to-date information on water and sewer connectivity across the whole of Scotland" as described on Scottish Water's website (WAT75).
2. In each case, MacRoberts stated that they did not require any details of the owner, proprietor, or occupier of any of the premises and stated a preference for receiving the information in electronic form, failing which in hard copy format. MacRoberts also requested that, in so far as any of the requested information contained personal data, the information should be provided to them with any personal data removed.
3. MacRoberts sent the e-mails to the address specified in Scottish Water's publication scheme: FOI@scottishwater.co.uk. However, Scottish Water failed to respond to any of MacRoberts' e-mails within the statutory 20 working day timescale specified in section 10 of FOISA.



4. On 23 March 2005, MacRoberts sent eight corresponding e-mails to Scottish Water requesting a review of each of their information requests. MacRoberts stated that, since they had not received any response to their requests within the statutory period set out in FOISA, they required Scottish Water to review its refusal to supply the information requested.
5. Scottish Water responded to MacRoberts' requests for review on 22 April 2005. In its response, Scottish Water apologised to MacRoberts for failing to respond to their initial e-mail requests. Scottish Water stated that it had considered the requests together as they all related to the status of connections to Scottish Water's networks. Scottish Water proceeded to confirm that it held the information but had decided not to release it on the basis of sections 25 (information otherwise accessible) and 33 (commercial interests and the economy) of FOISA.
6. MacRoberts were dissatisfied with the outcome of Scottish Water's review and, on 22 and 25 April 2005, applied to the Scottish Information Commissioner for a decision.
7. The case was then allocated to an investigating officer and the application validated by establishing that MacRoberts had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to their request.

The investigation

8. The investigating officer wrote to Scottish Water on 19 May 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. Scottish Water was asked to comment on the issues raised by the case and to provide supporting documentation for the purposes of the investigation. In particular, Scottish Water was asked to provide details of the process involved in reviewing MacRoberts' requests and to explain the steps taken to determine whether the information requested was actually contained within Scottish Water's publication scheme. A detailed analysis of how Scottish Water had relied on section 25 (Information otherwise accessible) and section 33 (Commercial interests and the economy) of FOISA was also requested.



Submission from Scottish Water

9. Scottish Water responded on 8 July 2005, providing comments and supporting documentation for the purpose of the investigation. This included representative samples of the information that is available through its publication scheme. In its letter, Scottish Water confirmed that information regarding the status of connections to public water and sewerage networks is available in accordance with its publication scheme and this is discussed in more detail in the next section below.
10. Scottish Water stated that the various requests received from MacRoberts had been aggregated as they all related to the status of connections to Scottish Water's networks. Scottish Water added that its response was the same for all of the requests received in this instance.
11. In its letter, Scottish Water noted that MacRoberts had requested similar information from a number of local authorities. I have considered the issues surrounding those applications in detail in decision 056/2006, MacRoberts and the City of Edinburgh Council. That decision was issued on 24 March 2006 and is available on my website (<http://www.itspublicknowledge.info/appealsdecisions/decisions/Documents/decision6056.htm>).
12. Scottish Water also provided details of its statutory duties concerning the provision of information relating to its infrastructure. These include section 58 of the Water Industry (Scotland) Act 2002, which states that Scottish Water may afford facilities for any person to inspect and, on payment of a reasonable fee, to obtain copies of or extracts from any records (in whatever form or medium) transferred to Scottish Water by virtue of the Water Industry (Scotland) Act 2002, created or acquired by Scottish Water in the exercise of any of its functions, or otherwise in its keeping.
13. Scottish Water carries out a commercial property search service which provides reports on the existence of public water and sewerage connections to a property. These reports are usually required as part of the conveyancing process. The service is generally provided directly to solicitors or via local authorities or other private firm of searchers, rather than to private individuals. This service is distinct from the right of individuals to access and inspect network plans, usually in area offices, for which no charge is applied.



14. Scottish Water stated that such records are routinely inspected by search companies who sell the information to customers in response to requests for information regarding the status of connections to Scottish Water's infrastructure. On its website, Scottish Water states that its "extensive database system is the sole source of up-to-date information on water and sewer connectivity across the whole of Scotland":
(http://www.scottishwater.co.uk/portal/page?_pageid=174,480615&_dad=portal&_schema=PORTAL). The database is, according to Scottish Water, updated continually.
15. In competition with search companies, Scottish Water runs a commercial service providing property search certificates for £40 plus VAT, in line with its published scheme of charges as required under section 29A of the Water Industry (Scotland) Act 2002 (WISA). Each certificate is certified as being accurate and is covered by fully indemnified comprehensive insurance.
16. A property search certificate states:
 - whether the property is connected to public water mains and whether these mains are *ex-adverso* (opposite to) the boundaries of the property;
 - whether the property is connected to the public sewer, whether these sewers are *ex-adverso* the boundaries of the property and whether there is a wastewater charge;
 - whether the water supply is charged by household water charge, business water charge or metered supply; and
 - whether any public mains or sewers of a strategic nature are located within the grounds of the property which may impact on future building plans or have "rights of access" by Scottish Water for maintenance or repair.
17. Under section 29(1)(a) of WISA, Scottish Water has the power to demand and recover charges for any services provided by it in the exercise of its core functions and under section 29(1)(b) of WISA it may fix, demand, and recover charges for any goods supplied or services provided by it in exercise of any of its other functions. The power conferred by section 29(1)(b) of WISA is exercisable by or in accordance with an agreement with the person to be charged.
18. The Water Industry Commissioner must, when required by the Scottish Ministers, advise them on the matters to be taken into, or left out of, account by Scottish Water in fixing charges in charges schemes having regard to the economy, efficiency and effectiveness with which Scottish Water is using its resources in exercising its core functions and the likely cost to Scottish Water. Scottish Water must send a charges scheme to the Water Industry Commission for Scotland for approval.



19. Scottish Water's current scheme of charges includes the following statement:

"Scottish Water will not charge land owners who ask for copies of plans showing the location of assets on their land.

There is no charge if the plans are requested to allow Scottish Water's pipelines and other assets to be located to avoid damage during site investigations works, excavation or other activities or to minimise potential safety and operational works, excavation or other activities or to minimise potential safety and operational issues.

We will make a charge if we are asked to provide details for an individual property through either:

- written information indicating whether a property is connected or adjacent to our water or waste water infrastructure;
- property connection certificates;
- property search certificates;
- providing copies or extracts from our plans; or
- any other administration or consultation for this type of service such as site visits or advice while inspecting plans.

a) Charges will also apply when organisations or individuals request copy plans of asset locations on land that is not in their ownership."

20. Scottish Water pointed out that property search certificates are made available through its publication scheme and are listed under section 14.4 of the scheme: Customer (Household and Business and the Scheme of Charges). The scheme of charges provides details of the different services offered by Scottish Water and its current charges for household and business customers. Under the heading "Services for Developers and Property Enquiries", information is available which is described as follows: "Property clearance, connection certificate or written confirmation of connection to or adjacent to infrastructure". The relevant charge for this information is also provided.

21. Scottish Water also emphasised that it was willing to enter into licensing arrangements with search companies and others who wished to obtain and re-use information for commercial purposes. Scottish Water advised me that it had intimated to MacRoberts on a number of occasions that it would be happy to discuss similar arrangements with MacRoberts or their clients, but that this offer was not taken up by MacRoberts.



The Commissioner's Analysis and Findings

22. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both MacRoberts and Scottish Water and I am satisfied that no matter of relevance has been overlooked.

Section 25 – Information otherwise accessible

23. Scottish Water took the view that MacRoberts' clients (and, presumably, MacRoberts themselves) could reasonably obtain the information other than by requesting it from Scottish Water under FOISA, on the basis that the information was already available from Scottish Water in accordance with its publication scheme.
24. Under section 23 of FOISA, every Scottish public authority must adopt and maintain a publication scheme which relates to the publication of information by the authority and is 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.
25. A publication scheme must specify:
- (a) classes of information which the authority publishes or intends to publish;
 - (b) the manner in which information of each class is, or is intended to be, published; and
 - (c) whether the published information is, or is intended to be, available to the public free of charge or on payment.
26. The exemption under section 25 of FOISA is an absolute exemption (i.e. it is not subject to the public interest test) and the text of that exemption is set out in full in the appendix to this decision.



27. Section 25(1) of FOISA states that information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. This section should be read in conjunction with section 25(3) which 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 set out in Part 1 of FOISA. Instead of requiring the applicant to go through the formal request process within FOISA, the information is made available under the terms set out in the relevant authority's publication scheme.
28. On the basis of the information supplied to me by Scottish Water (i.e. extracts from its publication scheme which detail the information held and the respective charges that apply, copies of sample property search certificates which, if completed, would specify, *inter alia*, whether a named property is connected to the public water supply or to the public sewer system and whether that property is subject to business or household water charges or drainage charges), I am satisfied that the information requested by MacRoberts is not available from Scottish Water in accordance with the provisions contained in its publication scheme. My reasons for this are as follows.
29. MacRoberts requested lists of properties where Scottish Water collects specific water and drainage charges as well as a copy of water and sewer connectivity information contained in Scottish Water's database. If such information could be obtained by requesting multiple copies of individual property search certificates under the terms of Scottish Water's publication scheme, it could also be argued that the information requested and the information which would be made available under the publication scheme would not be the same.
30. There is a significant difference between a comprehensive list of properties, which states which charge is applicable to which property, and an individual certificate which contains the information for only one property. Whereas the information in the lists of properties could be provided to MacRoberts *en masse*, and would satisfy the terms of their request, the same could not be said about the information contained within each property search certificate. For MacRoberts to be able to use Scottish Water's publication scheme to obtain the lists they require, they would presumably have to supply Scottish Water with a list of all of the properties they require information about and ask for an individual search to be carried out in relation to each property.
31. In the course of the investigation, the investigating officer was informed by Scottish Water that the kind of information specified in the lists requested by MacRoberts was not contained within its property search certificates. Instead, such information could only be obtained by running reports in various databases which would produce the lists required.



32. I am of the opinion that the information requested by MacRoberts is therefore not readily accessible, since Scottish Water would have to run specifically tailored reporting procedures in order to extract the required information from its databases. The information in question is therefore not readily available or reasonably accessible to the public at large in accordance with Scottish Water's publication scheme.
33. It should also be noted that an authority cannot rely upon section 25 of FOISA, where it is claimed that information is available in accordance with its publication scheme, and then proceed to refuse to disclose such information under another exemption in FOISA (e.g. section 33(1)(b) of FOISA, the application of which is discussed further below). I am therefore of the view that Scottish Water cannot rely upon the section 25 exemption under FOISA in relation to MacRoberts' requests for lists of properties where Scottish Water collects specific water and drainage charges (WAT68-74).
34. In relation to MacRoberts' request for a copy of the list of the information held in Scottish Water's database concerning water and sewer connectivity across Scotland, the same reasoning applies. In order to provide such information, Scottish Water would have to run reports in various databases in order to extract the required information. Once extracted the information would have to be edited by Scottish Water in order to exclude any personal, confidential or sensitive information. Therefore, I am of the view that Scottish Water does not make the information that MacRoberts requested readily available in accordance with its publication scheme and consequently cannot rely upon this exemption in relation to MacRoberts' request (WAT75).
35. I am therefore of the opinion that none of the lists of information requested by MacRoberts are obtainable in accordance with Scottish Water's publication scheme.
36. On the basis of the above considerations, I am of the opinion that Scottish Water was wrong to rely upon the exemption under section 25 of FOISA, since the lists of information requested by MacRoberts are not contained within Scottish Water's publication scheme and are not made readily available in accordance with Scottish Water's publication scheme. The information requested is therefore not otherwise accessible in terms of being reasonably obtainable in accordance with Scottish Water's publication scheme.

Section 33(1)(b) – Commercial interests

37. Where an authority considers that section 33(1)(b) of FOISA applies to information which is the subject of a request, it needs to indicate whose commercial interests might be harmed by disclosure (e.g. Scottish Water in this case), the nature of those commercial interests and how these interests will be prejudiced substantially.



38. Even where an authority can demonstrate that disclosure of information would, or would be likely to, prejudice substantially its commercial interests, it must still go on to consider whether the public interest in disclosing the information is outweighed by the public interest in withholding the information. It must release the information if it believes that the public interest would be better served by the release of the information.
39. Scottish Water pointed out that although it is a public authority it is charged with operating as if it were a privatised company: its regulators benchmark it against privatised water companies in the rest of the UK (which are not subject to the provisions of freedom of information legislation). Scottish Water argued that disclosure of the information would, or would be likely to, prejudice substantially its commercial interests since Scottish Water derives a considerable income from the provision of information regarding water and sewerage connections. Scottish Water argued that it is funded by its customers and the income derived from providing such information to solicitors, search companies and the public helps to defray Scottish Water's operating costs.
40. Having established above that the information requested by MacRoberts in this case is not contained within Scottish Water's publication scheme or made readily available in accordance with Scottish Water's publication scheme, I will now go on to consider whether the section 33(1)(b) exemption under FOISA applies to the information MacRoberts has requested which is held within Scottish Water's databases.
41. Scottish Water stated that although a register of trade effluent consents is available for inspection, information held on billing systems is not available for general inspection. Scottish Water argued that if it were to produce lists containing billing information these would have considerable commercial value and, if the information was correlated and edited in such a way that allowed it to be available to the public, it could also be sold by Scottish Water to cost consultants who seek to check bills for customers in exchange for a fee or a commission based on any savings achieved. Scottish Water stated that this may in fact occur when the retail market opens for commercial customers in 2008, but disclosure at this time could substantially prejudice the commercial interests of Scottish Water and its customers.
42. In all the circumstances, I am satisfied that Scottish Water has commercial interests in relation to the provision of the information requested by MacRoberts. I am also of the opinion that disclosure of the information requested by MacRoberts under FOISA would, or would be likely to, result in a significant loss of income for Scottish Water and would, or would be likely to, prejudice substantially its commercial interests, especially in relation to this particular area of its operations.



43. The exemption in section 33(1)(b) of FOISA is subject to the public interest test contained in section 2(1)(b) of FOISA. In this case, this means that even although I am satisfied that the release of the information would, or would be likely to, prejudice substantially Scottish Water's commercial interests, I must go on to consider whether in all the circumstances of the case the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. If I find that the public interest would be better served by the information being disclosed, I must order release of the information.
44. Scottish Water has argued that, in situations where a public authority owns intellectual property which it can exploit commercially to the benefit of the public, it would not be in the public interest to hand over such information for exploitation by private enterprise.
45. As I am required to do, I have considered the public interest in favour of release as well as the public interest in favour of the information being withheld. In considering the public interest in favour of release, I have taken into account the fact that the release of the information to parties other than Scottish Water might reduce the cost to commercial organisations of obtaining the information which otherwise must be obtained from Scottish Water by way of licensed arrangements with commercial organisations in line with Scottish Water's scheme of charges.
46. It could be argued that the cost of obtaining the information requested by MacRoberts might be reduced for commercial organisations either because that information had been made publicly available or because third parties could compete with Scottish Water in order to provide the information. However, I am not convinced that any potential benefit obtained by such organisations as a result of them obtaining access to the information in question would result in any benefit to the public. It is more likely that releasing the information under FOISA would, or would be likely to, prejudice substantially Scottish Water's commercial interests in this area and could result in increased water charges to the detriment of businesses and the public at large.
47. It is also difficult to see how it could be argued that it would be in the public interest for commercial organisations to be able to deprive Scottish Water of income that it is legally entitled to collect and charge for, in line with its scheme of charges which is approved by the Water Industry Commission for Scotland.



48. Although graphical information on Scottish Water's infrastructure is available for inspection, information that is requested about a specific property or part of Scottish Water's infrastructure or proposed development is made available in accordance with Scottish Water's scheme of charges. In my view, the release of such information under FOISA would, or would be likely to, significantly harm the finances of Scottish Water in relation to its commercial interests in this area and this loss of income could in turn have the unintended consequence of driving up water and sewerage prices which would be to the detriment of businesses and the public at large. The only obvious advantage in disclosing such information under FOISA would appear to be to commercial companies who would be able to harvest such data for their own commercial benefit.
49. In my briefing on the public interest, which is available on my website (<http://www.itspublicknowledge.info/legislation/briefings/publicinterest.htm>), it is stated that the public interest is not defined within FOISA but has been variously described as "something which is of serious concern and benefit to the public", not merely something of individual interest or of sectional interest to particular groups in society. It has also been held that public interest does not mean "of interest to the public" but "in the interest of the public", i.e. it serves the interests of the public. In this instance it could be argued that there is a sectoral interest in releasing the information rather than a general public interest. In other words, whereas release of the information could be argued on the basis that it would be of benefit to commercial operators, the public interest test involves the consideration of whether or not release of the information would be in the interests of the public as a whole.
50. MacRoberts argued that the information was being withheld on the basis that Scottish Water wishes to keep such information within its possession "in order to support (and exploit) its statutory monopoly on water and water information". In my view, the matter of whether there is an argument for opening up the water industry market in Scotland as a whole to commercial competition is not relevant to the matter in hand. Although the retail market for non-domestic customers is being opened up to competition from 2008, I must consider the law as it now stands. Scottish Water was established under the Water Industry (Scotland) Act 2002 and has to operate within a legal framework. Matters such as the issue of water privatisation are matters for the Scottish Ministers and the Water Industry Commission for Scotland and have no bearing on the public interest arguments being considered in this case, although I have considered the public interest in increasing competition in the narrow area of the supply of information.



51. Having considered these matters and, on the basis of information supplied for the purposes of my investigation by Scottish Water, I am of the view that, on balance, it would not be in the public interest for the information to be released given that the harm caused to Scottish Water's commercial interests could impact upon water and sewerage charges issued to the public. I am satisfied that the public interest in increasing competition in the narrow area of the supply of information is not sufficient on its own to outweigh the public interest in avoiding a likely increase in charges.

Technical requirements of FOISA

52. Scottish Water appears to have no record of MacRoberts' initial e-mails of 21 February 2005, and has been unable to trace these as having been received even though all requests made to its freedom of information e-mail address are logged on receipt. This led to a technical breach of FOISA concerning the way in which the information requests were dealt with.
53. I find that, in failing to respond to MacRoberts' original requests, Scottish Water failed to comply with its duty to respond to information requests within 20 working days of receipt as set out in section 10(1) of FOISA.
54. I do not require Scottish Water to take any remedial steps in relation to this technical breach.

Decision

I find that Scottish Water was correct to withhold the information requested on the basis of the section 33(1)(b) exemption under FOISA. This section states that information is exempt if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person. I hold that disclosure of the information requested would, or would be likely to, prejudice substantially Scottish Water's commercial interests. I also hold that it would not be in the public interest to release such information on the grounds that the loss of income which is currently obtained by Scottish Water in providing such information through licensed arrangements with commercial organisations would, or would be likely to, have the unintended consequence of increasing overall water and sewerage charges which would not be in the interest of the public.



However, I find that Scottish Water was not entitled to withhold the information requested on the basis of the section 25 exemption under FOISA. Section 25 states that information is exempt from release under FOISA if an applicant can reasonably obtain the information other than by requesting it under section 1(1) of FOISA. I hold that the information (lists of properties in respect of which Scottish Water collects water and drainage charges and lists of information contained in Scottish Water's database relating to water and sewer connectivity across Scotland) is not available in accordance with Scottish Water's publication scheme and is not reasonably obtainable other than by requesting it under section 1(1) of FOISA. As a consequence of this, the section 25 exemption in FOISA cannot be relied upon to withhold the information requested.

I therefore find that Scottish Water failed to comply with Part 1 of FOISA in applying the exemption contained in section 25 of FOISA to the information, contrary to section 1(1). However, given that I consider the information to be exempt under section 33(1)(b) of FOISA, I do not require Scottish Water to take any remedial action in relation to this breach.

In relation to Scottish Water's handling of MacRoberts' requests, I find that Scottish Water partially failed to comply with Part 1 of FOISA in responding to MacRoberts' requests for information. I find that Scottish Water breached section 10(1) of FOISA in dealing with the requests, as set out above. I do not require Scottish Water to take any remedial action in relation to these breaches.

Appeal

Should either MacRoberts or Scottish Water wish to appeal against this decision, there is a right to 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.

Kevin Dunion
Scottish Information Commissioner
19 September 2006



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

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.

33 Commercial interests and the economy

- (1) Information is exempt information if-
 - ... (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).