

Decision Notice



Decision 151/2008 Councillor Danny Carrigan and Lanarkshire Valuation Joint Board

Addresses and sales dates of specific properties

Reference No: 200801190
Decision Date: 8 December 2008

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Councillor Danny Carrigan (Councillor Carrigan) requested from the Lanarkshire Valuation Joint Board (the Board) the exact addresses and sales dates of the three properties whose selling price had been used to determine the council tax banding of a property inhabited by one of his constituents. The Board responded by advising Councillor Carrigan that it considered the information exempt from disclosure in terms of section 25(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Councillor Carrigan remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Board had dealt with Councillor Carrigan's request for information in accordance with Part 1 of FOISA, by correctly applying the exemption in section 25(1) of FOISA to the withheld information. He did not require the Board to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement), 2(1) and (2)(a) (Effect of exemptions) and 25 (Information otherwise accessible)

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

Background

1. On 13 June 2008, Councillor Carrigan wrote to the Lanarkshire Valuation Joint Board (the Board) requesting the exact addresses and sales dates of the houses on a specified street whose sale price was used by the Board to determine the council tax banding of his constituent's residence.
2. The Board responded on 23 June 2008. It advised Councillor Carrigan that it considered the information he had requested to be exempt from disclosure in terms of section 25(1) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). The Assessor, who responded on behalf of the Board, offered to meet with Councillor Carrigan to discuss this matter informally.
3. On 29 July 2008, having met with the Assessor, Councillor Carrigan wrote to the Board requesting a review of its decision.



4. The Board notified Councillor Carrigan of the outcome of its review on 5 August 2008. It upheld its original decision to withhold the information in terms of section 25(1) and 38(1)(b) of FOISA.
5. On 11 August 2008, Councillor Carrigan wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Councillor Carrigan had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 27 August 2008 the Board was notified in writing that an application had been received from Councillor Carrigan and asked to provide the Commissioner with any information withheld from him. The Board responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Board, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Board was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Board responded in writing on 29 October 2008. In its submissions, the Board explained its reasons for withholding the information in terms of section 25(1) and 38(1)(b) of FOISA.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has consider all of the withheld information and the submissions made to him by both Councillor Carrigan and the Board and is satisfied that no matter of relevance has been overlooked.

Scope of the information request

11. In this case, Councillor Carrigan has requested the exact addresses and sales dates for the properties that were used to set the council tax banding for his constituent's residence. It should be noted that the "sales date" information held by the Board - and the Registers of Scotland (RoS) - and discussed in this Decision, is the date of registration of the sale and not the exact sales date. This point was clarified with both parties during the investigation in order to ensure that both the Board and Councillor Carrigan understood the information under discussion.



Section 25(1) – Information otherwise accessible

12. The Board relied on the exemption contained in section 25(1) of FOISA to withhold the details of the addresses and sales data requested by Councillor Carrigan.
13. Section 25(1) of FOISA allows Scottish public authorities to exempt information which the applicant can reasonably obtain other than by requesting under section 1(1) of FOISA. The exemption in section 25 is absolute in that section 2(2)(a) of FOISA provides that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
14. It should be noted that section 25(1) of FOISA is not restricted to information that is publicly accessible. It recognises that where information is already available to the applicant (even if it is not available to the general public) there is no need to provide an alternative right of access to it through FOISA.
15. The issue to be considered in this case is whether the information requested by Councillor Carrigan can be reasonably obtained by him through means other than FOISA.
16. In its submissions, the Board noted that it had met with Councillor Carrigan on 28 July 2008 (after providing its initial response to him, but before he had submitted his request for review) in an effort to reassure him that his constituent was not being unfairly treated. During this meeting the Board provided Councillor Carrigan with the exact addresses of the three properties that are relevant to his request, along with the year in which they were sold. The Board submitted that any information discussed during that meeting was provided to Councillor Carrigan in confidence, and that it was given to him in his capacity as an elected member representing his constituents.
17. The Commissioner would like to clarify that applicants and public authorities can, if they so wish, attempt to reach settlement agreements outwith FOISA with the aim of reaching a resolution that does not require the Commissioner to issue a Decision. For example, they may be willing to disclose information to an individual in confidence, while they would not be willing to have the same information publicly disclosed. With reference to the above meeting, the Commissioner acknowledges that this represents the Board's attempt at informal resolution and that any information disclosed to Councillor Carrigan at that meeting was not disclosed under FOISA, but was given to him in confidence. However, the Commissioner also notes that this attempt at informal resolution did not affect Councillor Carrigan's rights under FOISA, in that he was still entitled to ask the Board to review its initial response to him and to appeal to the Commissioner when he remained dissatisfied.
18. In his application, Councillor Carrigan supplied the Commissioner with a copy of the information he obtained from the Board during the above meeting, which consisted of the addresses of the three properties and the year in which they were sold. As this information is held by Councillor Carrigan, the Commissioner considers that it is reasonably obtainable *to him* other than by requesting it under FOISA, and he is satisfied that the addresses and sales year of the above three properties fall under the exemption contained in section 25(1) of FOISA.



19. However, the Commissioner notes that Councillor Carrigan has sought “the exact date of the sales” of the three properties not just the year of sale. The Commissioner has interpreted this to mean that Councillor Carrigan is seeking information on the day and month of the sale of the three properties as well as the year. Consequently, the Commissioner will now consider whether the exact sale dates of the three properties is also exempt in terms of section 25(1). As noted above, the “sales date” information held by the Board is understood to be the date of registration of the sale.
20. In its submissions, the Board argued that the information sought by Councillor Carrigan is available from the RoS in accordance with that authority’s publication scheme. The Board noted that the information is subject to fees in accordance with the Fees in the Registers of Scotland Amendment Order 2005.
21. With a view to determining whether this was the case, the investigating officer contacted the RoS and asked whether it was possible to obtain the specific sales dates for the three properties. The RoS advised that if an applicant supplied it with an address and a year then it could provide the exact date of sale for that property. The RoS explained that there is a charge for this information, and details of its fees are set out in its publication scheme. The Commissioner notes that section 25(3) of FOISA creates a presumption that information which is available through an authority’s publication scheme should be considered to be reasonably obtainable for the purposes of section 25(1) even though payment may be required to access it.
22. Having considered all of the circumstances of the case, the Commissioner is satisfied that all of the information requested by Councillor Carrigan is exempt in terms of section 25(1) of FOISA, in that it is otherwise accessible to him other than through FOISA. The Board therefore acted in accordance with Part 1 of FOISA by withholding the requested information from Councillor Carrigan.
23. Having reached this conclusion, the Commissioner has not gone on to consider the exemption contained in section 38(1)(b) of FOISA and which was also applied to this information by the Board.

DECISION

The Commissioner finds that the Lanarkshire Valuation Joint Board acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Councillor Carrigan.



Appeal

Should either Councillor Carrigan or the Lanarkshire Valuation Joint Board 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Investigations
8 December 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 002, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 002 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - ...

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.