



Scottish Information
Commissioner

**Decision 037/2007 MacRoberts and the Keeper of
the Registers of Scotland**

Request for copy of Application Record

Applicant: MacRoberts, Solicitors

Authority: The Keeper of the Registers of Scotland

Case No: 200502125

Decision Date: 1 March 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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St Andrews
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Decision 037/2007 – MacRoberts, Solicitors and the Keeper of the Registers of Scotland

Request for copy of Application Record – information refused under section 25(1) (information otherwise accessible) of FOISA – Commissioner upheld use of exemption

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) and (2) (General entitlement); section 8(1)(b) (Requesting information); sections 23(1) and (2) (Publication schemes) and section 25(1), (2)(a), (2)(b)(i) and (3) (Information otherwise accessible)

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, requested a copy of the “the Application Register”, later clarified to be a copy of the Application Record. The Keeper of the Registers of Scotland (the Keeper) responded, citing the exemption in section 25(1) with reference to 25(2)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA).

After an investigation the Commissioner found that the Keeper had dealt with MacRoberts’ request for information in accordance with Part 1 of FOISA, in that he applied section 25 of FOISA to the information withheld and consequently complied with part 1 of FOISA.

Background

1. On 27 April 2005, MacRoberts requested a copy of the Application Register maintained by the Keeper.



2. On 24 May 2005 the Keeper responded, having clarified on 5 May 2005 that the information MacRoberts required was the Application Record, and stated that he did not consider MacRoberts' request as being valid in terms of section 8(1)(b) of FOISA.
3. The Keeper further stated that, even were the request valid, the Application Record was exempt information as the information was considered otherwise available, and citing section 25(1) of FOISA.
4. On 27 May 2005, MacRoberts requested a review of the Keeper's decision, contending that the application was valid and that the information sought was not covered by section 25(1) of FOISA.
5. On 15 June 2005, the Keeper responded to the request for review, upholding the original decision.
6. On 17 June 2005, I received an application for a decision from MacRoberts as to whether the Keeper had dealt with their information request in accordance with FOISA.
7. The case was subsequently allocated to an investigating officer.

The Investigation

8. My investigating officer notified the Keeper of the application from MacRoberts in terms of section 49(3)(a) of FOISA and asked for his comments on the application and for further information in relation to this case, in particular the information requested by MacRoberts. The Keeper responded on 20 July 2005.

Submissions from the Keeper

9. The Keeper submitted that he did not believe MacRoberts' application was valid in terms of section 8(1)(b) of FOISA in that Mr Flint, the partner of MacRoberts who had made the information request was acting "on behalf of a client" and that therefore neither Mr Flint nor MacRoberts could be considered to be the applicant. Rather, he contended, the true applicant was the unidentified client for whom Mr Flint and MacRoberts were acting as agents.



10. The Keeper added that, even were the request to be considered valid, he considered the information exempt under section 25(1) of FOISA as the information contained within Application Record can be accessed by the public on payment of the appropriate fee and that this was detailed on the Registers of Scotland Publication Scheme.
11. The Keeper advised that the Land Register of Scotland opened in 1981 and from the outset was a computerised register, the main purpose of which was the creation and maintenance of Title Sheets of interests in land. Applications for registration in the Land Register can be accepted by the Keeper which result in the creation of a new Title Sheet or the amendment of an existing Title Sheet.
12. As the processing of applications for registrations takes time a need to keep track of ongoing or “live” applications was required.
13. The Keeper advised that the “Application Record” is a way of keeping track of live applications for registration and that it was a collection of data about such applications.
14. Despite the name, the “Application Record” is not a discrete record and has no separate existence beyond the Land Register – it simply consists of data about applications for registration held in the Land Register of Scotland.
15. The Keeper argued that this made the Application Record information which an applicant could reasonably obtain other than having to request it under section 1(1) of FOISA.

Submissions for the applicant

16. MacRoberts stated that they wanted to gain access to the information contained in the Application Record and to obtain regular updates of the information for their client in a convenient manner.
17. MacRoberts also submitted that their client received regular updates of other registers from other agencies and public authorities and this had never been considered a problem.

The Commissioner’s Analysis and Findings

18. I have considered the correspondence, submissions and information supplied to me by both parties.



19. This investigation considered firstly whether MacRoberts' request was valid and, if so, whether the exemption claimed by the Keeper under section 25 of FOISA was applied correctly.

Was MacRoberts' request valid in terms of section 8(1)(b) of FOISA?

20. The Keeper asserted that MacRoberts' request is not valid in that they made their request "on behalf of a client" and cited section 8(1)(b) of FOISA.
21. This section of FOISA does indeed stipulate that a request "states the name of the applicant and an address for correspondence..."
22. Section 1(2) of FOISA defines the "applicant" as the person who makes a request. In this case, MacRoberts have made it clear that they are acting on behalf of an unnamed client. Where a solicitor has made it clear that he or she is acting on behalf of a named client then I will consider the "applicant" in that case to be the client. However, I do not agree that it is necessary for a firm of solicitors to give the name of their clients when making a request for information in order for the request to be valid. In terms of section 1(1) of FOISA, "a person" may make a request for information. The definition of "person" clearly includes a firm of solicitors. In such cases, I will, given the definition of "applicant" in section 1(2) of FOISA, consider the firm of solicitors to be the applicant. Clearly this will be relevant should an applicant wish to appeal against one of my decisions to the Court of Session. In the case of a named client, I consider that it is the named client who has the right of appeal. In the case of the applicant being the firm of solicitors, then it will be the firm of solicitors who will have the right of appeal.
23. I therefore consider MacRoberts' request to have been a valid request in terms of section 1(1) of FOISA.

Consideration of the application of section 25(1) – information otherwise accessible

24. The Keeper stated that the information was exempt by virtue of section 25 of FOISA in that the information is otherwise accessible, even if payment is required for access to it.
25. Having checked the Registers of Scotland Publication Scheme (<http://www.the Keeper.gov.uk/foi/infregisters.htm>) I can find no specific mention of the Application Record. However, I am satisfied by the Keeper's submission that, by virtue of the fact that the Land Register is available and that the Application Record is not distinct from the information contained in the Land Register, the information requested is also available in accordance with that Publication Scheme.



26. This is not inconsistent with the requirement of section 23 of FOISA, which imposes a duty on Scottish public authorities to adopt and maintain a publication scheme and to publish information in accordance with that scheme. Section 23(2)(a) requires only that a publication scheme must specify classes of information it publishes. As the Land Register itself is the class in this case, and the Application Record forms part of that class, the information is held to be available in accordance with the publication scheme.
27. I take this to be sufficiently clear that the Application Record is information which is otherwise accessible.
28. I am therefore satisfied that the authority correctly applied section 25(1) with reference to 25(2)(a) of FOISA in exempting the information requested.

Decision

I find that the Keeper of the Registers of Scotland dealt with MacRoberts' request for information in accordance with Part 1 of FOISA, in that it applied section 25 of FOISA to the information withheld and consequently complied with section 1(1) of FOISA.

Appeal

Should either MacRoberts or the Keeper wish to appeal against my 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.

Kevin Dunion
Scottish Information Commissioner

1 March 2007



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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the "applicant".

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
...
 - (b) states the name of the applicant and an address for correspondence; and...

23 Publication schemes

- (1) A Scottish public authority must-
 - (a) adopt and maintain a scheme (in this Act referred to as a "publication scheme") which relates to the publication of information by the authority and is approved by the Commissioner;
 - (b) publish information in accordance with that scheme; and...
- (2) 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.

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;

...

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.