



Scottish Information
Commissioner

**Decision 089/2006 MacRoberts Solicitors and Orkney Islands
Council**

***Request for information relating to Property Enquiry
Certificates***

**Applicant: MacRoberts Solicitors
Authority: Orkney Islands Council
Case No: 200600767
Decision Date: 31 May 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 089/2006 MacRoberts Solicitors and Orkney Islands Council

Failure of Orkney Islands Council to respond to an information request and subsequent request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002

Facts

1. On 1 February 2006, MacRoberts Solicitors (MacRoberts) made an information request to Orkney Islands Council (the Council) for the number of Property Enquiry Certificates issued by the Council from 1 December 2002 and the details of any income generated from each property enquiry certificate. In their requests, MacRoberts referred to the Freedom of Information (Scotland) Act 2002 (FOISA).
2. The Council did not respond to MacRoberts' request for information.
3. MacRoberts wrote again to the Council on 2 March 2006 requesting that it review its decision to withhold the information requested. Again, they did not receive a response from the Council.
4. On 7 April 2006, MacRoberts applied to the Scottish Information Commissioner requesting that he investigate the Council's refusal to respond to their request for information and subsequent request for review.
5. The Commissioner notified the Council of the application made by MacRoberts and invited its comments on 16 May 2006. The Council responded to the notice within the timescale indicated, providing comment and information.
6. The Council stated that, due to an administrative oversight, it had not responded to MacRoberts' request for information or their request that the Council review its decision. The Council indicated that it had now responded to MacRoberts' request, providing all of the information requested, and enclosed a copy of this response in its reply to the Commissioner.



Decision

Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and must issue a Decision Notice to both the applicant and the public authority.

I am satisfied that MacRoberts made a request for information to the Council on 1 February 2006 which was valid in terms of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 2 March 2006.

Section 10 of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information. Section 21(1) of FOISA gives authorities a maximum of 20 working days to carry out a review from receipt of the request to carry out the review.

The Council did not respond either to MacRoberts' request for information or to their requirement for review within the respective timescales specified in FOISA. The Commissioner therefore finds that the Council did not deal with MacRoberts' request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with sections 10 and 20.

The Commissioner recognises that the Council responded to MacRoberts' request for information on receipt of notification from him that an application had been made. He also notes that the Council has disclosed all of the information requested by MacRoberts. As a result the Commissioner does not require the Council to take any remedial action upon receipt of his decision.

Appeal

Should either party 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.

Margaret Keyse
Head of Investigations
31 May 2006