

# Decision Notice



Decision 035/2009 Councillor Danny Carrigan and the Assessor of  
Lanarkshire Valuation Joint Board

Addresses and sales dates of specific properties

Reference No: 200801189  
Decision Date: 31 March 2009

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## Summary

Councillor Danny Carrigan (Councillor Carrigan) requested from the Assessor of Lanarkshire Valuation Joint Board (the Assessor) the exact addresses and sales dates of the thirteen properties whose selling price had been used to determine the council tax banding of a property inhabited by one of his constituents. The Assessor responded by advising Councillor Carrigan that he considered the information exempt from disclosure in terms of sections 25(1) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, in which the Assessor also applied the exemption contained in section 35(1)(d) to the information, Councillor Carrigan remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Assessor had partially failed to deal with Councillor Carrigan's request for information in accordance with Part 1 of FOISA, by incorrectly withholding information under the exemptions contained in sections 25(1), 38(1)(b) and 35(1)(d) of FOISA. However, the Commissioner also found that the Assessor correctly applied the exemption contained in section 25(1) to some of the withheld information. He required the Assessor to disclose to Councillor Carrigan details of the specific addresses and sales dates of 10 of the 13 properties he had requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1), (2)(a) and (2)(e)(i) (Effect of exemptions); 25(1) (Information otherwise accessible); 35(1)(d) (Law enforcement) and 38(1)(b), (2)(a)(i) and (b) (Personal information).

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data") and Schedule 1 (The data protection principles - the first data protection principle) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6(1)).

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.

The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (The Regulations).



## Background

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1. On 13 June 2008, Councillor Carrigan wrote to the Assessor of Lanarkshire Valuation Joint Board (the Assessor) requesting the following information:  
  
*Details of the actual addresses and sales dates of the thirteen properties whose sale price was used by the Assessor to determine the council tax banding of his constituent's residence.*
2. The Assessor responded on 23 June 2008. He advised Councillor Carrigan that he considered the information Councillor Carrigan 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 offered to meet with Councillor Carrigan to discuss this matter informally.
3. On 29 July 2008, having met with the Assessor, Councillor Carrigan wrote again to the Assessor requesting a review of his decision.
4. The Assessor notified Councillor Carrigan of the outcome of his review on 5 August 2008. He upheld his original decision to withhold the information in terms of section 25(1) and 38(1)(b) of FOISA and indicated that he also considered the information exempt in terms of section 35(1)(d) of FOISA.
5. On 11 August 2008, Councillor Carrigan wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of the Assessor'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

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7. On 27 August 2008, the Assessor was notified in writing that an application had been received from Councillor Carrigan and was asked to provide the Commissioner with any information withheld from the applicant. The Assessor responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Assessor, giving him an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking him to respond to specific questions. In particular, the Assessor was asked to justify his reliance on any provisions of FOISA it considered applicable to the information requested.



9. The Assessor responded in writing on 29 October 2008. In its submissions, the Assessor explained that he was withholding the information in terms of section 25(1), 35(1)(d) and 38(1)(b) of FOISA.
10. In subsequent correspondence with the Assessor, the investigating officer sought further background information to inform the Commissioner's consideration of this case.
11. Councillor Carrigan was also invited to comment on the matters raised by the case, and he provided his comments by email on 2 December 2008.

### **Commissioner's analysis and findings**

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12. 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 Assessor and is satisfied that no matter of relevance has been overlooked.

#### **The Board or the Assessor?**

13. In this case, the Commissioner notes that Councillor Carrigan submitted his request and request for review to the Assessor, and that the Assessor has confirmed that he holds the information requested by Councillor Carrigan. Councillor Carrigan's application to the Commissioner also named the Assessor as the relevant public authority. However, the Commissioner notes that the responses provided to Councillor Carrigan's request and subsequent request for review created the impression that the public authority that was responding was Lanarkshire Valuation Joint Board (the Board). For example, the responses sent to Councillor Carrigan advised him first to submit his request for review to the Board and then to appeal to the Commissioner if he was dissatisfied with the outcome of the Board's review.
14. Within schedule 1 of FOISA (which lists those bodies and appointees that are Scottish Public Authorities for its purposes), an Assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994 is a public authority (number 20 listed within Part 3 of the Schedule). A Valuation Joint Board is a joint board within the meaning of section 235(1) of the Local Government Scotland Act 1973, and as such is also, and separately a public authority (number 22 listed within Part 3 of the Schedule). As a consequence, the approach taken by the Assessor and the Board created some confusion as to which public authority was responsible for the handling of Councillor Carrigan's information request.



15. This potential for confusion is understandable when the relationships between the Assessor and the Board are considered. The Assessor is a statutory independent official (in this case) appointed by the Board. The Board provides the Assessor with the resources to deliver services, including staff. The Assessor submitted that he can be considered an officer of the Board when he is acting in his capacity as a manager of a service, and information regarding employees, budget, property etc, would be information belonging to the Board, which he would hold on the Board's behalf.
16. However, the Assessor has the statutory authority to gather the information about people and property and to use it to fulfil his statutory duties, and so he submitted that it is the Assessor and not the Board who holds the information requested by Councillor Carrigan.
17. In this case, the Commissioner has concluded that (notwithstanding the terms of the responses provided to Councillor Carrigan), the request under consideration was made to the Assessor, who is the holder of the information concerned, and the response provided was made on behalf of the Assessor and not the Board. The request for review was submitted to the Assessor and it was the Assessor (acting in that capacity, rather than as a representative of the Board) who conducted a review and notified Councillor Carrigan of its outcome. The Commissioner is satisfied that his decision should name the Assessor and not the Board as the public authority concerned.
18. The Commissioner has discussed the issues this case has raised with the Assessor and recognises that the relationships between the Board and the Assessor are complex. The Assessor has stated that the Board often receives information requests which he understands to be directed at the Assessor rather than the Board. The Assessor confirmed that most of such requests are dealt with on a 'business as usual' basis, and this has not always clarified the difference between the two authorities on receipt of requests. The Assessor has indicated that he will be altering the content of standard letters as a matter of urgency to prevent any similar confusion occurring in the future.
19. The Commissioner welcomes this action and would encourage the Assessor to work with the Board to ensure that the two public authorities provide appropriately worded responses and advice to people making requests under FOISA. He would suggest that they review their procedures to ensure that applicants are given advice where appropriate to ensure that they understand which public authority is responding to their request, which is the holder of the information they want to access, and how they can redirect their request to the other authority if necessary.

### **Scope of the information request**

20. In this case, Councillor Carrigan has requested the exact addresses and exact sales dates for the thirteen 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 Assessor - 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 Assessor and Councillor Carrigan understood the information under discussion.



### Section 25(1) – Information otherwise accessible

21. The Assessor relied on the exemption contained in section 25(1) of FOISA to withhold the information requested by Councillor Carrigan.
22. 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 it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
23. 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.
24. 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.
25. In its submissions, the Assessor noted that he had met with Councillor Carrigan on 28 July 2008 (before he had submitted his request for review) in an effort to reassure him that his constituents were not being unfairly treated. During this meeting the Assessor provided Councillor Carrigan with the exact addresses and year of sale of three of the thirteen properties about which he had requested information. The Assessor 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.
26. 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 Assessor'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 Assessor to review his initial response to him and to appeal to the Commissioner when he remained dissatisfied.



27. In his application, Councillor Carrigan supplied the Commissioner with a copy of the information he obtained from the Assessor during the above meeting, which consisted of the addresses of three of the thirteen properties he was seeking and the year in which each of the three properties were sold. As this information is clearly 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. This is in line with *Decision 151/2008 Councillor Carrigan and Lanarkshire Valuation Joint Board*, where the Commissioner found that information provided to (and held by) Councillor Carrigan in confidence was exempt from disclosure in terms of section 25(1) of FOISA.
28. Turning to the remaining information requested by Councillor Carrigan, the Commissioner notes that Councillor Carrigan has sought the addresses of thirteen properties and the date on which each was sold. The Commissioner has interpreted Councillor Carrigan's request for the sales dates to mean that he is seeking information on the day and month of the sale not just the year of sale. Consequently, the Commissioner will now consider whether the addresses of the ten properties not previously disclosed to Councillor Carrigan, and the exact sale dates of all thirteen properties are also exempt in terms of section 25(1).
29. In his submissions, the Assessor argued that the information sought by Councillor Carrigan is available from the Registers of Scotland (RoS) in accordance with that authority's publication scheme. The Assessor noted that the information is subject to fees in accordance with the Fees in the Registers of Scotland Amendment Order 2005.
30. With a view to determining whether this was the case, the investigating officer asked the RoS if it held details of the layout of a sold property (e.g. whether it was a one-bed roomed flat or three-bed roomed detached house). The RoS clarified that it does not hold any information on the type of property sold, and that it could not provide a list of all two-bed roomed flats in a named street. The investigating officer also asked the RoS whether it could provide the specific sale date of a named property. The RoS advised that if an applicant supplied it with an address 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.
31. The Commissioner also notes that if Councillor Carrigan had access to the addresses of all thirteen properties, then he could obtain the sales date information for each from the RoS. However, as the Commissioner has concluded that it can only be demonstrated that Councillor Carrigan has access to three of the thirteen addresses, he has concluded that Councillor Carrigan can only obtain the exact sales dates of those three properties from the RoS. Without knowing the addresses of the ten remaining properties that were used to determine the council tax banding of his constituents property, Councillor Carrigan is unable to obtain the sales dates for each of these properties, and so this information is not accessible to him other than through FOISA.



32. In light of this, the Commissioner is satisfied that the sales dates of the three properties whose addresses have already been disclosed to Councillor Carrigan, is exempt from disclosure in terms of section 25(1) of FOISA, as it is publicly accessible and can be obtained from the RoS.
33. However, the Commissioner is also satisfied that the ten addresses not previously disclosed to Councillor Carrigan, along with the sales dates of those ten properties, are not exempt in terms of section 25(1) of FOISA as they are not otherwise accessible to Councillor Carrigan other than through FOISA.
34. The Commissioner will now go on to consider whether the addresses and sales dates of the ten properties whose addresses were not provided to Councillor Carrigan, fall under any of the remaining exemptions applied by the Assessor.

#### **Section 35(1)(d) – Law enforcement**

35. Section 35(1)(d) of FOISA allows public authorities to refuse to disclose information to someone who requests it, if disclosure of that information would, or would be likely to, have a substantially prejudicial effect on the assessment or collection of any tax or duty (or of any imposition of a similar nature).
36. The exemption in section 35(1)(d) of FOISA is a qualified exemption. This means that even if the authority considers the exemption applies it can only withhold the information if, in all the circumstances, the public interest in maintaining the exemption (and therefore withholding the information) outweighs the public interest in disclosure.
37. Since the Commissioner has already found the exact sales dates and addresses of three of the thirteen properties to be exempt in terms of section 25(1) of FOISA, he will only consider the application of the exemption contained in section 35(1)(d) of FOISA to the remainder of the information withheld from Councillor Carrigan, i.e. the ten outstanding addresses and their exact date of sale.
38. In this case, the Assessor advised the Commissioner that Councillor Carrigan's request for information was made in the context of his representation of a constituent who has lodged a proposal (to have their valuation band lowered) in terms of The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (The Regulations). The Assessor indicated that the proposal was passed to the local Valuation Appeal Panel (the Panel) for Lanarkshire on 6 December 2007 and has been made an appeal in terms of the Regulations.
39. The Assessor submitted that the council tax appeal system is an integral part of the assessment of Council Tax. He maintained that the disposal of such appeals is the responsibility of the Panel who sets the timetable for disposal of the appeals and the procedures to be followed. The Assessor added that the appeals procedure is governed by part IV of the Regulations, which includes provision in regulation 29(1) for the Panel to require one party to provide the other with a summary of the evidence to be led at the hearing and copies of any productions. The Panel also has the power under regulation 30(1) to allow recovery of documents or to require production of any documents.





40. The Assessor argued that these statutory rules are necessary for the efficient disposal of appeals and that the outcome of such appeals can be relevant to the assessment of tax on other properties. The Assessor has expressed the view that Councillor Carrigan's request is an attempt to circumvent the appeals procedure to obtain evidence to argue the merits of the appeal without the proper forum and outwith the statutory rules.
41. The Assessor submitted that in 2007 he received more than 1300 proposals from individuals seeking to have their valuation band lowered and at the current time (November 2008) there were still some 508 appeals awaiting determination by the Panel. The Assessor noted that the Panel intended to deal with 20 proposals each week and that he is required to prepare and present evidence for each of these 20 cases. The Assessor argued that the efficient and effective disposal of these appeals is dependent on these hearings proceeding as scheduled.
42. The Commissioner has considered the Assessor's arguments with respect to the exemption in section 35(1)(d) of FOISA, but he is unable to accept that disclosure of the ten addresses and their sales dates requested by Councillor Carrigan would, or would be likely to prejudice substantially the assessment or collection of any tax or duty (in this case, the council tax). Although he accepts that disclosure would provide actual or potential appellants with information that may be relevant to their case, he does not accept that disclosure would undermine the appeals process described by the Assessor.
43. The Commissioner acknowledges that access to this type of information might lead a person to make representations to the Assessor outwith the formal appeal process. In such circumstances, it would be for the Assessor to determine whether it was appropriate to engage in further informal discussion or direct the person to the more formal appeal route.
44. However, the Commissioner also recognises that, with access to the addresses and sales dates (and therefore the ability to find the selling price) of the properties that were used to determine their council tax valuation band, it is possible that a person would withdraw their appeal, if they found the evidence supporting the allocation of their valuation band to be convincing.
45. However, whether either of the possible outcomes in paragraphs 43 or 44 above arose in this case, the Commissioner is unable to see how the fact of residents knowing the addresses and sales dates of the properties that were used to determine their council tax valuation band could disrupt the collection of council tax or the assessment of properties for council tax. The Commissioner is satisfied that residents would still have to follow the appeals procedure set out in the Regulations to seek the rebanding of their property. Disclosure of the addresses and sales dates would simply enable them to know the basis upon which the Assessor initially determined their council tax band.
46. The Commissioner notes that disclosure of the addresses and sales dates could increase the administrative burden on the Assessor as he may have to disclose lists of addresses and sales dates to those considering council tax appeals but he does not believe that this would, or would be likely to, disrupt the collection or assessment of council tax in itself.



47. In conclusion, the Commissioner does not uphold the application of section 35(1)(d) to the ten addresses and sales dates requested by Councillor Carrigan. As the Commissioner has not upheld the exemption, he is not required to go on to consider the public interest test.

### **Section 38(1)(b) – Personal information**

48. The Assessor has submitted that all of the requested information is personal data and that disclosure would contravene the first data protection principle on fair and lawful processing of personal data.
49. However, as noted above, the Commissioner has already found the exact sales dates and addresses of three of the thirteen properties to be exempt in terms of section 25(1) of FOISA. Consequently, he will only consider the application of the exemption contained in section 38(1)(b) of FOISA to the remainder of the information withheld from Councillor Carrigan, i.e. the ten outstanding addresses and their exact date of sale.
50. Under section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) or 38(2)(b)), information is exempt information if it constitutes personal data and the disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles contained in schedule 1 to the Data Protection Act 1998 (DPA).
51. In considering this exemption, the Commissioner is required to consider two separate matters: firstly whether the information under consideration is personal data and, if so, whether the release of the information would indeed breach any of the data protection principles.

### **Is the information under consideration personal data?**

52. "Personal data" is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (see the full definition in Appendix 1).
53. The Assessor has argued that he holds information about living individuals, including names and addresses, along with details of the properties in which individuals live, including their size and layout. Where a property has been sold, the Assessor also holds details of the price paid. The Assessor has argued that living individuals can be identified from this data and that therefore, it is 'personal data' as specified in section 1(1) of the DPA.



54. As evidence to support his views, the Assessor has referred to a publication issued by the Information Commissioner's Office (ICO) entitled, "*Data protection technical guidance: determining what is personal data*", available online at: [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf). The Assessor referred to comments on page 9/10 of this document which states:

*"Information about a house is often linked to an owner or resident and consequently the data about the house will be personal data about that individual."*

The above guidance goes on to note that data about a house will not always be personal data, and it describes various scenarios where this can be the case, e.g. for statistical analysis. The Assessor has argued that Councillor Carrigan's request is not for statistical purposes and that his request is for personal data relating to a third party.

55. The Commissioner has reviewed the above guidance provided by the ICO and he is satisfied that the information requested by Councillor Carrigan is not for statistical analysis.
56. The Commissioner is of the view that an address, taken in isolation, may not identify any individual, but when it is considered along with the sales date of the property, and other information available in the public domain (e.g. in the Register of Sasines) the totality of the withheld information does identify the sellers and purchasers of the ten properties, and provide details of their financial affairs and property sales/purchases. Therefore, the Commissioner accepts that the information under consideration relates to living individuals who can be identified from that information along with other information likely to come into the possession of the data controller.
57. The Commissioner is therefore satisfied that the addresses and sales dates of the ten properties constitute personal data.

#### **Would disclosure breach the first data protection principle?**

58. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (of the DPA) is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 (again, of the DPA) is also met.
59. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. If there is a specific condition which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
60. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and he is satisfied that the personal data in this case does not fall into this category. It is therefore not necessary to consider the conditions in Schedule 3 of the DPA in this case.



61. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed and whether the disclosure of this personal data would be fair and lawful.

*Can any of the conditions in Schedule 2 of the DPA be met?*

62. The Assessor has argued that there are no conditions in Schedule 2 of the DPA that would permit disclosure of the personal data in this case.
63. It is the Commissioner's view that condition 6(1) of Schedule 2 of the DPA is the only condition which might be considered to apply in this case. Condition 6(1) allows personal data to be processed (in this case, disclosed in response to an information request made under section 1(1) of FOISA) if the processing is necessary for the purposes of legitimate interests pursued by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
64. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- Does the applicant (Councillor Carrigan) have a legitimate interest in obtaining this personal data?
  - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject(s)?
  - Even if the processing is necessary for the legitimate purposes of the applicant, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject(s)? This will involve a balancing exercise between the legitimate interests of the applicant and those of the data subjects. Only if (or to the extent that) the legitimate interests of the applicant outweigh those of the data subject(s) can the personal data be disclosed.

*Does the applicant have a legitimate interest?*

65. Councillor Carrigan was invited to comment on his legitimate interests, and in his response he submitted that the Assessor had informed his constituent that based on the evidence the Assessor holds, she has no case for appealing her council tax banding. Councillor Carrigan argued that the Assessor had refused to provide him and/or his constituent with the evidence that purportedly rules out her appeal (e.g. the addresses and sales prices of similar properties). Councillor Carrigan further argued that, as his constituent's council tax appeal depends on the evidence (personal data) withheld by the Assessor in this case, both he and his constituent have the right to see this evidence in order to decide whether to challenge it.



66. Councillor Carrigan submitted that it was unreasonable for the Assessor to withhold information from him and his constituent (and the general public) that was created through the monetary contributions of tax payers. Councillor Carrigan has therefore indicated that both he and his constituent (and the wider public) have a legitimate interest in seeing the personal data that has been withheld in this case.
67. The Commissioner has considered the arguments put forward by Councillor Carrigan and he is satisfied that Councillor Carrigan has a legitimate interest in obtaining the personal data that has been withheld by the Assessor. The Commissioner acknowledges that council tax payers can challenge the banding of their property through the relevant appeals process, however in his view, council tax payers have a legitimate interest in knowing the basis upon which their property was banded before they decide whether to pursue an appeal or not.

*Is disclosure of the information necessary to achieve those legitimate interests?*

68. The Commissioner notes that council tax valuations are based on the amount for which a property might reasonably be expected to have sold on the open market in April 1991.
69. In the circumstances, the Commissioner is satisfied that in order for an individual to assess whether they believe the Assessor has correctly valued their property, they must know the addresses and sales prices of the properties that were used as comparisons. The Commissioner notes that Councillor Carrigan requires disclosure of the ten addresses (and sales dates) of the comparison properties in order for him to determine whether those properties are of a similar type to his constituent's property, and in order to reach a view as to whether the Assessor has placed his constituent's property in the correct valuation band. Disclosure is necessary because only with access to the addresses and sales dates of the comparison properties, can Councillor Carrigan compare the nature of those properties and establish the open market value of those properties by consulting the RoS.
70. The Commissioner has noted again here the Assessor's point (made in relation to the exemption in section 35(1)(d)) that the valuation appeal process provides a formal framework within which the Assessor's banding decisions can be challenged. As noted above, evidence relied upon by each party may be required to be provided to the other party as part of that process.
71. While the Commissioner accepts that the information under consideration might well be made available within the formal appeal process, he recognises that such availability would only be in that context. Furthermore, he notes that the procedures set out above do not apply where an appeal is disposed via the written representations of the parties.
72. The Commissioner considers that release under FOISA would allow Councillor Carrigan (and his constituent) to assess the likelihood of success of any appeal, and to make an informed decision as to whether to proceed to a full hearing of the Panel. Disclosure in this case would therefore serve a different purpose from the potential disclosure that might be allowed within the context of the valuation appeals process.



73. The Commissioner has concluded that, notwithstanding the possibility of disclosure in a separate context, the disclosure of the information requested by Councillor Carrigan is necessary to achieve his legitimate interests.

*Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?*

74. In this case, the data subjects are the individuals who purchased or sold each of the ten properties, whose addresses and sales dates are sought by Councillor Carrigan.

75. The (UK) Information Commissioner considers the question of fairness in his Freedom of Information Act Awareness Guidance No 1 – Personal Data<sup>1</sup>. This guidance includes examples of the types of question which should be asked when assessing whether the disclosure of personal data (which would be a form of processing) would be fair. These sample questions are set out below. They are useful tools in considering the rights, freedoms and legitimate interests of the employees in question.

a. Would disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?

b. Would the third party expect that his or her information might be disclosed to others? Is disclosure incompatible with the purposes for which it was obtained?

c. Has the person been led to believe that his or her information would be kept secret?

d. Has the third party expressly refused consent to disclosure of the information?

e. Does the legitimate interest of a member of the public seeking information about a public authority, including personal information, outweigh the rights, freedoms and legitimate interests of the data subject?

76. Turning to consider any prejudice to the rights, freedoms and legitimate interests of the data subjects, the Commissioner notes that when individuals purchase or sell a property the details of the purchase/sale are made publicly available by RoS. Furthermore, the Commissioner notes that RoS often sell the data they hold to other commercial information providers, some of whom also make it publicly accessible.

77. The Commissioner believes that the parties concerned would have understood and expected that a record of the sale (which would include confirmation of the identity of the parties to the sale, along with the value of the transaction) would be retained permanently by RoS and made available to the public.

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<sup>1</sup> Available at

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance%201\\_%20personal\\_information\\_v2.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance%201_%20personal_information_v2.pdf)



78. The Commissioner recognises that Councillor Carrigan's information request was made to the Assessor rather than RoS, to allow him to identify the particular properties of interest to him. However, the Commissioner's view is that the data subjects in this case would have only very limited expectation that the details of their property purchase/sale would be withheld. Furthermore, as the purchasers/sellers name is already in the public domain, the Commissioner cannot see how disclosure under FOISA can cause unwarranted prejudice to the rights and freedoms or the legitimate interests of the data subjects.
79. Having balanced the two competing interests in this case, the Commissioner concludes that any prejudice to the rights, freedoms and legitimate interests of the data subjects here is outweighed (and so is not unwarranted) in this instance by the legitimate interests of those to whom the data will be disclosed.
80. The Commissioner, being satisfied that the three tests as set out at paragraph 44 above are fulfilled, finds that the processing is permitted by condition 6(1) of Schedule 2 to the DPA.
81. The Commissioner must, in addition, consider whether the disclosure is otherwise unfair or unlawful. The Commissioner is satisfied that the disclosure of the information would not be unfair, for the reasons outlined above in relation to condition 6(1). Given that the Assessor did not put forward any arguments as to why the disclosure of the information would be unlawful (other than in terms of a breach of the data protection principles), the Commissioner is satisfied that the disclosure of the data under FOISA would not breach the first data protection principle.
82. Having concluded that disclosure of the ten addresses and their sales dates withheld in this case would not breach the first data protection principle, the Commissioner has accordingly concluded that they are not exempt under section 38(1)(b) of FOISA.
83. Having found that the ten addresses and sales dates are not exempt in terms of section 25(1), section 35(1)(g) or 38(1)(b), the Commissioner has concluded that the Assessor wrongly withheld this information, and so breached Part 1 and section 1(1) of FOISA.

## DECISION

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

The Commissioner finds that by correctly withholding the addresses and exact sales dates of three of the thirteen properties requested in terms of section 25(1) requested by Councillor Carrigan, the Assessor complied with Part 1 of FOISA.

However, by incorrectly applying the exemptions in section 25(1), 35(1)(d) and 38(1)(b) of FOISA to the addresses and sales dates of the remaining ten properties requested by Councillor Carrigan, the Assessor failed to comply with Part 1.



The Commissioner therefore requires the Assessor to disclose to Councillor Carrigan details of the addresses and sales dates of ten of the thirteen properties he has requested, by 15 May 2009.

## Appeal

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Should either Councillor Carrigan or the Assessor of 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**31 March 2009**

## Appendix

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### 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 2, 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 2 (and no others) are to be regarded as conferring absolute exemption –
- (a) section 25;
  - ...
  - (e) in subsection (1) of section 38 –
    - ...
    - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

## **25 Information otherwise accessible**

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- ...

## **35 Law enforcement**

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
  - ...
  - (d) the assessment or collection of any tax or duty (or of any imposition of a similar nature);
  - ...

## **38 Personal information**

- (1) Information is exempt information if it constitutes-
  - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- (2) The first condition is-



- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles; or
  - ...
- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

## Data Protection Act 1998

### 1 Basic interpretative provisions

In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

### Schedule 1 – The data protection principles

#### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

#### Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data



...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...