



Scottish Information
Commissioner

**Decision 062/2006 Mr Najem Al Hasan, Expressplans.com, and
North Ayrshire Council**

*Various requests for information relating to North Ayrshire Council's building
control function*

**Applicant: Mr Najem Al Hasan, Expressplans.com
Authority: North Ayrshire Council
Case No: 200500963
Decision Date: 12 April 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 062/2006 Mr Najem Al Hasan, Expressplans.com, and North Ayrshire Council

24 requests for information relating to North Ayrshire Council's building control function submitted via a questionnaire – 13 requests refused – section 12(1) excessive cost of compliance – information released during the course of the investigation – applicant disputed the accuracy of the information provided

Facts

Mr Hasan, acting on behalf of Expressplans.com, submitted a questionnaire containing 24 separate requests for information to North Ayrshire Council (the Council). The Council originally refused information in relation to 13 of these requests, on the grounds of section 12 of the Freedom of Information (Scotland) Act 2002 (FOISA). During the course of the investigation however, information was subsequently provided in relation to all 13 requests where information had been withheld. Mr Hasan disputed the accuracy of the information provided, and requested that the investigation be continued on this basis.

Outcome

The Commissioner found that the information supplied by the Council in response to the thirteen information requests represented a reasonable and appropriate response to those requests and therefore that generally the Council had complied with Part 1 of FOISA in dealing with the requests.

The Commissioner, however, also found that the Council committed a technical breach of section 21 of the Freedom of Information (Scotland) Act 2002, in failing to recognise and respond to Mr Hasan's request for review.



Appeal

Should either the Council or Mr Hasan wish to appeal against this decision, there is a right of 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.

Background

1. North Ayrshire Council (the Council) was originally contacted by Mr Hasan on 17 February 2005. Mr Hasan, acting as a representative of the architectural practice Expressplans.com, submitted 24 information requests in the form of a questionnaire. These 24 requests related to various aspects of the Council's building control function, and included requests relating to the number of staff employed by the service, the number of Building Warrant Applications received, and the number and speed of approvals by the service.
2. Mr Hasan also included a 'Glossary of Terms' alongside his information request. This glossary provided contextual definitions of particular words or phrases used in the questionnaire.
3. A full copy of Mr Hasan's questionnaire, and the accompanying 'Glossary of Terms' is included as an appendix to this Decision Notice.
4. The Council responded to Mr Hasan's requests on 25 February. In this response the council refused to provide information in relation to thirteen of the 24 questions submitted by Mr Hasan. These thirteen questions were as follows:
 - Questions 5-11
 - Questions 14-19
5. The Council informed Mr Hasan that each of the 13 requests was being refused under section 12 of FOISA. Section 12(1) of FOISA allows public authorities to refuse requests if the cost of complying would exceed the upper limit of £600 set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).



6. On 2 March Mr Hasan responded to this correspondence, informing the Council that he disputed these grounds for refusal. Mr Hasan stated that the refusal to answer 13 separate questions on the basis of section 12 of FOISA indicated that the Council had estimated that it would cost in excess of £7,800 to respond to the disputed questions. Mr Hasan then invited the Council to respond to his request for information by either providing the information, supplying the raw data, or issuing a formal fees notice.
7. The Council responded on 10 March. In its response, the Council confirmed its intention to refuse Mr Hasan's outstanding 13 requests on the basis of the excessive cost of compliance. The Council stated that in order to respond to the requests, it would be required to manually access, extract and collate the information from each of the 2,231 records held. The Council considered that to undertake this work in relation to any or all of the outstanding requests work would take in excess of 40 hours and, stated that, using the 'notional charge' of £15 per hour provided for in the FOISA Fees Regulations, it had concluded that the cost of responding to Mr Hasan's outstanding requests would exceed £600.
8. Further correspondence took place between the Council and Mr Hasan on 10 and 11 March, during which Mr Hasan continued to dispute the Council's assessment of costs.
9. Mr Hasan submitted an application for decision to me on 14 March. The case was assigned to an investigating officer.

The Investigation

10. Mr Hasan's appeal was validated by establishing that it had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
11. On 11 April, the investigating officer contacted the Council to invite comments and seek further information relating to the case.
12. On 18 April, the Council contacted my Office by telephone. During this conversation, the Council informed my investigating officer that it did not consider Mr Hasan's correspondence of 2 March to be a request for review. The investigating officer confirmed that Mr Hasan's correspondence should have been considered as such because, in accordance with section 20 of FOISA, the applicant had:
 - Contacted the authority in writing



- Included his name and an address for correspondence
 - Made reference to the original request for information
 - Specified why he was unhappy with the way in which the authority handled that request
13. On 25 April, the Council informed my Office that, as Mr Hasan's correspondence had not been recognised as a request for review on receipt, no full internal review had been undertaken, and the internal process had therefore not been fully exhausted. With this in mind, the authority stated that it had since reviewed Mr Hasan's request, and proposed to release the requested information in full within two weeks.
14. On 26 April my investigating officer wrote to the Council to confirm the terms of this release. In this correspondence, confirmation was sought that information would be released in relation to all 13 outstanding requests. The Council responded on 29 April that, following development work on its database, they would be in a position to respond to Questions 5-11, 14, and 17-19. The Council stated however that it would be unable to respond to Questions 15 and 16. This was because the Council believed it would not be possible to extract this information from its database. The Council concluded that their only way to extract this information would be to conduct a manual search through the relevant records, and that this information would therefore continue to be refused on the basis of section 12 of FOISA.
15. The Council provided the information in response to Questions 5-11, 14 and 17-19 on 4 May. On 10 May Mr Hasan informed my Office that he believed that much of the information provided to him was inaccurate. Mr Hasan subsequently requested that my Office continue its investigation in relation to Questions 5-11 and Question 14 on the grounds that the information was inaccurate, as well as continuing in relation to Questions 15 and 16, on the grounds that the Council he believed that the Council had inappropriately refused the information under section 12 of FOISA (excessive cost of compliance).
16. Mr Hasan stated that the figures supplied by the Council in relation to Questions 5-11 and Question 14 did not reflect his own experience of dealing with the Council. Mr Hasan suggested that this might be because the information had been provided based on calculations using dates other than those specified in his request. Mr Hasan suggested that the date used by the Council to retrieve the data may have been a date other than the 'registration' date defined in his 'Glossary of terms'.
17. The Council was asked to supply comment in relation to both the specific issues raised by Mr Hasan, and the general handling of the information request. This comment was supplied on 25 May 2005.



18. The Council was then asked to provide further information in relation to the calculation of fees with regards to Questions 15 and 16. In response to this request, the Council contacted my investigating officer to inform him that the previous calculations regarding the cost of retrieval were incorrect, and that, following reassessment, the information could be manually retrieved from the files within the upper cost limit set out in the Fees Regulations. This information was supplied to Mr Hasan on 16 September 2005.
19. Following receipt of this information, Mr Hasan again contacted my investigating officer to express his view that the information supplied in response to Questions 15 and 16 did not accurately reflect that requested. Mr Hasan therefore indicated that his concerns related to the accuracy of all the information supplied during the investigation – i.e. that provided in response to all 13 outstanding questions.

The Commissioner's Analysis and Findings

20. Mr Hasan's application to my Office was originally made on the basis of a refusal under section 12 of FOISA. However, during the course of the investigation, and following the intervention of my investigating officer, information was provided in response to each of the 13 questions where information was originally withheld.
21. At Mr Hasan's request, the focus of the investigation therefore shifted from the consideration of the application of section 12, to an assessment as to whether the information provided to Mr Hasan accurately reflected that information sought in his original request.

The accuracy of the information provided

22. During the course of the investigation, the Council has clearly stated its view that the information provided to Mr Hasan represents an appropriate and accurate response to his information requests. Mr Hasan, however, has disputed this view, believing the information supplied to be based on an incorrect interpretation of those requests. In particular, Mr Hasan's concerns have focussed on the Council's interpretation of the word 'registered', used in Questions 5-11 and 14-16 of his questionnaire.
23. As discussed above at paragraph 2, Mr Hasan supplied a "Glossary of Terms" alongside his application. This glossary included a definition of 'registered' which he intended authorities to use when completing his questionnaire. The definition of 'registered' was as follows:



“The formal acceptance of a “valid” application, also the date payment is taken for the application and/or when an application is given a unique reference number by the Local Authority.”

24. Mr Hasan has suggested that the date used by the Council may not correspond with the “registration” date described in his glossary. Indeed, Mr Hasan stated that his own experience of the Council’s Building Warrant system supported this view.
25. As an example, Mr Hasan stated that his own experience suggested that few, if any, Building Warrant Applications were approved in less than four weeks of ‘registration’. He pointed out that this experience appeared to be contradictory to the Council’s response which indicated that 24% of applications were approved within this time. This perceived disparity has informed Mr Hasan concerns regarding the general accuracy of the information provided.
26. The Council has stated that figures were calculated using the date on which the application was received as the date on which it was ‘registered’. Mr Hasan has, however, stated his belief that any calculations made from the date on which application receipt was recorded would include those applications which were ‘invalid’ at the time of receipt – e.g. because the applicant had failed to fill out the form correctly, or had failed to provide appropriate payment. Mr Hasan stated that he is interested in receiving and analysing the timescales involved in approving ‘valid’ applications where a payment has been received only, and states that the definition of ‘registered’ contained in his glossary was worded in such a way to facilitate this. Mr Hasan was therefore concerned that calculations based on the day of receipt might potentially include both ‘valid’ and ‘invalid’ applications.
27. The Council asserted, however, that Mr Hasan’s definition of ‘registered’ was ambiguous, and contained up to three definitions within it, each of which may have potentially referred to a separate date. The Council also pointed out that the word ‘valid’ was not defined within Mr Hasan’s glossary, or elsewhere within his original request.



28. Nevertheless, the Council asserted in its submissions that the date used for calculations fulfilled the criteria of at least two of the definitions of 'registered' provided in the glossary of terms. The Council stated that the date of receipt used to calculate the figures could be considered to be the 'formal acceptance of a valid application'. In addition, the Council also stated that applications would only be considered valid if "*all the prerequisites had been complied with, namely the application form duly completed, and the appropriate fee paid*". The Council therefore made the case that, not only were its calculations based on figures which were consistent with two of the three criteria contained within the glossary of terms, but also that its calculations did not include details of application forms which were incorrectly completed. The Council therefore indicated that its calculations were consistent with Mr Hasan's interpretation of 'valid', as outlined in paragraph 26 above, despite the fact that this interpretation had not been provided to the Council at the time of the original requests.
29. As detailed above, the disagreement between the Council and Mr Hasan regarding the accuracy of the information provided stems from concerns around the interpretation of "registered", contained within Mr Hasan's glossary of terms.
30. Having considered the wording of this glossary, I concur with the Council's view that the definition of 'registered' provided is ambiguous, and does not lend itself to easy and consistent interpretation. As highlighted by the Council, the wording used may potentially refer to up to three separate dates which might be considered to be the date on which the application was 'registered' (although it may also be the case that all three identifiers occur on the same date within some authorities).
31. This ambiguity would appear to have its basis in the fact that Mr Hasan's questionnaire was originally drafted to be submitted to a number of different local authorities and, as a result of this, the questionnaire attempts to create a generic glossary, applicable to all. However, this appears to have created a situation where the definition of 'registered' is potentially open to interpretation, depending on the particular practices within each specific authority.
32. Indeed, I cannot help but conclude that, had the questionnaire been tailored to reflect the specific circumstances of each local authority, having sought advice and assistance from those authorities prior to submission with regard to the best way to frame his request in order to elicit the desired response, it is likely that any perceived ambiguities which have arisen in this case could have been avoided.



33. That said, however, following an assessment of the circumstances of this case, it is my view that the information provided by the Council can be considered to be both a reasonable and appropriate response to Mr Hasan's requests. I accept the Council's view that the information request is ambiguous and open to interpretation. Nevertheless, however, I also find, following a review of the submissions made by the Council, that the Council's interpretation of the requests was appropriate in that it led to the provision of information calculated from a registration date which can be considered to be both:
- *"The formal acceptance of a "valid" application"; and*
 - *"The date payment is taken for the application;*

As such, I conclude that the Council's response can be considered to be a reasonable and appropriate response to Mr Hasan's original information requests.

34. Finally, I would like to note that I acknowledge that Mr Hasan has expressed concerns regarding the accuracy of the information provided to him. I would hope that the information contained within this decision notice has served to alleviate those concerns. Should Mr Hasan continue to hold such concerns, however, it should be noted that it does not fall within my remit to assess the accuracy, or otherwise, of information which is held by a Scottish public authority. Indeed, provided an authority appropriately interprets an information request, and subsequently provides all the information it holds which falls within the scope of that request, the authority will be deemed to have complied with Part 1 of FOISA.
35. In circumstances where an authority is aware that the information it holds may be inaccurate, the authority should, of course, in line with its duty to advise and assist under section 15 of FOISA, inform the applicant of its concerns alongside the provision of the information. It is clear, however, from the Council's submissions in relation to this case, that it holds no such concerns regarding the accuracy of the information supplied to Mr Hasan.
36. While Mr Hasan's own experience may still lead him to believe that the information supplied is inaccurate, this can have no further bearing on my consideration of this case. Indeed, given that I am satisfied that the Council's interpretation of Mr Hasan's requests is reasonable and appropriate, and that I am also satisfied that the Council has provided all the information it holds which falls within the scope of these requests, I consider that the Council has fulfilled its obligations under Part 1 of FOISA.



The Council's handling of the request

37. I would like to conclude by offering some comment on certain aspects the Council's handling of Mr Hasan's information request.
38. Firstly, as noted above at paragraph 12, the Council initially failed to treat Mr Hasan's correspondence of 2 March as a formal request for review, despite the fact that his correspondence fulfilled the criteria required by section 20 of FOISA. It would appear that this failure occurred because the Council's initial response to the request had informed Mr Hasan of a postal address to which any such review should be made, and the Council anticipated that any such review request would be made to that address. However, Mr Hasan subsequently chose to make his review request by return email, as opposed to the postal address supplied in this correspondence. As a result, Mr Hasan's request was treated by the Council as a request for clarification, as opposed to a request for review.
39. It should be noted however, that, while an authority is perfectly entitled to identify a name and postal address for correspondence to be directed to, if that correspondence is subsequently sent to the person by alternative means (such as by email) then, provided that it fulfils the criteria required by FOISA to be considered as valid, the authority must deal with it accordingly. In this case, Mr Hasan's correspondence of 2 March was sent to the appropriate person and fulfilled the validation criteria for a requirement for review, as set out in section 20(3) of FOISA, and should therefore have been treated as such by the Council. In failing to do so, the Council failed in its obligations under section 21 of FOISA.
40. I note however, that the Council has acknowledged that it was a fault in failing to conduct a review in relation to Mr Hasan's correspondence of 2 March, and has informed this Office that it has since put into place procedures to ensure that there is no reoccurrence. I also note that the Council conducted two separate reviews during the course of this investigation, and subsequently concluded, as a result of these reviews, that the information requested by Mr Hasan should be released.
41. In relation to the assessment of charges made by the Council with regard to questions 15 and 16, it was considered by the Council, both during its initial consideration of Mr Hasan's requests and subsequently during the Council's review, that the cost of responding to each of these questions would exceed the upper limit of £600 as prescribed by the Fees Regulations.



42. However, when these estimated charges were queried by my investigating officer, the authority confirmed that it had used the maximum cost of £15 per hour for staff time allowed under the Fees Regulations as the default charge for calculations. Indeed, the Council's submission indicated that the Council considered this charge to be a 'notional' charge to be used when calculating responses, as opposed to a maximum charge. It was subsequently acknowledged by the Council that the appropriate hourly charge for retrieval of this information would in fact be £13.50 per hour. The Council's original submissions also stated that it would not be possible to retrieve the relevant information within a period of 90 seconds, while it was subsequently acknowledged, during the course of the investigation, that the information could be retrieved in less than 60 seconds. As a result of these reassessments, the Council subsequently concluded that the cost of providing the information did not exceed the £600 upper limit in relation to each request, and that the information could therefore be provided to Mr Hasan.
43. It is important for authorities to note, however, that any estimates made in accordance with the Fees Regulations should be made as accurately as possible, and should be informed by careful consideration of the actual cost to the authority of providing the information. The maximum cost for staff time of £15 per hour set out in the Fees Regulations is just that – a *maximum* cost – and, where staff time will cost less than that figure, charges should be estimated accordingly. In estimating costs, it will frequently be appropriate for authorities to undertake a small representative sample of the work required, in order to inform any subsequent estimation of charges.
44. I consider, however, that the bulk of the errors made by the Council in relation to its handling of Mr Hasan's request were made as a result of the request being received in the early stages of the implementation of FOISA. As such, I consider that a level of unfamiliarity and uncertainty amongst Council staff regarding the requirements of FOISA, and the appropriate interpretation of both FOISA and the accompanying Fees Regulations, contributed to the errors made in its initial handling of these requests. While this is clearly not an acceptable reason for failing to deal appropriately with the requests under FOISA, I recognise that the Council has fully acknowledged its failings in this area, and has since put in place procedures to address the issues which led to these failings.
45. I do not, therefore, require the Council to take any remedial action in relation to these failings.



Decision

I find that the information supplied by North Ayrshire Council (the Council) in response to the thirteen information requests which were originally refused represented a reasonable and appropriate response to those requests and therefore that generally the Council complied with Part 1 of FOISA in dealing with the requests.

I also find that the Council committed a technical breach of section 21 of the Freedom of Information (Scotland) Act 2002, in failing to recognise and respond to Mr Hasan's request for review.

I do not require the Council to take any remedial action in relation to this failure.

Kevin Dunion
Scottish Information Commissioner
12 April 2006



APPENDIX:

Questionnaire submitted by the Mr Hasan to North Ayrshire Council

Questionnaire

Please answer the following questions in the space provided. Any words highlighted in ***bold and italics*** is further explained in the Glossary to eliminate doubt of their meaning.

1. How many employees were permanently employed by the Building Control Section directly responsible for assessing and issuing Building Warrant applications in the calendar year 2003? (I.e. not administration staff).
-

2. How many employees were permanently employed by the Building Control Section directly responsible for assessing and issuing Building Warrant applications in the calendar year 2004? (I.e. not administration staff).
-

Between the period 1st January 2004 to 31st December 2004:

3. How many Building Warrant Applications were received by this Local Authority?
-

4. How much fee income did these Building Warrant Applications generate for the Local Authority?
-

5. How many Building Warrant Applications were ***approved*** within 4 calendar weeks of them being ***registered***?
-

6. How many Building Warrant Applications were ***approved*** between 4 and 8 calendar weeks of them being ***registered***?
-



7. How many Building Warrant Applications were **approved** between 8 and 12 weeks of them being **registered**?

8. How many Building Warrant Applications were **approved** between 12 and 16 calendar weeks of them being **registered**?

9. How many Building Warrant Applications were **approved** between 16 and 20 calendar weeks of them being **registered**?

10. How many Building Warrant Applications were **approved** between 20 and 26 calendar weeks of them being **registered**?

11. How many Building Warrant Applications were **approved** over 26 calendar weeks of them being **registered**?

12. How many Building Warrant applications were **refused**?

13. How many **refused** Building Warrant Applications were the subjects of an appeal heard by a Sheriff?

14. How many Building Warrant applications were **registered** and **approved** without the need for a "**Plan Assessment/Crit/First Report**" letter, i.e. the proposals as submitted fully complied with the Building Standards (Scotland) Regulations.

15. How many Building Warrant applications were **registered** but subsequently could not be assessed for compliance with the Building Standards (Scotland) Regulations due to a lack of information?



16. From your answer to question 15 above, how many of these applications were then **approved** once the information requested by Building Control was furnished in support of the Building Warrant Application?

17. How many "**Letter of Comfort**" requests did this Local Authority receive?

18. How many "**Letter of Comfort**" were issued by this Local Authority?

19. How much fee income was generated for the Local Authority by issuing "**Letter of Comfort**"?

20. How many cases were referred to the Procurator Fiscal where individuals/organisations had carried out works without obtaining a Building Warrant prior to commencing the works.

21. How many cases were referred to the Procurator Fiscal where individuals/organisations had occupied or used a building without having obtained a **Completion Certificate**?

22. How many **Completion Certificates** were issued?

23. How many **Completion Certificates** did the Local Authority refuse to issue?

24. Please supply us with the standard letter issued by this Local Authority to inform the Applicant/Agent of non compliance – i.e. the cover letter sent with the "**Plan Assessment/Crit/First Report**"



Glossary

“approved” – The formal issuing of a Building Warrant – i.e. the date on the approved set of plans returned to the Applicant.

“registered” – The formal acceptance of a “valid” application, also the date payment is taken for the application and/or when an application is given a unique reference number by the Local Authority.

“refused” – The rejection of a previously **registered** application for whatever reason.

“Plan Assessment/Crit/First Report” – Correspondence from the Local Authority/Building Control/Building Control Officer requesting clarification, further information and/or indicating non compliance with the Building regulations.

“Letter of Comfort” – Letter issued by the Local Authority after works have been carried out by an individual/organisation without the necessary Warrants in place.

“Completion Certificate” – Certification issued by the Local Authority confirming the works specified in the Building Warrant Application have been done in accordance with the Building Regulations as far as can be ascertained.