



Scottish Information  
Commissioner

**Decision 123/2007 Millar & Bryce Limited and  
Renfrewshire Council**

*Request seeking copies of notices or orders  
served under various statutes*

**Applicant: Millar & Bryce Limited  
Authority: Renfrewshire Council  
Case No: 200502770  
Decision Date: 30 July 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## **Decision 123/2007 Millar & Bryce Limited and Renfrewshire Council**

**Request for a copy list of properties that have outstanding debts in relation to statutory Notices/Orders served under various statutes. Information withheld under section 25(1) (Information otherwise accessible).**

### **Relevant Statutory Provisions and Other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2(1) and (2)(a) (Effect of exemptions); 23(1) and (2) (Publication schemes) and 25 (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**

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Millar & Bryce Limited (Millar & Bryce) requested a copy list of properties with outstanding debts in relation to statutory notices/orders served under specified statutes from Renfrewshire Council (the Council). The Council responded by withholding the information requested, relying on the exemptions in sections 25(1) (Information otherwise accessible) and 38 (Personal information) of the Freedom of Information (Scotland) Act 2002 (FOISA). Millar & Bryce were not satisfied with this response and asked the Council to review its decision. The Council carried out a review and, as a result, notified Millar & Bryce that it was maintaining its position to withhold the information under section 25(1) of FOISA, but was withdrawing its reliance on section 38. Millar & Bryce remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Millar & Bryce's request for information in accordance with Part 1 of FOISA. He required the Council to provide Millar & Bryce with full details of the information requested.



## Background

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1. On 2 June 2005, Millar & Bryce wrote to the Council requesting the following information:

A copy list of properties that have outstanding debts in relation to statutory notices/orders as at 31 May 2005, specifying only the address of the property, the notice type & reference number, date served and date works completed, under or pursuant to the following legislation:

- Building (Scotland) Acts 1959/70 (section 10, 11, 13)
- Building (Scotland) Act 2003 (sections 25, 27, 28, 29)
- Civic Government (Scotland) Act 1982 (sections 87, 90, 92, 95, 96)
- Environmental Protection Act (section 80)
- Housing (Scotland) Act 1987 (sections 88, 89, 90, 91, 108, 114, 115, 116, 156, 157, 160, 161, 162, 166)

2. On 14 June 2005, the Council wrote to Millar & Bryce in response to their request for information. The Council confirmed that they held the information requested by Millar & Bryce. They went on to say, however, that it was withholding the information on the basis of the exemptions in sections 25(1) (on the basis that it was available through its publication scheme) and 38 of FOISA (on the basis that it was personal data, the release of which would breach the Data Protection Act 1998).
3. On 9 August 2005, Millar & Bryce wrote to the Council requesting a review of its decision. In particular, Millar & Bryce disagreed with the Council's assertion that the information requested could be obtained through the Council's publication scheme.
4. On 5 September 2005, the Council wrote to notify Millar & Bryce of the outcome of its review. In this review, the Council maintained its position on section 25(1) of FOISA, providing additional background to support its view that the information requested is otherwise accessible. The Council also suggested that the information would be available from the Keeper of the Records of Scotland. The Council withdrew its reliance on section 38 of FOISA.



5. On 22 September 2005, MacRoberts, Solicitors applied to me for a decision on behalf of Millar & Bryce, in terms of section 47(1) of FOISA. MacRoberts disagreed that the information requested by Millar & Bryce was covered by the Council's publication scheme.
6. The application was validated by establishing that Millar & Bryce had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

## **The Investigation**

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7. In a letter from the investigating officer dated 12 October 2005, the Council was notified of the application and was invited to provide a substantive response in relation to the matters raised by Millar & Bryce and on the application as a whole, in terms of section 49(3)(a) of FOISA 2002. The Council was also asked to provide information and to comment on a number of specific questions raised by the investigating officer.
8. On 10 November 2005, the Council issued a full, substantive response to the investigating officer.

## **The Commissioner's Analysis and Findings**

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9. In coming to a decision on this matter, I have taken into consideration the submissions provided by both Millar & Bryce and the Council and I am satisfied that no matter of relevance has been overlooked.
10. I must decide whether the Council acted in accordance with Part 1 of FOISA in refusing to supply the information on the basis that it was exempt in terms of section 25(1) of FOISA.

### **Section 25(1) - Information otherwise accessible**

#### ***The Council's publication scheme***

11. In its submission to my Office, the Council stated that the requested information could be obtained from its publication scheme and so was exempt under section 25(1) of FOISA



12. Under section 23 of FOSA, all public authorities must adopt and maintain a publication scheme, which sets out information which is proactively published by the authority, along with details of how that information may be accessed.
13. Under section 25(1) of FOISA, information which the applicant can reasonably obtain other than by requesting it under section 1(1), is exempt from disclosure. This is an absolute exemption in that it is not subject to the public interest test required by section 2(1)(b) of FOISA.
14. In this case, section 25(1) of FOISA requires to be read in conjunction with section 25(3), which creates the presumption that where information is made available in accordance with an authority's publication scheme, the information will be reasonably accessible and therefore exempt under section 25(1). Instead of requiring the applicant to go through the formal request process under FOISA, the information is instead made available on the terms set out in the authority's publication scheme.
15. The Council asserted that the information requested by Millar & Bryce is available from its property enquiry certificates (PECs). In brief, a PEC is a document which collates together a range of information about the status of an individual property, in order that value and marketability of the property can be assessed and confirmed. The information which appears on a PEC is wider than the information requested by Millar & Bryce, but will generally include information on whether a specific property is subject to any statutory notices/orders and by default confirm whether there is any outstanding debt in relation to these notices/orders. PECs are contained within the Council's publication scheme. At the time of the request, the charge for each PEC was £75.00.
16. However, I am not satisfied with the arguments put forward by the Council.
17. The request made by Millar & Bryce was for a copy list of properties that have outstanding debts in relation to statutory notices/orders at a specific date in time, under or pursuant to various pieces of legislation. The Council has not offered to provide Millar & Bryce with such a list, but has instead offered to sell Millar & Bryce PECs. This is not the information which Millar & Bryce have asked for.



18. It may be helpful to consider exactly what the Council is expecting Millar & Bryce to do. In order to access the details of all properties subject to extant statutory notices/orders under the various statutes listed in their request, Millar & Bryce would be required to purchase a PEC for each property within the Council's geographic boundaries. These certificates would then have to be individually reviewed in order to determine which properties were subject to one of the relevant notices/orders. Millar & Bryce would then be required to draw up a list of relevant properties themselves. This methodology would by its very nature require the purchase of a very substantial amount of information which Millar & Bryce had not asked for, namely all of the PECs where the properties were not subject to any notices/orders under the relevant statutes.
19. The Council did not provide any figures regarding the number of PECs that would be required to be purchased in order for Millar & Bryce to be able to prepare its own list of relevant properties. However, I note from a report dated May 2003 from the Council's Department of Planning and Transport "Census 2001: Renfrewshire Council Area Summary of Key Statistics" that in 2001, there were 75,355 households in Renfrewshire. This figure will no doubt have fluctuated in the meantime, but if we use this figure as an example, it would cost Millar & Bryce over £5.5 million to be able to access the background information it requires to make up its own lists.
20. I conclude that the information is not available through the Council's publication scheme and that the Council therefore acted incorrectly in applying the exemption under section 25(1) on this basis.

### ***The Keeper***

21. The Council also suggested that Millar & Bryce could access the information they requested from the Keeper of the Records in Scotland. The Council did not provide any additional information to support this view.
22. On investigating this aspect further, given the nature of the request, I concluded that the Council actually intended to refer to the Keeper of the *Registers* of Scotland (his role is to provide information on Scotland's land and property) as opposed to the Keeper of the *Records* of Scotland.



23. However, with a view to fully exploring this issue, the investigating officer contacted both Keepers to find out whether the information sought by Millar & Bryce could be obtained from them. Both confirmed that information may be available of the nature sought, but that to access this they would both require details of the specific address of the relevant properties to conduct its searches. Millar & Bryce do not have this information. Indeed, it is this information which they wish to obtain from the Council. I therefore find that the information is not information which Millar & Bryce can reasonably obtain either from the Keeper of the Records of Scotland or the Keeper of the Registers of Scotland in terms of section 25(1) of FOISA.

## **Decision**

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I find that Renfrewshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in withholding the information requested by Millar & Bryce on the basis of the exemption in section 25(1). In doing so, the Council failed to comply with section 1(1) of FOISA.

I therefore require Renfrewshire Council to provide Millar & Bryce with a full and accurate response to their request for information. I require that the Council supply this information to Millar & Bryce no later than 45 days from receipt of this notice.

## **Appeal**

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Should either Millar & Bryce or Renfrewshire Council 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 decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**30 July 2007**



## 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.

##### 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

[...]

##### 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
  - (c) from time to time review that scheme;





- (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; 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.