



Scottish Information  
Commissioner

**Decision 021/2008 Mr Conor McNally and Glasgow City Council**

*Financial information concerning work on a property*

**Applicant: Mr Conor McNally**

**Authority: Glasgow City Council**

**Case No: 200601937**

**Decision Date: 6 February 2008**

**Kevin Dunion  
Scottish Information Commissioner**

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## Decision 021/2008 Mr Conor McNally and Glasgow City Council

***Request for information concerning repair work carried out on behalf of Glasgow Housing Association – certain information withheld by Glasgow City Council on the grounds that disclosure would prejudice substantially the commercial interests of the Council and its wholly-owned subsidiary, City Building (Glasgow) LLP – the Commissioner upheld the Council’s decision to withhold its Schedule of Rates***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 10(1) (Time for compliance); 33(1)(b) (Commercial interests).

The full text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

### Facts

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Mr McNally wrote to Glasgow City Council (the Council) requesting information concerning maintenance and repair work that had been carried out by the Council's Building Services on behalf of the Glasgow Housing Association (GHA).

The Council provided Mr McNally with most of the information he had requested but withheld detailed costing information contained within the Schedule of Rates in the relevant contract. This decision was upheld on review and Mr McNally applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had been correct to rely upon section 33(1)(b) of FOISA in relation to the information that had been withheld, as the disclosure of that information would, or would be likely to, prejudice substantially the commercial interests of the Council.



## Background

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1. Mr McNally initially requested information from the Council on 8 April 2006. The information he requested related to work carried out at his home by Building Services on behalf of the Glasgow Housing Association (GHA) between February 2004 and March 2006. He also asked to be provided with details of payments made by GHA relating to that work, along with details of any general funding arrangements between GHA and departments of the Council specific funding arrangements and between GHA and Building Services in relation to work at his address.
2. The Council acknowledged Mr McNally's request and then responded to it more fully on 24 April 2006. In its response the Council confirmed that it held some of the information requested and provided Mr McNally with details of repair work that had been carried out, including dates and costs. The Council informed Mr McNally that it was of the view that it had complied in full with his request.
3. On 1 May 2006 Mr McNally wrote to the Council asking for further detailed documentation that related to the repair work carried out at his home between February 2004 and March 2006. Mr McNally informed the Council that his reason for asking for such information was to enable him to understand the general charging structure between GHA and the Council, and the justification for what appeared to Mr McNally to be excessive repair costs concerning his own particular property.
4. Mr McNally received no response from the Council within the 20 working day timeframe for responding to requests as set out in section 10(1) of FOISA. He wrote a reminder letter to the Council on 19 June 2006, enclosing a copy of his request of 1 May 2006.
5. The Council responded to Mr McNally on 18 July 2006. In its letter the Council informed Mr McNally that it held some of the information he had requested. Mr McNally received the information he had asked for with the exception of responses to his questions concerning (i) the "profit" that had been made by the Council's Building Services in carrying out both general repair work for GHA and individual repairs to his property and (ii) the costing of repairs to his property, which the Council advised was contained within a Schedule of Rates. Both sets of information were considered by the Council to be exempt from disclosure under section 33(1)(b) of FOISA on the grounds that to disclose such information would, or would be likely to, prejudice substantially the commercial interests of the Council.



6. Mr McNally was dissatisfied with the response to his request and he wrote to the Council on 2 August 2006, requesting a review of its decision to withhold the information he had requested. In his letter Mr McNally argued that there was a clear public interest in disclosing repair and maintenance charges at GHA properties and referred to a number of news articles which, in his view, highlighted the issue of high building and maintenance charges for owners of properties factored by GHA (the majority of the relevant work being carried out by the Council). He also challenged the assertion that the Council's commercial interests would be prejudiced substantially by disclosure.
7. The Council carried out a review of its decision to withhold information and communicated its findings to Mr McNally on 31 August 2006. In its letter the Council informed Mr McNally that it was satisfied that the original decision to withhold information was correct and confirmed that decision.
8. Mr McNally was dissatisfied with the outcome of the review and, on 10 December 2006, applied to me for a decision.
9. Mr McNally's application was validated by establishing that he had made a valid 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 his initial request.

## **The Investigation**

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10. The Council was notified on 23 January 2007 that an application had been received from Mr McNally and that an investigation into the matter had begun. The Council was also asked to provide comments in terms of section 49(3)(a) of FOISA, along with supporting documentation for the purposes of the investigation. This information was provided by the Council and the case was subsequently allocated to an investigating officer.



### *The Council's submissions*

11. In setting the background to Mr McNally's request, the Council explained that it had been appointed through its Building Services department to be the main contractor to GHA for maintenance and repair work. This included work on former Council houses (such as Mr McNally's) which were now factored by GHA. Prior to the transfer of the Council's housing stock to GHA in 2003, the Building Services department had carried out this work on behalf of the Council's Housing Services department, having won the contract in 1996 following a tendering exercise carried out under the Compulsory Competitive Tendering rules which applied to such works contracts at that time. The Schedule of Rates for the GHA contract was essentially the same as that contained in the 1996 contract.
12. The Council also advised that it had transferred most of the functions of its Building Services department (including the GHA contract) to a new external body, City Building (Glasgow) LLP (City Building), in October 2006: As a wholly-owned subsidiary of the Council, City Building was itself a Scottish public authority in terms of sections 3(1)(b) and 6(1)(b) of FOISA. It stated that the current GHA contract would expire in March 2008, prior to which a new contract for the work (in which City Building would be interested) would be awarded following a tendering exercise under the EU public procurement regime: it was an essential element of such a tendering exercise that all tenders were submitted blind, without knowledge of the content of other competing bids.
13. The Council advised that the prices for various works of maintenance and repair were contained in the Schedule of Rates in the contract between the Council and GHA. The Schedule of Rates was made up of a number of elements, including an allowance for direct labour costs, materials, direct supervision, property costs, transport, storage site and office overheads. The Council argued that it was therefore not a simple or straightforward task to determine "profit" on specific jobs, the costs of which included a percentage attributed to administration and overheads. It was also argued that it would be very difficult and time consuming to identify this information and even then the accuracy of the information could be called into question, given that the contract rates had been set in 1996 and there had been a significant movement in staff in the intervening period. In addition, the Council argued that the actual profit margin associated with any given job would be dependent on extraneous elements, such as the actual amount of time spent on that job relative to the estimated average time which the Schedule of Rates was based on.



14. The Council stated that it did not keep time details at the level of individual jobs and it was argued that any calculation it attempted to make would at best represent a very broad approximation. It considered that it could have informed Mr McNally that it did not hold the information he had requested concerning “profit” on specific repairs, but since it was able to produce an approximate answer it felt it was better to state that the information was held but subject to an exemption. The Council accepted that it would perhaps have been more accurate to say that it held the information which would allow the information requested by Mr McNally to be calculated, but it took the view that to comply with its duties to advise and assist under section 15 of FOISA it would (apart from any exemption it considered applicable) be necessary to calculate the profit so far as it was able to do so.
15. The information provided to Mr McNally by the Council, which concerned repairs carried out on Mr McNally’s home between the specified dates, comprised (for each job) the job number, repair description, date reported, date completed, date charged/invoiced and the cost of the work carried out. However, the Council refused to provide Mr McNally with details of how those repairs had been costed since this information was held within the Schedule of Rates which the Council deemed to be exempt from disclosure under section 33(1)(b) of FOISA.
16. In the course of the investigation, the Council provided Mr McNally with further information from its annual accounts, showing the general Council figures for external trading work (which included the GHA maintenance and repair work) for the 2004-5 and 2005-6 financial years. The GHA work had been accounted for separately in 2005-6 and a surplus was disclosed. Mr McNally confirmed that this answered his question in relation to general “profit”, but not his other outstanding questions in relation to works on his own property. While Mr McNally appeared at this point to be dissatisfied with the Council’s responses to other questions he had asked in his request for information, I am satisfied having considered all relevant correspondence that his application to me for a decision in fact related only to the Council’s application of exemptions: the outstanding questions to which exemptions were applied are:

*“...for each separate repair carried out at [Mr McNally’s property] between February 2004 and March 2006:*

1. How was the repair actually costed?

...

8. What was the profit made by GCC Building Services on each repair?”

In addition, Mr McNally confirmed that the information he was seeking appeared to be contained in the Schedule of Rates.



17. I will now go on to consider the Council's arguments for withholding this information, in the course of which I will examine in detail the arguments submitted by the Council for applying the exemption in section 33(1)(b) of FOISA.

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

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18. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by Mr McNally and the Council and am satisfied that no matter of relevance has been overlooked.

### *Section 33(1)(b) – Commercial interests*

19. Section 33(1)(b) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).
20. There are certain elements to section 33(1)(b) of FOISA which an authority needs to demonstrate when relying on this exemption. In particular, it needs to indicate whose commercial interests might be harmed by disclosure, the nature of those commercial interests and how these interests would be prejudiced substantially by disclosure. Where an authority is arguing that the commercial interests of a third party will be harmed, the authority must make this clear and must indicate the nature of those commercial interests and how these interests would, or would be likely to, be substantially prejudiced.
21. Even where an authority considers that section 33(1)(b) of FOISA applies to information which is the subject of the request, it must still go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
22. Initially, the Council withheld all information contained within its Schedule of Rates on the grounds that disclosure would, or would be likely to, prejudice substantially the commercial interests of the Council. At the time when the Council issued its responses to Mr McNally, Building Services was still an integral part of the Council and therefore the commercial interests which the Council deemed to be potentially prejudiced were stated to have been those of the Council.





23. However, with the transfer of functions to City Building, the Council's position changed slightly and in its submission to me it argued rather that that the relevant commercial interests were primarily those of City Building. The Council believed that its own commercial interests were still engaged, although to a far lesser extent, on the basis that that City Building was a wholly-owned subsidiary of the Council and any financial loss impacting on City Building would also impact, albeit indirectly, on it.
24. I note the Council's revised position. In reaching a decision on an application made to me under section 47(1) of FOISA, my primary concern is whether the authority in question dealt with the applicant's request for information in accordance with Part 1 of FOISA. As the request was handled throughout by the Council (and City Building did not, for that matter, exist until after Mr McNally had submitted his application to me for a decision), the relevant authority for the purposes of Mr McNally's application must be the Council rather than City Building. However, given the nature of the transfer of functions to City Building in October 2006, it may be necessary or helpful for me to address the interests of City Building in the course of considering the application of the section 33(1)(b) exemption.
25. The exemption under section 33(1)(b) of FOISA relates to the commercial interests of an individual or organisation. When considering this exemption, it is important that a distinction is drawn between the commercial interests of an organisation and its financial interests.
26. Financial interests will generally relate to the financial affairs of an organisation and will include, but will not be limited to, the revenue generated by an organisation and the management of its financial assets. Commercial interests, however, will relate more directly to trading activity undertaken by an organisation and will include activity relating to the ongoing sale and purchase of goods and services by that organisation, frequently for the purpose of revenue generation.
27. In order for the test under section 33(1)(b) of FOISA to be satisfied, therefore, it is my view that the interests which are at risk of harm must go beyond those relating solely to the purchase by a Scottish public authority of goods and services which are required for the effective fulfilment of its functions, statutory or otherwise. While the purchase of such goods may entail activity which engages with commercial operators, it will not necessarily follow that the authority has commercial interests in relation to that activity.





28. I accept that public authorities can have commercial interests, but only in specific instances where I am satisfied that a particular commercial activity is being carried out. In this case, I accept from the information provided by the Council that the operations of Council in providing a maintenance and repair service to GHA under contract were commercial in nature and that, by extension, the provision of the same service to GHA by City Building remains commercial in nature. To that extent, the Council had at the time it dealt with Mr McNally's request (and City Building now has) commercial interests which were (and in the case of City Building are) capable of being engaged by the exemption in section 33(1)(b) of FOISA. Incidentally, I accept the Council's argument that City Building is a Scottish public authority by virtue of sections 3(1)(b) and 6(1)(b) of FOISA.
29. Having indicated whose commercial interests might be harmed by disclosure, the Council applied a number of tests in order to determine whether the section 33(1)(b) exemption in FOISA applied to the information requested by Mr McNally. These tests included whether the prejudice caused would be real, actual and of significant substance (and therefore would be substantial).
30. The Council went on to provided more detailed arguments concerning the nature and extent of the prejudice it considered would, or would be likely to be, result from disclosure. It stated that City Building had been set up in part to be able to compete in the general marketplace, as well as in the specific expectation that it would tender for the GHA contract when the current one expired. The Council argued that the current contract rates were all-inclusive (except for exceptional items where dayworks rates needed to be charged in addition to the stated rates) and that the general public interest in local authorities being able to conduct trading exercises was clearly affirmed by local government legislation, such as sections 8 and 10 of the Local Government in Scotland Act 2003.
31. It was further argued that the tenders City Building submitted were made on the basis that no tenderer would be aware of the prices which any other tenderer would submit, so that all tenderers would submit their best bid rather than one which had been adjusted away from best bid as a result of knowledge of the competition. The Council added that the actual level of any bid submitted for repair and maintenance work would consist purely of the specified rates for the jobs concerned plus any applicable percentage variations.



32. The Council also argued that the release of a bald profit figure for the repair work carried out at Mr McNally's property would, in conjunction with other information the Council had released, permit the Council's tender rates to be approximated by competitors. The Council argued that to provide the breakdown of the Schedule of Rates would give its competitors this information in considerable detail and it was therefore only the non-availability of this information which allowed City Building to tender on a confidential basis.
33. The Council argued if these details were made available in response to a freedom of information request, competitors of City Building would be able to calculate the tender price which it would be able to submit, to the detriment of City Building's ability to compete in the marketplace in future. The Council was of the view that this would clearly be to the substantial prejudice of City Building's commercial interests. In the context of the forthcoming tendering exercise for the GHA contract, senior officials of City Building considered that disclosure could jeopardise the company's entire financial viability.
34. The Council stated that its Building Services department was actively tendering for work (mostly, but not exclusively, from housing associations in the city) right up to the point when its functions were transferred to City Building on 6 October 2006. In order to assist the financial standing of the proposed new organisation, the Council had actively sought additional work in the run-up to the transfer.
35. The Council argued that the transfer itself predicated a more intensive push by the newly-established City Building to gain additional contracts utilising its new status, and so the time when the request for information was made was one where the Council's Building Services department was actively pursuing business opportunities. The basis of the pricing for all these tenders was the Schedule of Rates. Additionally, it was pointed out that the GHA contract was not, and is not, the only contract which either the Building Services department, or now City Building, was a party to which utilised the schedule of rates.
36. The Council stated that the business processes (including, crucially for purposes of this appeal, the method of costing tenders and individual jobs based on the Schedule of Rates) of Building Services were adopted wholesale and without any substantial alteration by City Building when it was set up. All the staff involved in producing tender responses for Building Services immediately prior to the establishment of City Building were transferred under the TUPE Regulations to City Building, where they continued to carry out the same task and on the basis of the same Schedule of Rates. It was emphasised that the Schedule of Rates had been, and continued to be, used by City Building as the basis for its tenders.



37. The Council stated that in November 2007, it had received a formal request from GHA to extend the works of maintenance contract for a period of up to one year; this contract was otherwise due to expire in March 2008. In December 2007, the Executive Committee of the Council agreed to permit officers of the Council to negotiate such an extension with the GHA and these negotiations were still ongoing. In this context, it was stressed that the Council subcontracted (rather than assigned) its contract with the GHA to City Building. The Council therefore argued that it had a commercial interest which was engaged in this appeal: the Council had entered into a commercial contract, in 2003, for works of maintenance with the GHA.
38. Following the establishment of City Building on 6 October 2006, this contract had been subcontracted to City Building, but the Council remained contractually bound to GHA in the first instance. The Council argued that the request for extension of this contract from GHA meant that the Council's commercial interests were engaged in this appeal and, it was submitted, would be prejudiced by disclosure. However, the Council stressed that its main reason for withholding the information in question remained the potential substantial prejudice to the commercial interests of City Building.
39. It was argued that the tendering exercise for the GHA contract (of which City Building is the present holder) was still live. City Building had intimated an intention to tender for this contract and that tender was likely to be costed on the basis (with appropriate inflationary uplifts) of the Schedule of Rates.
40. Further, the Council explained that the Schedule of Rates was a complex document. It had been drawn up, at significant effort, in 1996 and both the Building Services department and now, as successor to that department, City Building, had continued to use the 1996 Schedule of Rates with inflationary uplifts applied to the various components of it. Thus while the original source document was now nearly 12 years old, it remained the mainstay of how City Building prices for tenders and work, and would continue to do so for the foreseeable future.
41. When asked if an older version of the Schedule of Rates could have been disclosed to Mr McNally, i.e. the version which would have been current at the time of Mr McNally's request, the Council explained that while the prices would have dated from 1996, they remained the basis for the contract agreed in 2003. The prices stated in the original agreement had been uprated by inflation (the rate of which was stated) and therefore anyone could work out current prices by a simple piece of arithmetic.



42. Taking into account all of the above, I am of the view that to disclose details of the prices for various works of maintenance and repair which are contained in the Schedule of Rates in the contract between the Council and GHA would, or would be likely to, cause considerable harm to City Building's commercial activities (and, at the time the Council dealt with Mr McNally's request, the commercial interests of the Council) by hampering its ability to bid competitively in future tendering exercises.
43. Having established that the section 33(1)(b) exemption in FOISA applies to the information in question, I must now go on to consider the public interest test.

*The public interest test*

44. Mr McNally stated that he wanted the information he had requested in order to be able to determine whether the charges levied by the Council for its building works on his property had been fair. He stated that his property was factored by GHA, which had a very close relationship with the Council. Mr McNally argued that there was substantial public interest amongst other GHA-factored home owners for similar information. Further, it was argued that for the remainder of Glasgow's population who do not live in GHA accommodation, there was a corresponding public interest that the Council did not unfairly subsidise GHA occupiers by undercharging for its work. Mr McNally argued that revealing the Schedule of Rates and other requested information concerning profits would help to clarify the situation.
45. Mr McNally was of the view that revealing the details of the existing Repairs and Maintenance Contract would not give other potential rivals a commercial advantage over the Council. He argued that the existing contract had been won by the Council's Building Services in 1996, and the new contract would not be tendered until March 2008, by which time Building Services would have ceased to exist. He argued that the new City Building partnership would be a new company working in new market conditions and it should submit its most competitive bid, like any other tenderer.
46. Mr McNally also maintained that there was public interest in understanding that the handover from Building Services to City Building was commercially fair and it was in the public interest that, in terms of the price paid by GHA for its services, that City Building remained as efficient as possible.
47. Mr McNally also referred to a number of newspaper articles which highlighted the levels of building and maintenance charges which GHA home owners had to pay. Mr McNally was of the view that these articles demonstrated a clear public interest concerning repair and maintenance charges at GHA properties. Mr McNally viewed his request as being a case study which illustrated the general situation.



48. In its consideration of the public interest test, the Council had regard to the following information:
- Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities Under FOISA (the Section 60 Code - available on the Scottish Government's website: <http://www.scotland.gov.uk/Publications/2004/09/19894/42618>);
  - My own guidance on the public interest test (available on my website: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/ThePublicInterestTest/thePublicInterestTest.asp>); and
  - The Scottish Public Sector Procurement and Freedom of Information Guidance, published by the Scottish Procurement Directorate (available on the Scottish Government's website: <http://www.scotland.gov.uk/Resource/Doc/1265/0006892.pdf>).
49. The Council suggested that the public interest factors favouring disclosure of the information requested were as follows:
- The general public interest in information being accessible;
  - Whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money;
  - Whether disclosure would ensure fairness in relation to applications, in this case to other tenderers who were or may in future be interested in tendering for these products; and
  - The general public interest surrounding the issue of owner-occupier repair bills issued by GHA, as referred to by Mr McNally.
50. The Council suggested that the public interest factors favouring withholding the information requested were as follows:
- The public interest in securing value for money in relation to public expenditure by the Council and its wholly-owned subsidiary;
  - Avoidance of a course of action which would frustrate the legislative intentions behind section 8 of the Local Government in Scotland Act 2003 (which contains provision for the supply of goods and services etc. by local authorities);
  - Avoidance of a course of action which could undermine competitive tendering exercises conducted by the Council and by City Building by providing competitors with an unfair advantage;



- Maintaining consistency with the approach adopted by Directive 2004/18/EC (which concerns the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts) and ensuring the integrity of any future tendering exercises which City Building participated in; and
  - Protecting GHA's contracting position for future tendering purposes.
51. The Council acknowledged the importance of "information for information's sake", and had expressed the view to the Scottish Parliament that "openness is the price of doing business with the public sector", but it also recognised practical limitations to the concept and asserted that some flexibility had to be recognised where the public sector itself was the party doing business.
52. In particular, the Council was of the opinion that the legitimate public interest points which favoured disclosure had all been addressed without the information requested having to be disclosed. It was of the view that the balance of the public interest was on the side of withholding the information for the following reasons:
- Information relating to the surplus which the Council made from maintenance and repair work was already published in general terms;
  - Detailed information concerning the works carried out at Mr McNally's property, the costs, specifications and other information, had already been provided to Mr McNally both in response to this request and in response to others made both to the Council and to City Building;
  - The Council considered that it was in the public interest to safeguard the integrity of future tendering exercises. The Council argued that, in this case, GHA was essentially a publicly-funded body and was subject to European procurement rules. Those rules (as implemented in Scots law by the Public Contracts (Scotland) Regulations 2006) required procuring bodies to respect tenderers' reasonable requirements as to confidentiality, so as to prevent the integrity of tendering exercises being compromised. The Council argued that this was a not-unlikely prospect if City Building were required to release detailed rates breakdowns under freedom of information legislation;





- Trading activities by the Council and its wholly-owned subsidiaries helped to generate funds to support front line service delivery without impacting adversely on the public purse. The Council considered that the public interest was served by protecting the Council's ability to do so in a competitive marketplace and referred to the Scottish parliament's recent extension of these powers as evidence that this was generally felt to be in the public interest. The Council was also of the view that there was no public interest in frustrating such moves and argued that the public interest argument remained equally valid where (as here) the trading activity was conducted by a wholly-owned subsidiary rather than directly by the Council;
- The Section 60 Code listed, at paragraph 43, certain elements of contracts which should not be the subject of agreed non-disclosure terms. The Council argued that the information sought by Mr McNally and withheld by the Council did not fall into any of the categories listed;
- The Scottish Procurement Directorate guidance stated, in relation to section 33(1)(b) of FOISA:

“Substantial prejudice to commercial interests is required before the information can be considered to be exempt under s33(1)(b). This will generally mean real or actual harm around the ability to do business. This could involve giving advantage to the competition, and/or loss of shareholder/customer/supplier confidence. The commercial interests of a public body are also covered by this exemption, e.g.:

- where public bodies have a revenue-earning commercial arm and are therefore subject to prejudices similar to those that could apply to private sector companies; [or]
- the role of the public body as a purchaser could be compromised, e.g. as suppliers could withhold sensitive information in the future (to the detriment of the procurement process), or a reduction in the body's ability to negotiate effectively to secure best value for money.”

The guidance also indicated (in Annex A) that “price breakdown” should generally be withheld, on the basis that this could reveal the contractor's costing information which, in turn, should be withheld because of the advantage this could give a competitor.

53. The Council submitted that all of these factors were present in respect of the information requested and, for all of the above mentioned reasons, concluded that the information relating to the Schedule of Rates should not be released.





54. In my view the prices for various works of maintenance and repair which are contained within the Schedule of Rates (e.g. allowances for direct labour costs, materials, direct supervision, property costs etc.) would constitute a core part of any tendering bid made by Building Services in relation to its trading activities. In my opinion, if such information were to be made available to the competitors of Building Services this would be highly likely to put Building Services at a competitive disadvantage in any competitive tendering exercise it subsequently enters into.
55. I note that, the Scottish Procurement Directorate guidance states that the impact on a bidder/supplier/public body of the disclosure of commercial interest information is likely to diminish over time. However, it also recognises that this may not always be the case. In this instance the contract between the Council and GHA is still extant and I am satisfied that, were the information requested by Mr McNally to be disclosed, the impact on the Council (and its successor City Building) would be significant and the detrimental effect that would be caused by disclosure has not diminished over time.
56. Having weighed up the competing public interest arguments for and against disclosure, I have not found any reason for disclosure that would outweigh the likely harm that would be caused to the commercial interests of Council (and its successor City Building) as a result of disclosure of the information requested by Mr McNally. I have therefore found that the general public interest in disclosure of the information is outweighed in this instance by the public interest in withholding the information.

### *Conclusion*

57. Taking into account the information that has already been provided to Mr McNally by the Council in response to his request, which comprised (for each job undertaken on Mr McNally's property) the job number, repair description, date reported, date completed, date charged/invoiced and the cost of the work carried out, I am satisfied that the Council provided Mr McNally with as much information as it could without prejudicing substantially its commercial interests and those of City Building.
58. In my view the Council was correct to withhold the information relating to Mr McNally's request which was contained within its Schedule of Rates on the grounds that the information was exempt under section 33(1)(b) of FOISA and, in all the circumstances of the case, the public interest in disclosing the information was outweighed by that in maintaining the exemption.



## **Decision**

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I find that Glasgow City Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by relying upon the exemption in section 33(1)(b) of FOISA in relation to information requested by Mr McNally.

I find that the Council failed to respond to Mr McNally's information request within the required timescale as set down in section 10(1) of FOISA. I do not require the Council to take any action in respect of this breach.

## **Appeal**

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Should Mr McNally or Glasgow City Council wish to appeal against my decision, there is a right to 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**  
**6 February 2008**



## 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.

##### 10 Time for compliance

(1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request;

##### 33 Commercial interests and the economy

(1) Information is exempt information if-

(...)

(b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).