



Scottish Information  
Commissioner

**Decision 071/2007 - Mr Najem Al Hasan,  
Expressplans.com, and East Dunbartonshire  
Council**

*Various requests for information relating to East Dunbartonshire  
Council's building control function*

**Applicant: Mr Najem Al Hasan, Expressplans.com  
Authority: East Dunbartonshire Council  
Case No: 200600288  
Decision Date: 22 May 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## **Decision 071/2007 - Mr Najem Al Hasan, Expressplans.com, and East Dunbartonshire Council**

*24 requests for information relating to East Dunbartonshire Council's building control function submitted via a questionnaire – application made in relation to the handling of 10 of those requests — Section 12(1) (Excessive cost of compliance)*

### **Relevant Statutory Provisions**

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The Freedom of Information (Scotland) Act 2002 – sections 1(1) (General entitlement) and 12(1) Excessive cost of compliance.

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 – regulation 5 (Excessive cost – prescribed amount).

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

### **Facts**

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Mr Hasan, acting as a representative of the architectural practice Expressplans.com, submitted a questionnaire containing 24 separate requests for information to East Dunbartonshire Council (the Council). The Council refused information in response to 10 of these requests, and Mr Hasan subsequently appealed to the Commissioner.

The Council asserted that section 12(1) (Excessive cost of compliance) of the Freedom of Information (Scotland) Act 2002 (FOISA) could be applied with regard to Mr Hasan's information requests.

Following investigation, the Commissioner found that the Council had acted in accordance with FOISA in refusing Mr Hasan's requests on the grounds of section 12(1) of FOISA.



## Background

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1. Mr Hasan, acting on behalf of Expressplans.com, submitted 24 information requests to the Council on 25 November 2005. These 24 requests were made in the form of a questionnaire and related to various aspects of the Council's building control function.
2. The Council responded to this request on 15 December 2005. In doing so, the Council provided a response in relation to 14 of Mr Hasan's 24 requests. In relation to the remainder, the Council stated that the requests were being refused on the grounds of section 12(1) of FOISA (Excessive cost of compliance).
3. Mr Hasan requested that the Council review its refusal on 15 December 2005.
4. The Council responded to this request on 11 January 2006, informing Mr Hasan that its decision to refuse to respond to 10 of the questions had been upheld.
5. Mr Hasan submitted an application to my office on 6 February 2006.
6. Mr Hasan's appeal was validated by establishing that he had made a request for information to a Scottish public authority (the Council), and had appealed to me only after asking the authority to review its response to his request.

## The Investigation

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7. Mr Hasan suggested in his application that he considered that the requested information should be electronically accessible to the Council from its internal systems, and therefore should have been provided in response to his requests.
8. My investigating officer contacted the Council in order to advise it of the application and to seek its submissions in relation to this case in terms of section 49(3)(a) of FOISA.
9. These submissions were subsequently provided. Additional submissions were sought and received by my office during the course of the investigation.



## The Commissioner's Analysis and Findings

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10. In refusing 10 of Mr Hasan's requests, the Council cited section 12(1) of FOISA (Excessive cost of compliance). Section 12(1) provides that public authorities are not obliged to comply with requests for information where the cost of complying with that request would exceed the amount prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations). This amount is currently set at £600.
11. In relying on section 12(1), the Council asserted that, while it did maintain a central database for managing Building Standard files, its system did not allow for the information required to respond to Mr Hasan's requests to be extracted. The Council stated that, when it originally acquired the system, it considered whether it would be appropriate to include a reporting system which would allow it to extract information of the type requested by Mr Hasan. The Council concluded, however, that it had no statutory or operational need for such a reporting system.
12. During the course of the investigation, the Council was asked to provide detailed information setting out the type of information held electronically and the manner in which that information was held. The Council was also asked to comment on the method by which this data might potentially be manipulated to provide responses to Mr Hasan's requests. In response, the Council raised concerns regarding the ambiguous nature of the questions posed in Mr Hasan's questionnaire and gave an example whereby it considered that there were three possible interpretations what it was being asked to provide.
13. It should be noted that the ambiguous nature of this aspect of Mr Hasan's questionnaire has previously been discussed in some detail in relation to a separate application (see paragraphs 27-33 of Decision 062/2006 - Mr Najem Al Hasan, [expressplans.com](http://expressplans.com) and North Ayrshire Council).
14. Nevertheless, the Council stated that the generation of a response to Mr Hasan's questions using information contained within any of the identified fields would require the services of an external IT consultant. This consultant would be required to develop appropriate reports within the Council's systems. The Council went on to state that it did not have the capability within its own service to develop the required reports. The Council submitted that the cost of contracting an external consultant to undertake the work required to respond to any single question would be in excess of £600. In support of this, the Council cited previous examples where requests for the development of equivalent reports had attracted charges in excess of £700.



15. Having fully reviewed the submissions made by the Council with regard to its electronic systems, I am satisfied that the Council does not currently have the ability to generate electronic responses to the outstanding requests from those systems. I also accept the Council's submission that it currently lacks the requisite skills to develop the required reporting mechanisms internally, and that the cost of securing external support to develop these systems would exceed the FOISA upper limit of £600.
16. Given the fact that relevant information cannot be retrieved electronically, the Council stated that the only way of retrieving the information sought by Mr Hasan would therefore be through the manual review of relevant files. The Council asserted that the relevant information required to respond to these requests was held within a considerable number of separate files, and could only be extracted through a review of each of these files.
17. The Council submitted that this work would be required to be undertaken by one of its Building Standards Surveyors, in that it would require a degree of professional knowledge to identify and extract the information. The Council stated that the rate for such staff was £15 per hour.
18. With regard to seven of Mr Hasan's requests, the provision of a response would require a manual review of the files relating to all 1,685 applications received in 2004. It estimated that it would take 5 minutes to retrieve and review each file, and that it would therefore take approximately 140 hours to extract all relevant information. The Council therefore estimated that the total cost of responding to any single request would be in the region of £2,100, significantly in excess of the £600 upper limit prescribed by the Fees Regulations.
19. With regard to a further three of Mr Hasan's requests, the Council stated that the work to be undertaken would be similar to that required in relation to the seven requests referred to above, in that a manual review of all 1,685 relevant files would be required in order to extract the relevant information. However, given the nature of these three requests, the Council stated that a more detailed interrogation of the files would be required in order to retrieve a response in relation to each of these questions, with 10 minutes being required in order to retrieve a response to one of the questions and 15 minutes required to respond to two of the questions. The Council therefore asserted that the cost of responding to these questions would be approximately £4,200 and £6,300 each respectively.



20. On review of this case, I am satisfied that the Council's decision to refuse to respond to ten of Mr Hasan's questions on the grounds of section 12(1) of FOISA was appropriate in the circumstances of this case. Having considered the Council's submissions in detail, I am satisfied that the Council does not hold the information requested by Hasan in a manner which would enable it to be provided within the upper cost limit of £600 as prescribed by the Fees Regulations.

## **Decision**

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I find that East Dunbartonshire Council acted in accordance with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing Mr Hasan's information requests on the grounds of section 12(1) of FOISA.

I find that the cost of responding to each of Mr Hasan's information requests would indeed exceed the amount prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.

## **Appeal**

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Should either the Council or Mr Hasan wish to appeal against this 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 of receipt of this notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**22 May 2007**



## APPENDIX

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### 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.

#### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

### The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

#### 5 Excessive cost – prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act ... is £600.