

# Decision Notice



Decision 129/2013 Mrs Eileen Thomas and Perth and Kinross Council

The “long-stop date” for a property transaction

Reference No: 201300469  
Decision Date: 4 July 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

On 13 November 2012, Mrs Thomas asked Perth and Kinross Council (the Council) for a “long-stop date” pertaining to a specific property transaction.

The Council withheld the information under section 33(1)(b) of FOISA. The Council subsequently decided that it no longer wished to withhold the information and provided it to Mrs Thomas.

The Commissioner found that the Council had not been entitled to withhold the information under section 33(1)(b) of FOISA but (as Mrs Thomas had by then been provided with the information) did not require the Council to take any further action in this case.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 33(1)(b) (Commercial interests and the economy)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 13 November 2012, Mrs Thomas wrote to the Council requesting the “long-stop date” pertaining to the sale of Kinross Town Hall and associated buildings, negotiated between the Council and a named purchaser. (The “long-stop date” is the agreed date by which specified conditions have to be met for the transaction to proceed.)
2. The Council responded on 26 November 2012, withholding the information under the exemption in section 33(1)(b) of FOISA (Commercial interests and the economy).
3. On 4 January 2013, Mrs Thomas wrote to the Council requesting a review of its decision. She disagreed with the Council’s application of section 33(1)(b) of FOISA.
4. The Council notified Mrs Thomas of the outcome of its review on 16 January 2013, upholding its original decision.



5. On 10 February 2013, Mrs Thomas wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mrs Thomas made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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7. On 15 February 2013, the Council was notified in writing that an application had been received from Mrs Thomas and was asked to provide the Commissioner with the withheld information. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked (with particular reference to the requirements of section 33(1)(b)) to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. Both the Council and Mrs Thomas provided submissions to the Commissioner.
10. During the investigation, the Council re-considered its position, withdrew its reliance on section 33(1)(b) of FOISA and disclosed the information to Mrs Thomas.
11. Mrs Thomas confirmed that she would still like a decision to be issued.
12. The relevant submissions received from both the Council and Mrs Thomas have been considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mrs Thomas and the Council. She is satisfied that no matter of relevance has been overlooked.

### Section 33(1)(b) of FOISA - Commercial interests and the economy

14. In terms of section 33(1)(b), information is exempt if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (including those of a Scottish public authority).



15. The Council initially argued that disclosure of the long-stop date would prejudice substantially both its own commercial interests and those of the named purchaser.
16. However as noted at paragraph 10 above, the Council later informed the Commissioner that it no longer wished to withhold the long-stop date under section 33(1)(b). It explained that it had re-considered its previous position that disclosure would substantially prejudice the commercial interests referred to above. The Council subsequently disclosed the information to Mrs Thomas.
17. Given the Council's withdrawal of its reliance on section 33(1)(b), the Commissioner is unable to find that it was entitled to withhold the information under that exemption. Consequently, she finds that the Council failed to comply with section 1(1) of FOISA in refusing to provide the information.
18. As Mrs Thomas has now received the information previously withheld, the Commissioner does not require the Council to take any further steps in relation to this failure to comply.

## DECISION

The Commissioner finds that Perth and Kinross Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Thomas.

The Commissioner finds that the Council was not justified in withholding the information requested by Mrs Thomas under the exemption in section 33(1)(b) of FOISA.

As Mrs Thomas has now received the information, the Commissioner does not require the Council to take any further steps in relation to this matter.



## Appeal

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Should either Mrs Thomas or Perth and Kinross 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 after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**  
**4 July 2013**



## 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.

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- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that -

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

##### 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).

...