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 *calls cost 7p per minute plus your
 phone company's access charge
 Email – coqltr@copfs.gsi.gov.uk

<http://www.qltr.gov.uk>

Our ref: BV/2051/12

Date: 2 September 2016

Dear

**CLOVA HOMES LIMITED (NOW DISSOLVED)
 FREEDOM OF INFORMATION REQUEST
 AREA OF GROUND AT TRAVEBANK GARDENS, MONIFIETH – TITLE
 INVESTIGATION**

Thank you for your request dated 12 August 2016 under the Freedom of Information (Scotland) Act 2002 (FOISA). Your request is in the following terms:

"I request:

- 1 a copy of your reply with any enclosures to a letter that was sent to you by Mr Lindsay Darroch, Partner, Blackadders Solicitors, 30 & 34 Reform Street, Dundee on 30 January 2013.
- 2 a copy of your reply with any enclosures to a letter that was sent to you by Mr Lindsay Darroch, Partner, Blackadders Solicitors, 30 & 34 Reform Street, Dundee on 29 April 2013.

The above inquiries relate to ownership of a 199 [square metre] rectangular area of ground allegedly transferred by dissolved Clova Homes Limited to the members of Muirwood Residents Association (MRA)."

As you may be aware, the Court of Session judgment – Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73 (issued on 30 September 2009) – clarified that FOISA gives a right to information, not documents, and that information requests must identify the information sought.

It appears to me from your email request that the information you seek is around any consideration of title investigations by the QLTR in response to the letters you refer to in respect of the area raised with the QLTR by the approach the QLTR had received.

If that is not the position please do not hesitate to reform your enquiry, however in the meantime I am able to provide the following information which I hope you will find

helpful. In providing this information I record that the QLTR is not in a position to provide any legal advice to you and what follows reflects the QLTR's understanding to inform the QLTR's own position in respect of the approach we had received in 2013. You would need to take your own legal advice to advise you about ownership of the land and I strongly recommend that you do so.

1 Response to letter of 30 January 2013

Our response to that letter was to request a copy of the dissolved company's title (and any deed referred to in that for the description), a Deed of Conditions, a Disposition concerning the solum of a road at Hay Street and a Form 10 report (a property search relevant to the title to property) to enable QLTR to consider the approach.

2 Response to letter of 29 April 2013

Our response to that letter, as regards what I understand to be the information you have requested, was that having been able to consider the deeds produced with the benefit of the colour copy Deed of Conditions' plans it appeared to us that the area we had been approached about did not belong to the dissolved company at the time of dissolution. That was because Condition SEVEN in both the 1990 and 1991 Deed of Conditions provides that the proprietors of the flats within the four blocks have a right in common to the common garden ground, access footpaths, car parking spaces and boundary enclosures (under exceptions) within the area coloured green on the plan (to the Deeds of Conditions). On looking at the plan we considered that the area about which we had been approached in 2013 lies within that green area. Therefore, on the basis that the purchaser of each flat was granted the common rights as specified in the Deed of Conditions (which the terms of a copy Feu Disposition to one of the properties in the development affected by the Deed of Conditions which had also been provided to us suggests would have happened) the Crown could have no interest in the area.

In case of assistance I would mention that the 1991 Deed of Conditions referred to was by Clova Homes Limited and was recorded in the General Register of Sasines for the County of Angus on 22 January 1991 and in this instance I enclose a copy. However, under section 25(1) of FOISA, we are not required to provide information in a response where it is already reasonably accessible to you and if you wish to see any other title deeds these can be obtained from Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AU. I understand that there will be a charge for obtaining a copy of a title deed from Registers of Scotland.

For completeness it may also be helpful to mention that the QLTR has disclaimed any residue that was left with Clova Homes Limited immediately prior to its dissolution as we were concerned in case other residue might have been left with the dissolved company. I enclose a copy. The effect of a notice of disclaimer is to deem the property in the notice not to have vested in the Crown. Again I would have to leave you to take your own legal advice about the implications of a disclaimer.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please write to The QLTR, Scottish Government Building, Victoria Quay, 1B-Bridge, Edinburgh, EH6 6QQ, or for requests sent by e-mail to coqltr@copfs.gsi.gov.uk.

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, there is a right of appeal to the Scottish Information Commissioner under section 47(1) of FOISA.

Should you subsequently wish to appeal against the Commissioner's decision on such an appeal, there is a right of appeal to the Court of Session on a point of law only.