



Scottish Information  
Commissioner

**Decision 034/2008 - Mr M and South Lanarkshire Council**

*Aproportionment of the payment for compulsory purchase of property*

**Applicant: Mr M**  
**Authority: South Lanarkshire Council**  
**Case No: 200700549**  
**Decision Date: 26 February 2008**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 034/2008 - Mr M and South Lanarkshire Council authority**

### ***Aproportionment of the payment for compulsory purchase of property – information not held – section 17***

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

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1 (General entitlement) and 17(1) (Notice that information is not held).

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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Mr M requested from South Lanarkshire Council (the Council) information about payment received for land, business and legal rights (for his business) which had been acquired by the Council under a compulsory purchase order (CPO). The Council responded that in terms of section 17 of FOISA it did not hold any of the information requested. Mr M was not satisfied with this response and asked the Council to review its decision. The Council carried out a review and, as a result, notified Mr M that it upheld its initial response that it did not hold the information requested. Mr M remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr M's request for information in accordance with Part 1 of FOISA.



## Background

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1. On 16 February 2007, Mr M wrote to the Council requesting the following information about payment received for the land, business and legal rights (for his business) which had been acquired by CPO in August 2000 in respect of the M74 extension. He requested:
  - the proportion of the payment which applied to the land and buildings on a vacant possession basis (request 1);
  - the total extinguishment of business (request 2);
  - the development value (request 3);
  - the value put on the property by the Council in order to claim for the loss [of the insured property] (request 4).
2. On 7 March 2007, the Council wrote to Mr M with a formal response to his request for information. The Council:
  - provided an answer to request 1. The Council stated that the payment made had not been apportioned and there was therefore no breakdown into the elements of the sum paid in settlement of the claim i.e. the payment did not attribute sums to individual headings. Accordingly, the Council stated that in terms of section 17 of FOISA it did not hold any information requested in respect of this request (request 1);
  - sought clarification of what information was being sought (requests 2 and 3);
  - provided an answer by stating the reinstatement value of the insured property (request 4).
3. On 12 March 2007, Mr M wrote to the Council requesting a review of its decision. In particular, Mr M drew the Council's attention to previous settlements of a similar nature to which he referred as providing guidelines for the information he sought in respect of request 1.
4. The Council wrote on 15 March 2007 to confirm its understanding of the issue with which Mr M was dissatisfied i.e. that the Council had failed to provide information in response to request 1. Subsequently, on 10 April 2007, the Council wrote to notify Mr M of the outcome of its review. The review panel:



- Confirmed the initial decision in respect of request 1.  
The review explained that the only information held by the Council in respect of CPO settlement was “the global figure”, which had already been supplied to Mr M, and which did not include attribution of sums to any individual head of claim;
  - Stated that Mr M’s view that it would be possible to provide a breakdown of that global figure by following guidelines and similar settlements from the information supplied to the Council by Mr M, would require the creation of new records and that this was not required by FOISA.
5. On 13 April 2007, Mr M wrote to my Office, stating that he was dissatisfied with the outcome of the Council’s review and applying to me for a decision in terms of section 47(1) of FOISA. He explained in more detail his reasons for dissatisfaction by letter of 18 April 2007 and subsequent correspondence. His application related only to the Council’s responses to request 1, and so the remaining parts of his request will not be considered in this decision.
6. The application was validated by establishing that Mr M 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 case was then allocated to an investigating officer.

## The Investigation

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7. On 11 June 2007, the Council was notified in writing that an application had been received from Mr M and was asked to provide my Office with comments on the application and to respond to specific questions on the application. The Council responded to this request on 29 June 2007. The Council provided further information and comment in response to further requests from my Office in the course of the investigation.
8. In his correspondence with my Office, Mr M explained that he had received compensation from the Council in respect of a CPO. Mr M explained his concerns in respect of the payment he had received and in particular contrasted his payment with payments for similar land and buildings, which, he stated, were equivalent to his land but for which the payment had been larger.



9. Mr M supplied my Office with a number of files in support of his submission. These files included letters written by Mr M to various public authorities and persons in respect of his business and letters received by him from persons, including the Council.
10. The Council's submissions explained that the property in question had twice been subject to a decision from the Lands Tribunal for Scotland where Mr M had instituted proceedings against the Council. On the first occasion an extra-judicial settlement was reached with Mr M receiving the full amount of the global settlement figure and a signed conveyance in favour of the Council being registered. The second application to the Lands Tribunal was a Preliminary Hearing on the interpretation of the previous settlement agreement.
11. The Council referred to, and supplied to my Office, a summary from a decision by the Lands Tribunal involving it and Mr M, which, it explained, was unequivocal in terms of the settlement with Mr M, i.e. that the settlement reached was in respect of all sums payable in respect of claims Mr M had in respect of the premises, that there was no apportionment under separate Heads of Claim and that the total in aggregate represented full settlement of the claim.

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

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12. In order to determine whether the Council was correct to cite section 17 of FOISA, I must establish whether the Council holds (or did not hold at the time of Mr M's request) information which would address his request 1.
13. The Council explained the searches carried out in respect of Mr M's information request. It explained that its Enterprise Resources Department carried out an extensive review of all correspondence, case files and Lands Tribunal papers and proceedings to identify if the Council held the information requested.
14. I think it is necessary to note that I can only decide on the Council's compliance with Part 1 of FOISA in respect of Mr M's request. FOISA provides a right of access to recorded information that is held by public authorities.



15. It is not within my remit to decide or to comment on what should be held by an authority, nor to require an authority to create information which it does not hold. I cannot require the Council to give consideration to, for example, a proposed breakdown or calculation of a CPO claim, or past Land Tribunal decisions as Mr M requested in his letter of 18 April 2007.
16. During the investigation, the Council was asked if it held any information which would fall within the terms of Mr M's request. The Council explained that for the purposes of its involvement with Mr M, in terms of the CPO, there was not a need at the time to break down the sum involved.
17. Towards the end of the investigation the Council was again approached about whether it held a breakdown or attribution of the sum that was the difference between the sum offered by the Council during negotiations and the sum finally agreed between Mr M and the Council.
18. Again the Council responded that this information, which would have fallen within the terms of request 1, was not held. Accordingly, any apportionment or attempt to apportion the difference between an original valuation and a final payment between the value of the property, would be conjecture on the part of the Council at the present time.
19. Having considered all the submissions that have been made by the Council and all of the other information provided to me for the purposes of this investigation, therefore, I am satisfied that the information that Mr M is seeking in respect of a figure representing the proportions of the CPO in respect of his property and business, is not held by the Council (and was not so held at the time of his request).
20. I am therefore satisfied that the Council correctly notified Mr M in terms of section 17(1) of FOISA that the information requested was not held. I do not require any action to be taken by the Council in response to this decision.

## Decision

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I find that South Lanarkshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr M.



## **Appeal**

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Should either Mr M or the 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 the date of intimation of this Decision Notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

**Margaret Keyse**  
**Head of Investigations**  
**26 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.

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it...