

**Decision 158/2007 Mr Martin Wilson and North Lanarkshire Council**

*Legal action and related matters*

**Applicant: Mr Martin Wilson**  
**Authority: North Lanarkshire Council**  
**Case No: 200601288**  
**Decision Date: 03 September 2007**

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

Kinburn Castle  
Doubledykes Road  
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## Decision 158/2007 Mr Martin Wilson and North Lanarkshire Council

***Public funds expended on legal action and related information – certain information claimed not held – excessive cost of compliance claimed for certain information – refusal to confirm or deny whether certain information existed or was held – Commissioner upheld authority’s decision in part***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 12(1) (Excessive cost of compliance); 17(1) (Notice that information is not held); 18(1) (Further provision as respect responses to request); 33(1)(b) (Commercial interests and the economy).

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount).

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 Wilson made a series of requests for information to North Lanarkshire Council (the Council) regarding a range of subject areas but primarily relating to legal action and the content of certain educational courses. The Council responded by supplying certain information, advising in respect of the other information requested that it was either not held or subject to claim of confidentiality, or that the cost of compliance with the relevant request would exceed the prescribed cost limit. Mr Wilson was not satisfied with this response and asked the Council to review its decision in respect of certain requests for information. The Council subsequently carried out a review after being requested to do so by the Commissioner and, as a result, notified that its original decision had been upheld with some modifications. Mr Wilson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that in all but one respect the Council had dealt with Mr Wilson’s request for information in accordance with Part 1 of FOISA.



## Background

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1. On 2 May 2006, Mr Wilson wrote to the Council making 17 requests for information. Mr Wilson sought a range of information relating to legal action, educational courses and the use of funds. As this application relates only to requests 1, 6, 7, 9, 11, 12 and 14, I will only refer to the Council's responses in respect of those requests.
2. The Council responded to certain of Mr Wilson's requests for information on 3 May 2006. The Council advised that in respect of question 1 the cost of complying with the request would exceed the amount prescribed in regulations made by the Scottish Ministers. The Council advised that this constituted a ground of exemption in terms of section 12 of FOISA. In respect of questions 11, 12 and 14 the Council advised that no information was held and that accordingly section 17(1) of FOISA applied.
3. On 16 May 2006 Mr Wilson wrote to the Council requesting a review. He indicated that the Council had failed to provide a precise cost analysis accompanying its refusal to answer request 1. Mr Wilson also asked the Council to clarify what it meant by its statement that certain information was not held. He asked whether this meant that the information had never existed or that it had existed but was no longer available.
4. On 25 May 2006 the Council responded to the remainder of Mr Wilson's requests for information. In respect of requests 6, 7 and 9 the Council advised that the information was exempt in terms of section 36(1) of FOISA inasmuch as it was information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings and in all the circumstances of the case it was concluded that the public interest in disclosing the information was outweighed by that in maintaining the exemption.
5. In the same letter the Council addressed the additional matters that Mr Wilson had raised in his letter of 16 May 2006. It attempted to explain its position in relation to question 1.
6. The Council advised that the phrase "no information is held" meant that the Council at that time held no records on the information sought. It also stated, however, that it understood the particular information requested by Mr Wilson had never existed.
7. Subsequently, a review was requested of the Council's responses to requests 6, 7 and 9.



8. On 13 July 2006 the Council sent Mr Wilson a response to his requests for review. The review notice addressed the specific points Mr Wilson had raised, namely in respect of requests 1, 6, 7, 9, 11, 12 and 14. I will set out the Council's submissions in my analysis and findings below.
9. On 28 July 2006 Mr Wilson wrote to my Office indicating that he was dissatisfied with the review and wished to apply to me for a decision on the matter. Mr Wilson made a number of submissions which I will set out in my analysis and findings below.
10. The application was validated by establishing that Mr Wilson 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 Investigation**

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11. On 18 August 2006, the Council was notified in writing that an application had been received from Mr Wilson and was asked to provide my Office with its comments, all in terms of section 49(3)(a) of FOISA. In particular, it was asked to provide a copy of the information withheld, together with arguments in support of its reliance on certain provisions of FOISA. The Council responded with the information requested and the case was then allocated to an investigating officer.
12. There was a course of correspondence between my Office and the Council during the investigation. Mr Wilson also supplied further submissions. The submissions in respect of each request are set out in my analysis and findings below.

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

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13. Mr Wilson initially made 17 requests for information. Only certain of these requests are the subject of this application. I will address each request in turn.

### **Question No.1**

14. Mr Wilson requested a list of the total sum of public funds expended directly and/or indirectly by the Council in:



- a) Any and all employment law actions involving it from 1987 to the present date
  - b) Any and all personal injury law actions involving it from 1987 to the present date
15. The Council made a number of submissions in respect of this request for information.
- a) The Council advised that it only came into being in 1995 and had assumed responsibilities from its predecessor authorities only in 1996. The Council advised that it did not hold the information Mr Wilson sought on actions involving its predecessor authorities in relation to the functions of the Council for the period from 1987 to 1996.
  - b) The Council advised that the cost of supplying this information from 1996 onwards would exceed £600 and that therefore it was not obliged to provide it to Mr Wilson. The Council advised that the total number of actions falling within these categories for the period from 1 April 1996 amounted to almost 2400. The Council indicated that with regard to the actions from 1996 onwards it would be possible to ascertain the total sum of public funds expended only by examination of each file. The Council submitted that to obtain the information sought by Mr Wilson it would be necessary to retrieve each file, of which almost 1000 had been archived, examine each one and identify the total sum expended. The Council supplied my office with the list of cases that would need to be considered in supplying this information to Mr Wilson.
  - c) The Council further advised that it would, in any event, be unable to provide the total sum of public funds expended because a fee note in respect of judicial expenses would be prepared only where it was recovering these expenses. The Council also stated that the amount of judicial expenses recoverable would, in most cases, be less than the total sum of public funds expended. The Council submitted that the feeing of each file would constitute the creation of information rather than the retrieval and provision of information held.
16. I will initially consider the information held by the Council for the purposes of this request and then go on to consider whether the cost of supplying this information would exceed £600.

### ***Information held by the Council***

17. The Council had advised that it did not hold information on actions involving its predecessor authorities in relation to the functions of the Council for the period from 1987 to 1996. In correspondence with my office the Council was asked to clarify where its predecessor authorities' files were stored or who in fact they would be held by.



18. The Council advised that the Council was the statutory successor to Strathclyde Regional Council, Motherwell, Monklands and Cumbernauld & Kilsyth District Councils and, for part of the former council's area, Strathkelvin District Council. The location of files depended on the authority in question. In this instance, the Council considered that the sole relevant predecessor authority was Strathclyde Regional Council. The Council advised that personnel files in respect of employees of the former Regional Council were held by Glasgow City Council within the Mitchell Library, Glasgow.
19. The Council advised that files which had been created in respect of a claim were retained by it for six years before being shredded. The Council advised, however, that it was also the case that the former insurers of Strathclyde Regional Council and the predecessor District Councils might hold claim files where they had responsibility for defending a separate reparation action. The Council supplied me with a list of all files it held relevant to Mr Wilson's request. I understand that this list contains both ongoing actions and those which have been archived. Having considered the Council's submissions on this matter, I accept for the purposes of this application that these files alone are held by the Council and contain the information relevant to Mr Wilson's requests for information.
20. Also relevant to the issue of the information held by the authority is the extent to which the Council can meet the terms of the request. Mr Wilson has requested the total sum of funds expended by the Council in respect of employment and personal injury actions. The Council explained that although judicial fee notes had been prepared in some cases this had not taken place in all cases. In correspondence with my office the Council was asked to set out the circumstances when a file would have been "fee'd" and those cases where this would not have taken place.
21. The Council explained that the feeing could either be done in-house by the solicitor in question going through the file and applying the relevant rates or, more commonly, by a law accountant who charged a fee. The Council advised that this would only be carried out to recover legal expenses. In any case in which the legal expenses were not recoverable a file would not be "fee'd".
22. I accept the Council's submission that the legal expenses incurred would not have been calculated in every case. Rather only in cases where expenses were to be recovered from the other party would the Council undertake a feeing of the relevant file. There is no obligation under FOISA for the Council to carry out such an exercise where it had not already done so and I agree that this process would involve the creation of new information.



23. I accept, therefore, that even if the cost of supplying the information requested by Mr Wilson did not exceed £600 that the Council would not have been able to provide the total funds expended on the actions identified by Mr Wilson in his requests from 1987 onwards. Rather the Council could only have provided figures in respect of actions from 1996 onwards for those cases where the fees had already been calculated. Accordingly, the Council does not hold a full set of information to meet Mr Wilson's request.

***Cost of supplying the information requested***

24. The Council advised that the cost of supplying this information from 1996 onwards would exceed £600 and that therefore it was not obliged to provide it to Mr Wilson. The Council advised that the total number of actions falling within these categories for the period from 1 April 1996 amounted to almost 2400. The Council indicated that with regard to the actions from 1996 onwards it would be possible to ascertain the total sum of public funds expended only by examination of each file. The Council supplied my Office with the list of cases that would need to be examined in supplying this information to Mr Wilson.
25. In further correspondence the Council identified those files from the list supplied that were a) employment actions and b) personal injury actions in accordance with Mr Wilson's requests for information. The Council was also asked to set out the specific costs involved in supplying the information requested by the applicant for each category. The Council identified those files on the list relevant to Mr Wilson's requests and advised that it could only provide an estimate of the fees that would be incurred in supplying this information. The Council indicated that given the specialist nature of the files, the officer involved would require to be at professional level, the cost of which would exceed £15 per hour. The Council estimated that the minimum time taken to examine each file would be 30 minutes.
26. In correspondence with my office Mr Wilson challenged the Council's assertion that it would be necessary to examine each file. Mr Wilson indicated that the Council could simply refer to its own annual accounts or make enquires from its own legal, accounting and/or personnel department in order to arrive at a reliable, if general, estimate of expenditure.
27. Mr Wilson's requests are quite specific in that he has sought a list of the total sum of public funds expended directly and/or indirectly by the Council in:
- a) Any and all employment law actions involving it from 1987 to the present date
  - b) Any and all personal injury law actions involving it from 1987 to the present date



28. The requests could be interpreted as a request for the total figure in respect of each type of legal action or a request for the individual figure in respect of each case. In any event, Mr Wilson has not requested a general estimate but rather specific figures and has also asked for figures in respect of particular types of action. Having considered all the information available to me, I consider it unlikely that an authority could estimate a rough figure of the public funds expended in respect of different types of action without going through the process described above by the Council. I note also that in its original response of 3 May 2006 Mr Wilson was supplied with links to the financial information published by the Council. I assume therefore that this information did not provide Mr Wilson with the detail he was seeking: it is not my understanding, in any event, that the level of detail required by Mr Wilson will usually be found in a council's annual accounts, or that the information will necessarily be held in readily retrievable form within a council's departments.
29. In the circumstances, I accept that in order to respond to Mr Wilson's two requests for information the Council would have to examine each file as described above.
30. Under section 12(1) of FOISA a Scottish public authority is not obliged 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. The Fees Regulations currently set the prescribed limit at £600. I have calculated that there are 1402 files relevant to Question 1a) and 854 files relevant to Question 1b). Each file would need to be searched to ascertain any recorded information identifying judicial fees and legal expenses incurred by the Council.
31. I accept that a lawyer would need to search the files in order to identify the relevant documentation and therefore that the cost per hour of staff time would be at the maximum limit of £15 as permitted by the Fees Regulations. To reach the upper threshold limit the staff member could work only 40 hours on this request. Therefore at a rate of one file per half hour the member of staff could only consider 80 files relevant to each request to reach the upper threshold of £600. Even if the time for examination of each file were reduced to 10 minutes per file (which I would not regard as practicable) the costs incurred would still exceed £600.
32. I am therefore satisfied that the cost of supplying the information requested by Mr Wilson in respect of questions 1a) and 1b) respectively, on a reasonable estimate, would exceed £600. Consequently, the Council was not required to supply this information to Mr Wilson.





33. In his application to my office and request for review Mr Wilson complained that the Council should have supplied him with a cost analysis to support its claim that the supply of the information requested would exceed £600. In fact, an authority is only required to provide a breakdown of the projected costs if it intends to supply the information to the applicant and wishes to charge a fee. In cases where an authority indicates that the cost of supplying the information exceeds £600 and has chosen not to comply with the request, there is no requirement on the authority under FOISA to provide the applicant with an indication of the estimated costs, although it will be required to provide these figures to me if it is ultimately challenged.

### **Questions 6, 7 and 9**

34. Mr Wilson made a series of requests for information relating to a court case in which he and the Council are involved:

#### *Request 6*

Identify the total amount of public funds which the Council has spent to date, directly and/or indirectly, in case number A1628/01.

#### *Request 7*

Provide copies of any minutes, letters, internal memos, electronic mail etc concerning the funding allocated to and/or administration costs of case number A1628/01.

#### *Request 9*

Identify the amount of public funds which the Council has spent, directly or indirectly, upon covert video surveillance to date in the case of A1628/01, when any such decision was taken, and by whom.

35. I will address each of these requests in turn.



## Request 6

36. The Council indicated that in order to supply the information requested it would be required to carry out a full feeing of the file and that this would involve the creation rather than the provision of information held. The Council advised that it was aware that as a result of a court order it had prepared and intimated to Mr Wilson's solicitors a note of expenses. The Council indicated that firstly, this did not reflect the total amount of public funds spent to date by the Council on the case, directly or indirectly, and secondly, although it was appropriate for Mr Wilson to have knowledge of this information it doubted whether this was information should be made available to any member of the public who requested it. In its submissions to my office the Council supplied a copy of the account of expenses which is dated 16 May 2006. The Council subsequently indicated that it had no difficulty in supplying this information to Mr Wilson, although it assumed that he already had a copy of this document given that it would have been presented to his solicitors.
37. In his submissions to my office Mr Wilson challenged the Council's response to this request. He indicated that the Council was perfectly capable of supplying this information as he had already received two bills from the Council's legal representatives, which were itemised and precise costings of the Council's claimed expenditure. Mr Wilson indicated that he was not aware of the account of expenses dated 16 May 2006.
38. I understand from the Council's submissions that the account(s) of expenses that have been prepared to date do not represent the full public funds that have been incurred by the Council. I understand that ordinarily an account of expenses will include the court fees and fees paid to external solicitors and to Counsel but would not reflect the time spent by the Council's internal lawyers on preparation for the court action. To this end, I asked the Council whether a time recording exercise had been operated by its legal services department in respect of this case. In subsequent correspondence the Council advised that a time recording system had not been operated by the Council since November 2005 and that, in respect of this case, there had at no time been a time recording system. The Council advised that the case had been passed immediately to external solicitors dealing with the former Strathclyde Regional Council business and accordingly the in-house service was, in effect, a post box.



39. There appears to be some disagreement between the parties as to the number of accounts of expenses that have been prepared. Mr Wilson has indicated that he has already received two accounts whereas the Council has only identified one. The account of expenses dated 16 May 2006, in any event, falls outwith the scope of this application in that it postdates Mr Wilson's request for information of 2 May 2006. In any event, however, I am content from the submissions made to me that without a full feeing of the file it would not be possible to determine the total amount of funds expended on this court action to date and that this exercise would involve the creation of information.
40. I accept that where information about costs incurred and recovered in this case is held by the Council, as in the account(s) of expenses, that this information should already have been supplied to Mr Wilson in his capacity as pursuer in the Court action. If Mr Wilson wishes to access a copy of the account of expenses dated 16 May 2006 (and falling outwith the scope of this application) he should contact the Council directly.

#### **Request 7**

41. Mr Wilson also asked to be provided with copies of any minutes, letters, internal memos, electronic mail etc concerning the funding allocated to and/or administration costs of case number A1628/01.
42. The Council advised that the file held by the Head of Legal Service had been examined and that only one document had been found that related to finance. This was the account of expenses compiled by the Council's Edinburgh agents and discussed above.
43. The Council also advised that the court action was being defended by its Edinburgh agents and that no request for monies had been received from those agents. Having considered the Council's submissions on this matter, I accept that it does not (and did not at the time of the request) hold any information that would meet the terms of Mr Wilson's request 7.
44. The Council intimated that it would be willing to supply the account of expenses dated 16 May 2006 to Mr Wilson, although it believed he would already have a copy. As I said above, this item of information falls outwith the scope of this application. Mr Wilson may wish to contact the Council directly about this information.

#### **Request 9**

45. Mr Wilson also asked the Council to identify the amount of public funds which the Council had spent, directly or indirectly, upon covert video surveillance to date in the case A1628/01, when any such decision had been taken and by whom.



46. In its initial response the Council argued (as it had in relation to requests 6 and 7) that this information was exempt by virtue of section 36(1) of FOISA on the basis that it was information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. The Council indicated that the public interest in disclosure of this information was outweighed by the public interest in withholding it. In its notice of review, the Council made a number of supplementary submissions. The Council argued that to reveal whether the information existed or not would, in itself, be contrary to the public interest. The Council submitted that in pursuing or defending litigation, there must be instances in which a party to litigation can take action which should not come within the knowledge of the opposing party and that one such case would be that of a party instructing covert surveillance. The Council argued that as a result section 18(1) of FOISA applied, in that to reveal whether the information existed or was held would be contrary to the public interest. The Council reiterated these submissions in correspondence with my Office.
47. In his submissions, Mr Wilson stated that he had been passed a copy of video surveillance via his solicitors and therefore knew that surveillance had been carried out. I note, however, that Mr Wilson is pursuing legal action against both the Council and Motherwell College.
48. Where a public authority has chosen to rely on section 18(1), I must establish whether the authority is justified in issuing a refusal notice on the basis that to reveal whether the information exists or is held would be contrary to the public interest. Before I can accept the application of section 18(1) I must also satisfy myself that if the information existed and was held, the authority would have been justified in refusing to disclose it by virtue of any of the exemptions provided for by sections 28 to 35, 39(1) or 41 of FOISA.
49. In so doing, I must ensure that my decision notice does not confirm one way or the other whether the information requested actually exists or is held by the public authority. This means that I will be unable to comment in any depth on the reliance by the public authority on one of the exemptions listed in section 18(1), as to do so could have the effect of indicating whether the information existed or was held by the public authority.
50. There is a two step process in assessing the application of the section 18(1). In order to reply on section 18(1) an authority must first demonstrate that if the information existed it would be exempt information. Section 18(1) permits reliance on only certain exemptions listed in Part 2 of FOISA. Only if I uphold the application of an exemption to the information must I go on to consider whether to reveal whether the information existed or not would be contrary to the public interest.



51. It will be recalled that the Council relied initially on section 36(1) of FOISA to withhold this information. The Council was reminded that section 36(1) could not be used in combination with section 18 and, therefore, subsequently indicated that it was relying on section 33(1)(b) of FOISA to withhold this information. The Council indicated that were Mr Wilson engaged in a court action with any party not subject to FOI legislation, there would be no procedure whereby he could obtain through a court process information as to what investigations the opposing party had undertaken. It submitted that the extent of a party's information was crucial to its ability to pursue court action. The Council argued that a requirement to disclose the extent of any information or research would be substantially prejudicial to the Council's defence of the action Mr Wilson had raised. The action sought an award of damages against the Council and any prejudice to the Council's ability to defend that action would or would be likely to prejudice substantially the Council's commercial interests.
52. There are certain things which an authority needs to demonstrate when relying on section 33(1)(b) of FOISA. In particular, it needs to indicate whose commercial interests might be harmed by disclosure, the nature of those commercial interests and how those interests will be substantially prejudiced. I understand that the Council is submitting that if it is unable to defend a claim for compensation robustly (as a result of certain disclosures) its commercial interests will be substantially prejudiced.
53. 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.
54. 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.
55. 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. A public authority's commercial interests are likely to be narrower than its financial interests. Issues such as whether it will achieve a financial surplus or deficits will encompass non commercial activity and sources of income. In this respect, section 33(1)(b) will not apply simply because an authority fears it will suffer financial loss as a result of disclosure: the authority needs to demonstrate what commercial aspect of its activities would be (or is likely to be) prejudiced substantially before the exemption can be applied.



56. I consider that in this case the Council is concerned about possible financial loss and has not identified a specific commercial interest or activity which would engage section 33(1)(b). In the circumstances, I do not accept that the Council's commercial interests would be harmed by the disclosure of this information (assuming it does exist) and therefore do not uphold the application of section 33(1)(b) to the information requested in request 9.
57. Given that I have not upheld the exemption cited by the Council in respect of this information (assuming it did exist) I am not required to consider whether revealing whether the information exists or is held would be contrary to the public interest. Therefore, I cannot accept the Council's claim that section 18(1) of FOISA applies to request 9.
58. Given that I have not upheld the application of section 18 of FOISA to this request, I must require the Council to advise Mr Wilson whether or not it holds the information requested and deal with request 9 in accordance with Part 1 of FOISA (other than by applying section 18(1)).

#### **Requests 11, 12 and 14**

59. Mr Wilson made further requests for information about the provision and teaching of arts subjects in further education. These requests are set out below:

##### *Request 11*

Forward all copies of Council minutes, external and internal letters, memos, electronic mail etc of all meetings from 1987 to the present in which the provision and teaching of Arts subjects in Further Education or in association with Further Education was concerned, highlighting those involving Music provision within North Lanarkshire Council's boundaries and/or areas of responsibility.

##### *Request 12*

Forward all copies of all records, minutes of meetings etc, between 1987 to the present day concerning any and all course with a Music component submitted to North Lanarkshire Council for consideration by Motherwell College.

##### *Request 14*

List all those centres under North Lanarkshire Council's control and responsibility at which Music has been taught by staff employed by Motherwell College between 1987 to the present day, including dates.



60. In its original response the Council advised that no information was held relevant to these questions and that accordingly section 17 of FOISA applied. In its subsequent notice of review the Council advised that in respect of question 11 the Council's functions did not include further education and as a result no information was held. In respect of requests 12 and 14, the Council indicated that, as part of the review, staff in the Departments of Education and Community Services had been consulted. In both cases, staff of long standing had no knowledge or recollection of any instance in which Motherwell College had submitted any proposals to the Council for courses with a music component, or of any instance in which staff employed by Motherwell College had taught music at any centre under the Council's control.
61. In its submissions to my office the Council advised that colleges of further education ceased to be the responsibility of local government in the early 1990s. The Council advised that from 1996 onwards (when the Council was formed) further education was never a function of the Council and therefore in respect of question 11 no such material existed. In respect of requests 12 and 14, the Council advised that the relevant officers had confirmed that no courses with a music component were submitted to the Council for consideration by Motherwell College and that there was no such centre under the control of the Council. The Council advised that this had been verified both by a check of the local collaborative programme records and from questioning of the senior community learning and development workers in the area.
62. The Council was reminded that Mr Wilson's request 14 was broader than just further education in that he had asked about any centres under the Council at which music had been taught by Motherwell College staff. The Council advised that in its enquiries on request 14, it had checked records in relation to all establishments under the control of the Council, including primary and secondary schools.
63. Given the scope of Mr Wilson's requests the investigation also focussed on information relating to the period prior to the creation of the Council. The Council advised that the Council was the statutory successor to Strathclyde Regional Council, Motherwell, Monklands and Cumbernauld & Kilsyth District Councils and, for part of the area of the former council, Strathkelvin District Council. The location of files depended on the authority in question. The Council advised that on reorganisation current regional files were passed over for operational use and thereafter archived/destroyed in accordance with normal archive procedures. The Council advised that the relevant functions of local authorities had passed to the individual colleges prior to 1996. As a result, the Council anticipated that all records relating to the prior performance of those functions would also have passed to the relevant college. In this case, the Council considered that the relevant College was Motherwell College.



64. The Council supplied a copy of the Learning and Skills Retention and Disposal Policy. I have noted that the Council's Paragraph 9.4.2 of that Policy refers to "Music services and tuition provided within schools and music centres" and indicates that these records will be destroyed after 7 years from the date of last action.
65. The Council advised that archives in relation to Strathclyde Regional Council in so far as it covered North Lanarkshire were held by the then Strathclyde Archive, which on reorganisation became the Glasgow City Archive (held by Glasgow City Council).
66. Mr Wilson has submitted that he was employed as a music lecturer at Motherwell College from 1987 to 1996 and was engaged teaching adults at various outreach centres within the Council's boundary and control. Mr Wilson supplied a copy of a travel expenses claim sheet (dated 1995) which he indicated demonstrated that there was a working relationship between the Council and Motherwell College during his tenure.
67. Mr Wilson further submitted that the Council was also responsible for a number of secondary and primary schools and believed it was reasonable to conclude that there was a committee which discussed the provision of arts subjects such as music, art and drama as applied to the Education sector. He indicated during his tenure secondary school pupils came to the College to undertake class work in various subjects.
68. Mr Wilson has supplied evidence to demonstrate a connection between Motherwell College and the Council, or at least a school now in the Council's area and under its control. However, I note that this information pre-dates the formation of the Council. Further, Mr Wilson's requests are quite specific in that he is seeking information about music courses and it is in this respect that the Council has advised that information is not held.
69. The Council has submitted that it holds no information relevant to questions 11, 12 and 14. In considering this issue, I have taken into account that the Council only came into being in 1996. The Council has advised that it would have inherited only operational files from its predecessor Strathclyde Regional Council and that the remainder of the Regional Council's records would now be held by Glasgow City Council in the Mitchell Library. Local authorities stopped having responsibility for further education in 1993 and therefore it seems to me unlikely that files on this subject matter would have been considered operational and passed on to the newly formed Council. Mr Wilson has indicated that he is aware of other staff from Motherwell College working at centres controlled by the Council in 1995. Even if the Council had held information about this matter at that time, however, it is unlikely that this information would still be held at the time of Mr Wilson's request on 1 January 2006 given the Council's retention and disposal policy.





70. Taking all of the above into account and the information provided by the Council about the searches it has undertaken, I consider that the Council has taken all reasonable steps to establish whether it holds information relevant to Mr Wilson's requests. In the circumstances, I am satisfied that the Council does not hold information relevant to Mr Wilson's requests 11, 12 and 14.

### **Additional matter**

71. Mr Wilson complained that the Council had been unable to identify his court case from the reference number A1628/01 used in several requests for information. The Council had sought clarification on the meaning of this reference so that it could identify the precise information Mr Wilson was seeking. Following Mr Wilson's complaint, the Council submitted that while this reference number might appear on some documents emanating from the court it would not appear in any index of the Council nor would it be used by the Council in cataloguing information relating to the Court action. I consider the Council's submissions on this matter to be reasonable. Further, I have considered the case list supplied to me in respect of request 1. I have noted that these cases are indexed by an in-house code and by name (either person or property). In the circumstances, I find it was reasonable for the Council to seek clarification on the reference number referred to in several of Mr Wilson's requests for information.

### **Decision**

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I find that North Lanarkshire Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Wilson in respect of requests 1, 6, 7, 11, 12 and 14, either by virtue of the information in question not being held by the Council or by virtue of the request being one the cost of compliance with which would exceed the cost prescribed in regulations made under section 12(1) of FOISA.

I find that the Council failed to act in accordance with Part 1 of FOISA in responding to request 9. In particular, it was not appropriate for the Council to rely on section 18(1) of FOISA and in doing so it failed to deal with request 9 in accordance with section 1(1) of FOISA. I now require the Council to indicate whether it holds the information requested and, if it does, to deal with request 9 appropriately in accordance with Part 1 of FOISA (that is, other than under section 18(1)).

I require the Council to take this action within 45 days of receipt of this decision notice.



## **Appeal**

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Should either Mr Wilson 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 after the date of intimation of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**03 September 2007**

## **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.



## **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.

## **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.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

## **18 Further provision as respects responses to request**

- (1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35, 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.
- (2) Neither paragraph (a) of subsection (1) of section 16 nor subsection (2) of that section applies as respects a refusal notice given by virtue of this section.

## **33 Commercial interests and the economy**



- (1) Information is exempt information if-
  - (a) [...]; or
  - (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).

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

#### **Projected costs**

**3** (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.

(2) In estimating projected costs-

[...]

(b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

#### **Excessive cost - prescribed amount**

**5** The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.