



Scottish Information  
Commissioner

**Decision 031/2008 Ms Bridget McBride and  
North Lanarkshire Council**

*Request for information relating to a noise disturbance*

**Applicant: Ms Bridget McBride  
Authority: North Lanarkshire Council  
Case No: 200701111  
Decision Date: 26 February 2008**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 031/2008 Ms Bridget McBride and North Lanarkshire Council**

### ***Request for information relating to the investigation into a noise disturbance – information not held – upheld by the Commissioner***

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

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(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**

---

Ms Bridget McBride requested information relating to the investigation of a noise disturbance from North Lanarkshire Council (the Council). The Council responded by providing some information, but stated that it held no information in relation to the remainder of the request. Ms McBride 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 Ms McBride that it did not hold the information that was the subject of her request for review. Ms McBride remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Ms McBride's request for information in accordance with Part 1 of FOISA. He did not require the Council to take any action.



## Background

---

1. On 21 April 2007, Ms McBride wrote to the Council with a number of requests (14 in total) relating to the Council's investigations into a complaint regarding noise disturbance. Although some of these requests were clearly seeking recorded information (e.g. seeking copies of documents relating to the investigation of the complaint), other requests were expressed as questions seeking explanations, and confirmation of the views or actions of individuals concerned.
2. The Council wrote to Ms McBride on 24 May 2007 in response to her request for information. The Council noted that FOISA provides rights to access recorded information, but gives no rights to explanations, view, comments or assertions [except where these are held in recorded form]. It went on to advise Ms McBride that it did not hold any documentation in relation to the majority of the requests that she had submitted. The Council provided the requested information in response to her requests (numbered 11 and 12) for details of sound recorded equipment used, and for copies of the findings and details of the investigation. Additionally, the Council advised Ms McBride that she could visit the Council offices to listen to the sound recordings made in response to the complaint.
3. On 19 June 2007, Ms McBride wrote to the Council requesting a review of its decision. Ms McBride indicated that the Council should respond to all of her requests, excluding one (number 6), which she now no longer wished to pursue.
4. The Council notified Ms McBride of the outcome of its review by letter of 19 July 2007. The Council upheld its original decision and stated that it did not hold any recorded information falling within the scope of 11 of Ms McBride's 14 requests. It noted that information had been supplied in response to two of the requests, and the final question had been withdrawn.
5. On 8 August 2007, Ms McBride wrote to my Office, stating that she 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.
6. The application was validated by establishing that Ms McBride 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

---

7. On 24 August 2007, my Office contacted Ms McBride in order to ascertain the reason for her dissatisfaction with the outcome of the Council's review.
8. In a letter received in my Office on 3 September 2007, Ms McBride stated that her reasons for dissatisfaction were contained in previous correspondence with my Office.
9. Ms McBride had previously written to my Office advising that she was dissatisfied with the Council's response as twelve of her questions were not answered and she wished my Office to remedy this. On the basis that the Council did provide information in respect of requests 11 and 12, I have not included these requests within the scope of this decision.
10. Additionally, Ms McBride advised the Council that she wished to withdraw request number 6 when she sought a review of its response to her original request. Accordingly, I have not included request 6 within the scope of this decision.
11. On 2 November 2007, the Council was notified in writing that a valid application had been received from Ms McBride and that an investigation into the matter had commenced. The Council was asked to provide comments in terms of section 49(3)(a) of FOISA and to respond to specific questions on the application. In particular, the Council was asked to explain what steps it had taken to in order to establish that the information requested by Ms McBride was not held.
12. The Council responded on 4 December 2007.
13. The Council confirmed that it held no documentation in relation to the remaining information requested and explained the steps it had taken to ascertain that this was the case.

## The Commissioner's Analysis and Findings

---

14. In coming to a decision on this matter, I have considered all of the information and the submissions that that have been presented to me by both Ms McBride and the Council and I am satisfied that no matter of relevance has been overlooked.



## **Whether the information requested by Ms McBride is held by the Council**

15. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held. In this case, the Council notified Ms McBride that no further information was held.
16. In its submissions to me, the Council has explained the records that were relied upon to respond to Ms McBride's request for information. These were predominantly held within the case management system. Additionally, the Council advised me that it has checked correspondence between itself and Ms McBride, Council Officers' summary reports, Officers' notebooks and correspondence between the Council and an external organisation.
17. The Council explained that, having checked and analysed all of these records, no information was found which covered Ms McBride's requests.
18. Having considered the Council's submissions on this point and its explanation of the steps taken in order to ascertain that all relevant information has been supplied to Ms McBride and, consequently, that it does not hold the information which is the subject of this decision, I am satisfied that the information is not held by the Council. I am satisfied that the Council has taken all reasonable steps to establish whether any further information is available. I have therefore concluded that the Council was correct in informing Ms McBride that it was unable to supply the information in question.
19. I am therefore satisfied that the Council has complied fully with the provisions of FOISA in dealing with Ms McBride's request.

## **Decision**

---

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 Ms McBride. I find that the Council was justified in applying section 17(1) of FOISA in relation to the information requested. Accordingly, I do not require the Council to take any action in response to this decision.



## **Appeal**

---

Should either Ms McBride 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.

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

---

### 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.