

Decision Notice



Decision 204/2010 Councillor Gordon Murray and North Lanarkshire Council

Land transfer and sale

Reference No: 201000181

Decision Date: 7 December 2010

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Scottish Information Commissioner

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Summary

Councillor Gordon Murray requested from North Lanarkshire Council (the Council) information relating to the transfer and sale of property, rights and liabilities to the Council. The Council disclosed some information in response. Following a review, Councillor Murray remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Council disclosed additional information, the Commissioner found that the Council had partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) when responding to Councillor Murray's information request.

The Commissioner found that the Council complied with section 1(1) of FOISA by providing all the information it held in respect of parts a, e, f and g of Councillor Murray's request, but breached the requirements section 1(1) of FOISA by failing to identify and supply all relevant (and non-exempt) information that fell within the scope of part d.

In relation to part b of Councillor Murray's request, the Commissioner accepted that the cost of compliance with respect to this part would exceed £600 and consequently that (by virtue of section 12(1) of FOISA) the Council was not obliged to comply with the request.

In relation to part c of Councillor Murray's request the Commissioner upheld the Council's assertion that it did not hold the requested information in line with section 17(1) of FOISA.

The Commissioner also concluded that the Council had failed provide appropriate advice and assistance to Councillor Murray's (in terms of section 15(1) of FOISA) when responding to parts b and d of his request.

By the end of the investigation, the Commissioner was satisfied that, other than with respect to part b, the Council had identified all of the information it held within the scope of Councillor Murray's requests, and had provided Councillor Murray with this information. The Commissioner therefore does not require the Council to take any action in response to this decision.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance) and 17(1) (Notice that information is not held)



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

Background

1. The New Town (Cumbernauld) (Transfer of Property, Rights and Liabilities) Order 1996 (the Order) made provision for the transfer of certain property, rights and liabilities of the Cumbernauld Development Corporation (CDC) to the Cumbernauld and Kilsyth District Council. North Lanarkshire Council is the successor to the Cumbernauld and Kilsyth District Council following the local government reorganisation that took place more generally in 1996. The Schedule to the Order (the Schedule) details the properties, rights and liabilities that were transferred.
2. For the sake of simplicity, this decision will hereafter refer to the transfer of this property, rights and liabilities as if it had been directly from CDC to the Council.
3. On 23 October 2009, Councillor Murray wrote to North Lanarkshire Council (the Council) requesting the following information, with reference to the terms of the Order and the Schedule
“From the 5 parts of the schedule I wish:
 - a. Details of the value originally placed on each of the 51 plots [of land] specified in Part 1 of the Schedule.
 - b. Details of price achieved for selling the whole or part or any of these 51 plots of land.
 - c. Details as to when the sale was officially recorded as being completed.
 - d. Details of the subjects leased in Part 2 of the Schedule including what benefit has been achieved to date, and if there is still any residual value.
 - e. Details in Part 3, of how much money has accrued to the Council from these 56 mortgage loans and how much is expected to be achieved in the future.
 - f. Details in Part 4, of how much has been achieved to date from the 33 listed shared equity loans and how much is expected to be achieved by any still outstanding.
 - g. Details in Part 5, of how much money has been achieved from these 16 standard securities and how much is expected to be achieved by any still outstanding.”
4. The Council responded on 18 November 2009. The Council provided the following response to each part of Councillor Murray’s request:



- a A document with a list of properties in the Cumbernauld area, including its area in acres and DV (District Valuer) Value, was provided.
 - b The Council provided a list of the receipts generated from sales with associated plan number as set out in the Order.
 - c/d In response to parts c and d, the Council stated that it was not obliged to provide this information given the terms of section 12 of FOISA, as to provide the information would exceed the prescribed amount in the Fees Regulations made by the Scottish Ministers. The Council noted, in addition, that the information on land sales was also exempt under section 25 of FOISA, as it was publicly available from Registers of Scotland (RoS) (the Council provided Councillor Murray with a link to the RoS webpage).
 - e/f/g In response to parts e, f and g, the Council provided the amount of total value of loans transferred under each part of the Schedule, and the total current outstanding balance under each part.
5. On 24 November 2009, Councillor Murray wrote to the Council requesting a review of its decision. Councillor Murray was dissatisfied with the Council's response as he considered that the information provided was incorrect and that the Council held further information.
 6. The Council notified Councillor Murray of the outcome of its review on 24 December 2009. The Council upheld its previous response to parts a, b, d, e, f and g of Councillor Murray's request. In response to part c of Councillor Murray's request, it now advised him, in terms of section 17(1) of FOISA, that it did not hold this information as it is the purchaser (rather than the seller) who is required to record the sale.
 7. On 27 January 2010, Councillor Murray wrote to the Commissioner, stating that he 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.
 8. The application was validated by establishing that Councillor Murray had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.



Investigation

9. On 7 May 2010, the Council was notified in writing that an application had been received from Councillor Murray and was invited to comment on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions. In particular, the Council was asked to provide guidance in correlating the information provided to Councillor Murray and the various items detailed within the Schedule. The Council was also asked to provide comments on the searches it had undertaken to identify the requested information and comments on its application of the sections 12 and 25 of FOISA.
10. The Council provided background information in response to the investigating officer's questions regarding the Order, and the circumstances surrounding the transfer of property, rights and liabilities to the Council and how relevant information was held by the Council. On 10 June 2010, the Council provided its submissions on each part of Councillor Murray's request, which can be summarised as follows:
 - a The Council had provided all the information it held and which fell within the scope of this request.
 - b The Council advised that the provision of this information would exceed the prescribed limit specified within the Fees Regulations. The Council provided a breakdown of the costs associated with this request which it estimated as £1,490.62 in total.
 - c The Council did not hold this information as it was the purchaser's responsibility to register the sale.
 - d The Council had looked at this request again and noted that the only one building fell within the scope of this request (Fleming House) and some information could be disclosed to Councillor Murray.

e./f./g. The Council had provided the information held in respect of these parts of the request.
11. The investigating officer and the Council entered into discussion about the calculation of the costs for part b of Councillor Murray's request and in addition the investigating officer requested and received a copy of the title for the building reference in part d of Councillor Murray's request.
12. Due to the complexities of this request, in particular understanding what information was held by the Council, the investigating officer met with representatives of the Council on 2 August 2010. The purpose of this meeting was to discuss Councillor Murray's application and, in particular, to determine whether all the information held by the Council had been disclosed to Councillor Murray and to assess the reasonableness of the Council's projected costs for providing a response to part b of Councillor Murray's request.
13. Each part of Councillor Murray's request was discussed at the meeting and the Council was subsequently asked to provide additional documentation to support its submissions in relation



to parts a, e, f and g of the request. At the meeting, the Council explained and demonstrated the process that would be required to provide an exact selling price (part b) for three of the 51 plots of land.

14. It became clear at this meeting that the Council was unsure as to what information about the lease was being sought by part d of Councillor Murray's request. It was agreed that the investigating officer would seek to verify this matter with Councillor Murray.
15. The investigating officer subsequently wrote to Councillor Murray, to advise him of the outcome of the meeting. The investigating officer also advised Councillor Murray that the Council was unclear what information he sought in relation to part d of his request and suggested a possible interpretation.
16. Councillor Murray responded that Fleming House had a specific value in 1996, and it has a much higher value in 2010. He indicated that he was interested in the increased value and benefit that has been obtained over the years as part of the increasing value of the assets and liabilities transferred in 1996.
17. In the light of these comments, and the specific terms of Councillor Murray's request, it was agreed with the Council that part d would be interpreted as seeking the following information:
 - i. Value of the lease since 1996 – monies gained, spent and what is expected in the future.
 - ii. Value of the building in 1996 and 2009
18. When asked to comment upon its ability to supply this particular information, the Council advised:
 - i. A new financial system had been introduced in April 2001 and so information was available from the financial period 2001/02 and no information was held prior to this date. The Council provided a table detailing the payments for each part of the building which had been leased since 2001. After further discussion, the Council also provided details of the Council payments for the lease of the entire building since 2001.
 - ii. As the Council did not own the building, it had not been valued; however, a value had been noted in the list of assets transferred to the Council in 1996, which had been given to Councillor Murray in relation to part a of his request.
19. The Council provided the information referred to in paragraph i (above) to Councillor Murray on 28 September 2010.



Commissioner's analysis and findings

20. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Councillor Murray and the Council and is satisfied that no matter of relevance has been overlooked.
21. In relation to parts a, b, c and d of Councillor Murray's request, it is helpful to understand the background to the Order, along with the wider context of local government reorganisation in 1996. The Council explained that when the CDC was being wound up, the Order was created to specify the plots of land and other rights and liabilities that were to be transferred to the Council. The purpose of the transfer was to compensate the Council for the cost of maintaining future costs/liabilities following the wind-up of the CDC. The Council maintained that the assets were not ring-fenced for any particular cause or area.
22. The Council explained that the development of the Order involved discussion around draft versions as additional plots of land were included and others removed. Rather than assigning values to the individual plots of land as detailed within the Order, a total value was calculated, with the target being to ensure that the monies paid balanced against the ongoing liabilities (maintenance of the land, etc) that the Council would have to take on board.
23. The Council explained that it had inherited property from a number of merging authorities, as part of the wider reorganisation of local government in 1996. At that time, one task undertaken within the Council was to identify all of the inherited areas and have the land plotted and added to a property database, with a view to fully understand the assets of the Council.
24. With respect to the sites transferred from the CDC, the Council indicated that the recollection of officers working in the disposals team at that time was that preliminary checks were undertaken on the sites and they were then added to the database, which was later linked to a mapping system. The Council noted that this system covered all inherited land in Cumbernauld and not just that specified within the Order. It also explained that this system did not (and was not required to) identify ownership by any of the former authorities.
25. Over the period since 1996, the Council indicated that many land sites in Cumbernauld had been sold, but the boundaries of the sites sold did not match the shape and size of the sites shown on the plans in the original Order. Rather, the Council explained, sale boundaries reflected the best manner in which to sell the whole assets rather than relate specifically to a particular plot, and the records held do not enable the isolation of any sale of the transferred sites or composite parts of them.
26. The Council explained that its focus was on the total land and property being transferred, rather than keeping a separate and ongoing record of the land and property from CDC. The Council explained that the Order is used as a reference document solely and the value/definition of the individual plots of land was not essential; it was more pertinent to note the total land held by the Council.



Section 1(1) of FOISA – General entitlement

27. Section 1(1) of FOISA creates a general entitlement of access to information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other relevant provisions within Part 1).
28. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
29. In this case, the Council advised the investigating officer, that it had provided all the information it held in relation to parts a, d, e, f and g of Councillor Murray's request. Taking each of these parts in turn, the Commissioner will consider whether the Council complied with section 1(1) of FOISA. He will then turn to consider the Council's application of sections 12 and 17 of FOISA with respect to requests b and c respectively.

Part a – value originally placed on the 51 plots in Part 1 of the Schedule

30. Part 1 of the Schedule contains a descriptive list of each of the 51 plots of land together with a drawn plan for each individual plot of land.
31. In response to Councillor Murray's request, the Council provided him with a list of the types of land and associated assets together with the sites acreage and District Valuer's valuation. This document did not directly correlate the assets listed with those specified in the Schedule to the Order.
32. Councillor Murray disputed that this information was correct and stated that further information should be held by the Council. He also indicated that some of the identified plots of land had been sold at several times its original value.
33. Having considered the list of plots provided to Councillor Murray, and having noted that this did not correlate with the list in the Schedule, the investigating officer asked the Council whether it could provide information to help correlate the two.
34. The Council advised that it could not provide such information and went on to explain (as detailed above) that at the time when the Order was agreed the total value of the land to be transferred was of greater concern than the value of each individual plots of land. Given the wider process of local government reorganisation at that time, the Council's focus was on its total land holding, rather than the value and origin of each plot of land.
35. At the meeting with the Council on 3 August 2010, the investigating officer requested and received (following the meeting) additional documentation (copies of covering letters attached to the list of the plots of land provided to Councillor Murray) to substantiate the Council's view that the information provided to Councillor Murray was all that it held within relation to the plots of land specified in Part 1 of the Schedule.



36. Having considered all the information and explanation provided, the Commissioner is satisfied that the Council complied with section 1(1), and that no further information is held which would fall within the scope of part a of Councillor Murray's request.

Part d - Details of the subjects leased in Part 2 of the Schedule including what benefit has been achieved to date, and if there is still any residual value

37. Part 2 of the Schedule refers to the tenant's interest in a lease, referred to by date and Title Number.
38. In its initial response to this request, the Council advised Councillor Murray that complying with this part of his request would exceed the amount prescribed in the Fees Regulations made by the Scottish Ministers and that, in terms of section 12 of FOISA, it was not obliged to comply with the request. The Council upheld this on review, and advised Councillor Murray that it held no separate compilation of income; consequently, to provide such information would exceed the statutory amount in terms of section 12 of FOISA.
39. In response to the investigating officer's request for submissions, the Council advised that, after considering the request again, it noted that Part 2 of the Schedule was not as wide as it had originally considered, as the lease referred to therein involved only a single building. It indicated that the rental paid and monies accrued for the last year could be provided.
40. As noted above, after it was found that the Council was uncertain as to the information sought by part d of Councillor Murray's request, steps were taken to seek his clarification. Taking into consideration the comments received from Councillor Murray, along with the terms of his request to the Council, the Commissioner considers that a reasonable interpretation of this request is that it was seeking the following information:
- i. Value of the lease since 1996 – monies gained, spent and what is expected in the future.
 - ii. Value of the building [Fleming House] in 1996 and 2009
41. When asked to comment on this information, the Council advised that it held lease payments from the financial period 2001/02 only, as a new financial system had been implemented at this date. In relation to the value of the building, the Council advised that, as it did not own the building, it had not been valued, although a value had been assigned to it when the assets were transferred to the Council in 1996 (this list had been already been provided to Councillor Murray in response to part a of his request).
42. In providing this information to Councillor Murray, the Council explained that, following advice from the Commissioner's office, part d of his request had been interpreted as seeking the information noted above. The Council also advised Councillor Murray why only some of this information could be provided.



43. In considering the comments from the Council with regard to the information that it holds, the additional submissions made throughout the investigation and the explanations provided at the meeting with the investigating officer, the Commissioner is satisfied that the Council does not hold further information falling within the scope of Councillor Murray's request as understood by the Commissioner. The Commissioner is now satisfied that the Council has provided all the information that fell within the scope of part d of Councillor Murray's request.
44. Having drawn this conclusion, the Commissioner notes that the Council did not appear to give appropriate consideration to the scope and interpretation of this part of Councillor Murray's request. In particular, he notes that the Council initially claimed that the cost of complying with this part of the request would exceed the prescribed limit for the purposes of section 12. It was only during the investigation, that the Council recognised that the lease referred to in Part 2 of the Schedule related only to a single building. This observation appears to have led the Council to recognise that it incorrectly applied the provision in section 12 of FOISA to this part of Councillor Murray's request.
45. As also noted above, the Council indicated during the investigation that it would be possible to provide relevant information, but it advised the investigating officer that it was uncertain as to what recorded information Councillor Murray was seeking with this request. This left an unsatisfactory situation whereby the Commissioner had to seek clarification from Councillor Murray, and reach a decision on how this request should be interpreted in order to bring resolution to this case.
46. The Commissioner would highlight that, in any case where a public authority reasonably considers that it needs further information to enable it to identify and locate the information requested, it is entitled under section 1(3) to notify the applicant of this and to specify what further information is required. Where further information is sought from the applicant in terms of section 1(3), the public authority is not obliged to give the requested information until the further information has been received, provided the requirement is reasonable.
47. Given the Council's difficulties in this case, it seems to the Commissioner that it would have been reasonable for it to seek further information from Councillor Murray to enable it to identify and locate the information he wished to access. However, it did not do so, and instead provided a response, which maintained that section 12 of FOISA was applicable to this part of the request.
48. Having received no submissions in support of the Council's initial application of section 12 of FOSIA to part d of Councillor Murray's information request, the Commissioner must conclude that the Council incorrectly applied section 12 of FOISA. By failing to provide the information it held in relation to Councillor Murray's request d at the date of its review response, the Commissioner concludes that the Council failed to comply with section 1(1) of FOISA.
49. The Commissioner also considers that, by failing to engage in discussion with Councillor Murray to enable it to more clearly understand his request, or to assist him in making a request that more clearly identified the information he wished to access, the Council failed to comply fully with its duty under section 15(1) of FOISA to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information.



50. In circumstances where the wording of an information request makes it difficult for the authority to identify exactly what information is being sought, the authority can offer various types of advice and assistance to the applicant. For example, it might provide some background on the matters of interest to the applicant, explain the types of information held or how it is recorded, or explain any relevant technical terms to check their relevance to the request. In the circumstances of this case, the Commissioner considers that it would have been reasonable for the Council to offer such advice (along with any request for further information made in terms of section 1(3) of FOISA) to assist Councillor Murray to explain more clearly what information he was seeking, and to allow it to provide a relevant response.
51. Since the matter of the interpretation of Councillor Murray's request has been addressed during the investigation and in this decision, and the relevant information has now been disclosed, the Commissioner is satisfied that these breaches have now been rectified.

Parts e, f and g - money accrued and to be achieved from home loan balances in Parts 3, 4 and 5 of the Order

52. Part 3 of the Schedule contains a list of 56 mortgage loans, and each loan specifies the name of the mortgagee, mortgage address and the Land Register title. Parts 4 and 5 of the Schedule contain similar details along with the date of the loan with respect to (in Part 4) a list of 33 Shared Equity Loans and (in Part 5) a list of 16 Help Up Loans. For ease of reference these three types of loan are described collectively as home loans in what follows.
53. In response to Councillor Murray's request, the Council provided him with two figures for each group of loans i.e. the total value transferred and the current balance. During the investigation, the Council advised the investigating officer that it had provided Councillor Murray with all the information it held in respect of these parts of his request.
54. At the meeting with the Council, the investigating officer requested and subsequently received, a current breakdown of the home loans outstanding against each individual title. Although Councillor Murray did not request a breakdown by title, the investigating officer used this information to check that the information provided by the Council covered each of the home loans referred to within the Schedule. Having done so, the investigating officer advised Councillor Murray that she considered that the Council had provided the information requested in these parts of his request. In his response, Councillor Murray did not question or dispute this summation.
55. Having considered the information requested by Councillor Murray and the information provided by the Council, the Commissioner is satisfied that the Council provided Councillor Murray with all of the information it holds that fell within the scope of these parts of his request. The Commissioner has therefore concluded that the Council complied with section 1(1) of FOISA in responding to these parts of Councillor Murray's request.



Section 12(1) – Excessive cost of compliance – part b

56. In part b of his request, Councillor Murray requested details of the price achieved for selling the whole or part or any of the 51 plots of land specified in Part 1 of the Schedule. The Council responded to this request by providing a list of the receipts generated from sales with associated plan number as set out in the Order. Councillor Murray was dissatisfied with this response, because he considered that it was not a complete or accurate record of the relevant sales.
57. During the investigation, the Council explained that the list disclosed to Councillor Murray had been prepared some years earlier after a Council officer had undertaken an exercise to correlate plots of land sold against those listed in the Schedule. However, there was no one-to-one correlation between the plots sold and those transferred under the Order and it was explained that the Council officer had made the best estimate they could in correlating the receipts and the plots in the Schedule.
58. During the investigation, the Council argued that section 12(1) of FOISA would apply if it were to undertake the process required to provide a complete record of the price achieved for all relevant sales. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
59. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
60. The projected costs that the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
61. The Council provided an initial calculation of the charges to the investigating officer, which was queried and discussed in detail with the Council at the meeting on 3 August 2010. The revised calculation of costs provided at the meeting will be considered below.

Calculation of costs - time

62. The Council explained the steps which were required to be followed in order to identify the price achieved for selling any of the plots listed in the Schedule. During the meeting on 3 August 2010, a Council official demonstrated this process to the investigating officer with respect to three plots of land, which were chosen as examples of low, medium and high complexity. The investigating officer was also provided with copies of documents relevant to the process.



Step 1 – cross reference the plots of land listed within the Order, alongside the Council’s wider land holdings. This step is required because there is no one-to-one relationship between the Council’s mapped land holdings, and the boundaries of the land transferred within the Order (as explained above). This step would involve checking titles and drawing the plot listed in the Schedule onto the map showing the Council’s holdings, so that it could be visualised (and calculated in step 2) how much of the plot of land within the Order had been sold, and the extent to which this was sold along with other land.

As noted above the Council “walked through” this process at the meeting. In one example considered by the Council, the land ownership information was provided on four separate A4 pages, which then had to be re-plotted onto a single A4 page. In another example, a plot of land within the Schedule fell within parts of several plots of Council-owned land and it had taken several hours to re-plot this land ownership.

The Council estimated that the above work could take anywhere from one to seven hours depending on the complexity of the plot, so an estimate of one hour per plot of land within the Schedule was proposed by the Council. Due to the complexity of the work involved, a manager would also be required to provide instruction and complete one case prior to the individuals completing the work; the Council estimated one hour in total for this manager’s work.

In total, the Council estimated that this step would take to 52 hours to complete.

Step 2 – check to clarify what land had actually been sold, and calculate the sale price which relates to the land transferred by the Order. This would involve identifying the subjects sold and checking whether the whole or a partial plot of land within the Schedule had been sold, before calculating the selling price for the (part of the) plot of land within the Schedule.

The Council commented that this task would be extremely difficult, as the land that had been sold did not bear a one-to-one relationship with the plots of land in the Schedule and the land sold and within the Schedule are not uniform in shape.

The Council estimated that it would 30 minutes for 25 of the cases and one hour for the remainder. Due to the complexity of the work to be undertaken, a manager would also be required to provide instruction and complete one case, which was estimated as one hour in total for this manager’s work.

In total the Council estimated that this step would take to 39½ hours to complete.

63. Having considered the Council’s submissions on this request, which included a detailed explanation of the work required to collate a complete response, and a “walk through” of the process during the meeting with the investigating officer, the Commissioner is satisfied that the Council’s estimate of the time that would be required to complete this work is reasonable.



Calculation of costs - hourly rate

64. The Council advised the investigating officer that the individuals who would be required to complete the above work were a property technician/property officer for step 1 and a surveyor for step 2 and a manager to provide instruction. All of these individuals are paid more than £15 per hour; consequently, as the hourly rate as defined in regulation 3 of the Fees Regulations is capped at £15, this capped figure was used to calculate the costs.
65. Having provided extensive detail of the work to be undertaken, the Commissioner is satisfied that the Council has selected the appropriate staff to complete the work and, therefore, an hourly rate of £15 is appropriate.

Calculation of costs - total estimated costs

66. Based on the above figures, the Council calculated the total cost that would be incurred to provide the selling price of each plot of land was as follows:

Step 1	52 hours x £15 per hour	= £780
Step 2	39 ½ hours x £15 per hour	= £592.50
	Therefore the estimated total cost is	£1,372.50

67. As noted above, the Commissioner is satisfied with the estimation of the time that would be incurred to provide the requested information and the staff selected to complete the work. Consequently, he is satisfied that the cost of undertaking the search for the information under consideration would exceed the prescribed amount of £600.
68. The Commissioner therefore accepts that the cost of complying with Councillor Murray's information request would exceed the £600 prescribed limit set out in the Fees Regulations. The Commissioner concludes that, in terms of section 12(1) of FOISA, the Council was under no obligation to comply with part b of the information request made by Councillor Murray.

Section 15 – Duty to provide advice and assistance – part b

69. Having established that the Council was correct to rely upon section 12(1) in FOISA to justify its refusal to comply with Councillor Murray's request, the Commissioner has also considered whether the Council complied with its duty to advise and assist the requestor as required by section 15 of FOISA.
70. The Commissioner notes that, although the Council was entitled to notify Councillor Murray that section 12 was applicable in this case, it did not do so. Instead, it provided him with the information that had been collated some years previously. The Councillor queried the accuracy of this information and noted that it was not up to date.



71. In these circumstances, the Commissioner considers that the Council should have made it clear to Councillor Murray that the information he had requested, although potentially retrievable, could not be located and provided to him within the cost threshold provided by section 12. Had it done so, it would also have been reasonable for the Council to offer advice to Councillor Murray on how he might narrow the terms his request, for example by focussing on particular plots.
72. The Commissioner has again concluded that the Council failed to comply fully with its duty in section 15(1) of FOISA to provide reasonable advice and assistance to Councillor Murray in this case.

Section 17(1) – Information not held - Part c

73. Part c of Councillor Murray's request sought details as to when the sale was officially recorded as being completed for any whole or part of the 51 plots of land in Part 1 of the Schedule.
74. The Council advised Councillor Murray in response to his request that information was available from the Registers of Scotland (RoS) website and provided him with a weblink to the RoS website. In his review request, Councillor Murray disputed this response and requested that the information be provided to him. The Council advised Councillor Murray, having reconsidered his request, that the Council did not hold such information as it was the purchaser's responsibility to register the purchase of the land, not the Council, and that in terms of section 17 of FOISA the Council did not hold the information he had asked for.
75. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, then it must give the applicant notice in writing to that effect.
76. In order to determine whether the Council dealt with Councillor Murray's request correctly, the Commissioner must be satisfied as to whether, at the time it received Councillor Murray's request, the Council held any information which would fall within the scope of that request.
77. In the meeting with the Council on 3 August 2010, the investigating officer queried the fact that as the Council had sold the land it should have a note of the date when the sale was complete. The Council acknowledged that it does keep its own records, but it highlighted that the sale is not officially recorded as complete until the RoS are advised and it is up to the buyer to register the land. Since Councillor Murray had requested the date of registration, this was information which was not held by the Council.
78. As Councillor Murray has requested the date of officially recording the completion of any sale, and the purchaser is responsible for registering the sale, the Commissioner is satisfied that the Council did not hold the information Councillor Murray sought and was correct to respond to this part of the request in terms of section 17 of FOISA.



DECISION

The Commissioner finds that North Lanarkshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Councillor Murray.

The Commissioner found that the Council complied with section 1(1) of FOISA by providing all the information it held in respect of parts a, e, f and g of Councillor Murray's request .

In relation to part b of Councillor Murray's request, the Commissioner accepted that the cost of compliance in respect of this part would exceed £600 and consequently that (by virtue of section 12(1) of FOISA) the Council was not obliged to comply with the request.

In relation to part c of Councillor Murray's request the Commissioner concluded that the Council was correct to notify him in terms of section 17(1) of FOISA that it did not hold the requested information.

In relation to these matters, the Council complied with Part 1 of FOISA.

However, the Commissioner finds that the Council breached the requirements section 1(1) of FOSIA by failing to identify and supply all relevant (and non-exempt) information that fell within the scope of part d of Councillor Murray's request.

The Commissioner also concluded that the Council failed to provide appropriate advice and assistance in terms of section 15(1) of FOISA to Councillor Murray with respect to parts b and d of his requests.

By the end of the investigation, the Commissioner was satisfied that the Council had identified all of the information it held within the scope of Councillor Murray's requests (other than with respect to part b), and had provided Councillor Murray with this information. The Commissioner therefore does not require the Council to take any action in response to this decision.



Appeal

Should either Councillor Murray or North Lanarkshire 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.

Margaret Keyse
Head of Enforcement
7 December 2010



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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

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

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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...



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.

...

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

3 Projected costs

- (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-
- (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (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.

5 Excessive cost - prescribed amount

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