

# Decision Notice



Decision 111/2008 Ms Avril McDonald and West Lothian Council

Purchase of a property

Reference No: 200800693

Decision Date: 17 September 2008

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Ms McDonald requested information pertaining to the purchase of a particular property from West Lothian Council (the Council). The Council responded by providing information which it believed satisfied Ms McDonald's request. Following a review and the location and disclosure of further information, Ms McDonald remained dissatisfied with the Council's response and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Ms McDonald's request for information in accordance with Part 1 of FOISA, in providing all the information it held pertaining to the request. The Commissioner did not require the Council to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement)

The full text of this provision is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 14 June 2007, Ms McDonald wrote to the Council requesting the following information:  
Any notes, drawings, reports, letters, emails or instructions, with regard to her purchase of a particular property.
2. The Council responded on 27 June 2007, enclosing information in response to her request.
3. On 24 July 2007, Ms McDonald wrote to the Council requesting a review of its decision. She did not believe that she had been provided with all the information held by the Council and covered by her request, noting, for example, that she had not received copies of emails and that she had correspondence from the Council in her possession which had not been provided.



4. Ms McDonald received an acknowledgment from the Council to her request for review on 24 July 2007. She heard nothing further, however, and following further correspondence made an application to the Commissioner for a decision on the Council's failure to respond.
5. Following intervention by the Commissioner (*Decision 024/2008 Ms Avril McDonald and West Lothian Council* <http://www.itspublicknowledge.info/UploadedFiles/Decision024-2008.pdf>), the Council conducted a review and notified Ms McDonald of the outcome. In carrying out the review, the Council identified and supplied to Ms McDonald further information which fell within the scope of her request.
6. On 7 May 2008, Ms McDonald wrote to the Commissioner, stating that she 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. In particular, Ms McDonald drew to the Commissioner's attention her belief that the Council had not provided her with all the information it held relating to her request.
7. The application was validated by establishing that Ms McDonald had made a request 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 that request. The case was then allocated to an investigating officer.

## Investigation

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8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to describe the searches it had undertaken to identify what information it held pertinent to Ms McDonald's request.
9. The Council responded on 19 June 2008, detailing the actions it had taken to identify the information provided to Ms McDonald and explaining why initial searches had not identified all of the information which fell within the scope of her request. In doing this, the Council acknowledged that it had initially failed to identify all the relevant information, providing an explanation as to why this had happened.
10. In communications with Ms McDonald, the investigating officer sought to determine what further information she believed to be held by the Council with regard to the purchase of the property in question, asking her to provide copies of the correspondence in her possession which she believed to be relevant. While providing additional comments, Ms McDonald was unable to locate the correspondence in question and was made aware that in its absence the Commissioner would be required to come to a decision based on the submissions he had received from both her and the Council. Ms McDonald confirmed her understanding of this position.



## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the submissions that have been presented to him by both Ms McDonald and the Council and he is satisfied that no matter of relevance has been overlooked.
12. In this decision, the Commissioner must consider the matter raised by Ms McDonald's application to him, primarily whether the Council held additional information pertinent to her information request of 14 June 2007.
13. Under section 1(1) of FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority in question. However, it should be noted at this point that the requirements of section 1(1) only extend to recorded information held by the authority at the time of the applicant's request.
14. Ms McDonald's request was for information regarding her purchase of a particular property, occupied by her prior to that purchase as a tenant of the Council. This is quite clear from the terms of her request. While Ms McDonald suggested in the course of the investigation that she was in fact seeking all information relating to her when she lived at the property in question, the Commissioner sees no basis for expecting the Council to have extended its searches beyond information relating to the purchase: consequently, this decision will be confined to that smaller set of information.

### Does the authority hold any additional information?

15. In its response to the investigating officer, dated 19 June 2008, the Council acknowledged that in dealing with Ms McDonald's request for information it had failed to identify all the information falling within the scope of that request. It submitted that this had not arisen from any desire or attempt to withhold information, but rather from insufficient attention being paid to the full extent and scope of the request due to the pressures of other work.
16. The Council explained that its initial response was based on the information contained within its House Sales Team's files. Following Ms McDonald's request for review, it had been recognised that the conveyancing files held by the Council's Legal Services also fell within the scope of the request. An in-depth search of Council records had been carried out, embracing the Council's archives and involving officers being asked to double check all files, emails and hand written notes. Additional information relating to the conveyancing process had been found as a result of this and supplied to Ms McDonald.



17. Following the Council's review and the provision of this additional information, Ms McDonald remained unconvinced that the Council had provided her with all the information it held which fell within the scope of her request. She referred the Commissioner to correspondence in her possession which suggested that the Council held additional relevant information. However, as indicated above, she was unable to provide the Commissioner with copies of this correspondence. In fact, it appears that the correspondence in question relates to permissions to carry out improvements to the property, which might fall within the scope of a wider request relating to her occupancy of the property but would not (on any reasonable interpretation) fall within the scope of the request she actually made relating to its purchase.
18. The Commissioner has carefully considered the submissions provided by both Ms McDonald and the Council, along with the information located (both in response to her initial information request and her request for review) and provided to Ms McDonald. He notes Ms McDonald's concern that she has not been provided with copies of any emails, but the information disclosed certainly includes internal Council communications (in the form of memoranda) and it appears to be complete as a record of the sale of a Council house. The Council's searches appear (following the request for review if not in response to the initial request) to have covered all parts of the Council in which it might reasonably be expected that such a record would be found.
19. In all the circumstances, therefore, the Commissioner is satisfied that the Council conducted adequate searches to allow it to be concluded that it provided Ms McDonald with all the information it held falling within the scope of her request for information. Consequently, the Commissioner finds that the Council acted in accordance with Part 1 of FOISA.

## DECISION

The Commissioner finds that West Lothian Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms McDonald.

## Appeal

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Should either Ms McDonald or West Lothian 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 Investigations**  
**17 September 2008**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.