

# Decision Notice



Decision 065/2008 Martin Wilson and the Board of Management of  
Motherwell College

**Dispute between Mr Wilson and Motherwell College**

Reference No: 200701533  
Decision Date: 16 June 2008

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Wilson made 21 requests for information from the Board of Management of Motherwell College (the College) relating to a dispute which had arisen between himself and the College. The College initially withheld the information on the basis of cost under section 12(1) of FOISA, but following a decision of the Commissioner was instructed to respond to 20 of the requests. The College provided Mr Wilson with some information while indicating that the remainder was not held. Following a review, Mr Wilson remained dissatisfied and applied to the Commissioner for a decision.

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

## Relevant statutory provisions and other sources

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

## Background

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1. On 29 December 2005, Mr Wilson wrote to the College and made 21 separate requests for information relating to an ongoing dispute between himself and the College. The terms of each request are set out in the attached Schedule.
2. On 23 January 2006, the College informed Mr Wilson that to respond to his requests for information would exceed the maximum amount of £600 prescribed for the purposes of section 12(1) of FOISA and that therefore, under section 12(1), it was not obliged to respond to his requests.



3. Mr Wilson wrote to the College on 28 January 2006, requesting a review of its decision. In particular, he requested that the College reconsider the cost of responding to his requests. On 22 February 2006, the College wrote to notify Mr Wilson of the outcome of its review, which in the main upheld its original decision. The College did, however, disclose some information to Mr Wilson on the basis that it constituted personal data relating to him under the terms of the Data Protection Act 1998 (the DPA).
4. On 9 March 2006, Mr Wilson wrote to the Commissioner stating that he was dissatisfied with the outcome of the College's review and applying to him for a decision in terms of section 47(1) of FOISA.
5. Following investigation, on 19 July 2007 the Commissioner issued *Decision 117/2007 Mr Wilson and Motherwell College*, finding that the College was correct to apply section 12(1) of FOISA to Mr Wilson's 17<sup>th</sup> request. He also found, however, that the College failed to comply with Part 1 of FOISA in the manner in which it responded to the 20 remaining requests made by Mr Wilson, given that to respond to each request would cost less than £600. As a result, the Commissioner required the College to respond to Mr Wilson's 20 remaining requests.
6. The College responded to Mr Wilson's 20 remaining requests on 21 September 2007, providing him with information in response to his requests 1, 5, 8, 10, 11, 13, 14, 19 and 20. The information disclosed in response to request 8 did not include any personal data of the staff concerned, the College arguing that it was entitled to withhold this under section 38 of FOISA. In relation to requests 2, 3, 4, 6, 7, 16, 18 and 21, the Council stated that no information was held and therefore gave Mr Wilson notice in terms of section 17 of FOISA. Finally, the College indicated that any information it held which was covered by requests 9, 12 and 15 had previously been released to Mr Wilson under the DPA, in its correspondence of 22 February 2006.
7. On 19 October 2007, Mr Wilson wrote to the College requesting a review of its decision. In particular, Mr Wilson claimed that he had been given only a piecemeal response to requests 5, 8, 9, 10, 12, 15, 19 and 20, while pointing out in relation to requests 2, 3, 4, 6, 7, 16, 18 and 21 that the College now claimed it could not identify or did not possess the information requested, or that it was in the possession of legal representatives acting on behalf of a third party insurer.
8. The College notified Mr Wilson of the outcome of its review on 13 November 2007. The review maintained that no information covered by requests 2, 3, 4, 6, 16, 18 and 21 was held. It did, however, clarify that any information held that was relevant to request 7 had already been supplied with the contents of his personnel file as previously disclosed to him: the review had identified no further information. In relation to requests 8 and 10 the College provided Mr Wilson with revised versions of the information requested, while in relation to requests 5, 9, 12, 15, 19 and 20 it confirmed that Mr Wilson had been supplied with all the information that had been held.



9. On 16 November 2007, Mr Wilson wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of the College's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. He reiterated the arguments he had presented to the College in his request for review, asking the Commissioner to give consideration to certain items of information he had copied to the Commissioner's Office previously: these items had not been provided to Mr Wilson in response to his requests but he submitted that they could reasonably be assumed to be in the College's possession. He understood *Decision 117/2007* to require the College to provide the information he had requested. It should be noted that neither in his application nor in his request for review did Mr Wilson make any reference to requests 1, 11, 13 or 14.
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 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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11. On 18 January 2008, the investigating officer contacted the College, providing it with 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 College was asked to provide copies of the information supplied to Mr Wilson, details of the methods used to search for any relevant information held, and clarification of any FOISA exemptions it considered applicable.
12. The College responded on 28 February 2008. During the investigation, further representations on the case were received from both the College and Mr Wilson. These will be addressed in the Commissioner's analysis and findings below.
13. During the investigation, in response to alternative views he had advanced, Mr Wilson was advised (i) that *Decision 117/2007* had been complied with, in that the College had responded to Mr Wilson's remaining 20 requests as it required, and (ii) that the investigation could not consider his request 17. The investigation considered whether in responding to those of the remaining 20 requests referred to in Mr Wilson's request for review the College complied with Part I of FOISA.

## Commissioner's analysis and findings

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14. In coming to a decision on this matter, the Commissioner has considered all of the information and the submissions that have been presented to him by both Mr Wilson and the College and is satisfied that no matter of relevance has been overlooked.



15. The Commissioner will start by making the scope of this decision clear. Mr Wilson's requests 1, 11, 13 and 14 were not referred to either in his request for review or in his application to the Commissioner and in the circumstances there can be no basis for considering their handling by the College here. The College's application of section 12(1) of FOISA to request 17 was upheld in *Decision 117/2007* and if Mr Wilson had been unhappy with this finding his appropriate course of action would have been to appeal to the Court of Session within the relevant statutory timescale: the Commissioner cannot consider the College's handling of that request again here. Finally, the Commissioner endorses the interpretation of *Decision 117/2007* put to Mr Wilson in the course of the investigation. That decision required the College to respond to Mr Wilson's requests, with the exception of request 17. It did not require the College simply to provide Mr Wilson with the information he had requested.
16. There is no doubt from the College's letter of 21 September 2007 that it did in fact respond to Mr Wilson's remaining 20 requests, albeit some time after the expiry of the 45 day period specified for compliance in *Decision 117/2007*. The question for this decision is whether, in respect of those requests covered by Mr Wilson's application, it did so in accordance with Part 1 of FOISA. In summary, therefore, this decision will consider the College's dealt with requests 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 16, 18, 19, 20 and 20 in accordance with Part 1.

#### **Section 38(1)(b) – Personal Information**

17. In relation to that part of request 8 seeking musical qualifications of staff, the College provided Mr Wilson with a statistical analysis of the qualifications held by the relevant staff, without identifying the members of staff associated with those qualifications. It pointed out that under section 38 of FOISA it was not obliged to disclose any personal data where to do so would breach any of the Data Protection Principles. While this is undoubtedly true, the Commissioner does not consider it relevant in the circumstances. Having considered the information released to Mr Wilson regarding musical qualifications (and while acknowledging that the College was simply trying to provide Mr Wilson with an explanation of why additional information could not be provided), the Commissioner is satisfied that it met the relevant part of request 8 without the addition of any further information relating to the members of staff concerned. It is therefore unnecessary to consider the application of section 38 to any of the information.

#### **Section 17(1) – Notice that information is not held**

18. The College argued that it had supplied Mr Wilson with all the information it held which was covered by requests 5, 7, 8, 9, 10, 12, 15, 19 and 20. However, Mr Wilson described the release of information in response to these requests as piecemeal, not accepting what had been released as all the relevant information held by the College.



19. In relation to the responses Mr Wilson described as piecemeal, the College described the searches carried out to establish what it held. On the other hand, Mr Wilson provided copies of documents in his possession from which he believed it could reasonably be assumed that further relevant information was held. Having considered the information provided by both parties in this connection, the Commissioner is satisfied in the circumstances that the College has taken all reasonable steps to determine what relevant information it holds and that full responses have been given to requests 5, 8, 9, 10, 12, 19 and 20. He does not accept the conclusions drawn by Mr Wilson from the information in his possession and overall concludes that the College dealt with these requests in accordance with Part 1 of FOISA.
20. The College also stated that it did not hold the information covered by requests 2, 3, 4, 6, 16, 18 and 21. In relation to requests 2, 3, 4 and 21 the College intimated that if the information existed it would be held by its insurers the firm of solicitors acting on their behalf.
21. In relation to request 2, regarding public funds spent directly and/or indirectly on case number A1628/01, the College intimated that its insurers had instructed a legal firm to defend Mr Wilson's claim and that firm had in turn issued fees to the insurance company, which paid them. The solicitors did not fee the college and there was no expenditure on the part of the College in relation to the case.
22. In relation to requests 3 and 4, regarding public funds expended directly and/or indirectly by the College on the commissioning of covert video surveillance in case number A1628/01 and the decision to commission such surveillance, the College again intimated that these were entirely matters for its insurers and their solicitors. The College intimated that if such information was held by either the insurers or the solicitors it would be privileged and in any would not be held by or on behalf of the College.
23. In relation to request 21, where Mr Wilson sought the identity of the individual/s who claimed, or gave others reason to claim, certain things in written pleadings to the Court of Session in case number A1628/01, the College also intimated that it did not hold such information for the purposes of FOISA, but if in fact held it would be in the possession of its insurers and/or their solicitors.
24. In relation to the information covered by requests 2 to 4 and 21, the Commissioner accepts that the normal arrangement with any indemnity insurance such as employer's or public liability cover is that in exchange for being insured the person taking out the insurance, in this case the College, assigns all rights to defend claims against the policy to the insurer. In other words, the rights of the insured are limited to being indemnified for all insured losses arising out of the claim, the insurer being given full discretion to determine how the claim is defended. In this process, the insurer will be responsible for employing any lawyers and other professionals required to defend the claim, for gathering any necessary evidence and for commissioning any related services.





25. In this case the College's insurers are defending the case and it is the insurers who have employed solicitors to act for them and are responsible for any costs attached thereto. Equally, any decision to commission and pay for any covert surveillance will be a decision taken by and on behalf of the insurers. Any costs incurred by the insurers in employing legal representation and/or commissioning surveillance cannot therefore be said to be expenditure of public funds, either direct or indirect. The College, as the insured, will pay a premium for the insurance but in no sense can that be said to correlate to any particular claim or action. Finally, the identification and precognition of witnesses will be a matter for the insurers and their solicitors: some witnesses may be College staff, but in no sense does the College have any responsibility for the process.
26. In summary, therefore, none of the information covered by requests 2 to 4 and 21 can be regarded as information there would be any reasonable expectation of the College holding itself. While it might be held by the College's insurers and/or their solicitors for the purposes of defending Mr Wilson's claim, it does not follow that the information can be considered to be held on the College's behalf for the purposes of FOISA. In the circumstances, therefore, the Commissioner accepts the College's submissions that the information is not held.
27. In relation to request 6 regarding Mr Wilson's timetables for the duration of his tenure, the College stated that it was normal practice for timetables (being time specific and of little relevance beyond the relevant timeframe) to be disposed of after the class to which they related was completed. This is in line with the model retention schedule for documents of this kind developed by the Joint Information Systems Committee, a national organisation which provides a range of support services to the education sector, and therefore appears to be consistent with good practice for the sector. The Commissioner is satisfied in the circumstances that the College does not hold the information and could not have been expected to do so at the time of Mr Wilson's request.
28. In request 16, Mr Wilson asked the College to name any and all College Departments whose staff had been appointed as Specialist External Examiners/Assessors for any Higher Education Funding Authority from 1987 to the present, and to identify those authorities involved. From the submissions made to him by the College, the Commissioner accept that further education college staff are not appointed to roles of the kind described in this request, on any ordinary interpretation of the request. He therefore accepts that the College was correct to respond on the basis that it did not hold the information in question. It does appear, however, that Mr Wilson had something broader in mind in making this request and during the investigation the College agreed that specialist external examiners/assessors had been appointed to other educational establishments and carried out a further search resulting in that information being provided to Mr Wilson.
29. In request 18, Mr Wilson sought copies of "all assessments and outcomes of any and all manual handling/lifting and handling training given to College staff by North Lanarkshire Council from 1987 to the present date, listing all outcomes and results, identifying the signing officer/s in charge of this training and the College Departments and staff involved".



30. The College described the search methods undertaken to establish whether this information was held and the Commissioner is satisfied that it does not possess records of “assessments and outcomes” as requested. The College conducted a search of its Human Resources system to identify staff who would have been in post at the time the Council would have been responsible for staff development. This indicated that 175 staff might have undertaken training at this time and the paper files for each of these staff were examined to ascertain if any manual handling/lifting training was provided and if so by whom. This search concluded that while some manual handling/lifting had been delivered none of this delivery was by North Lanarkshire Council. In line with the duty to provide advice and assistance under section 15 FOISA, the College provided Mr Wilson with a summary of the staff development relevant to manual handling/lifting identified during this search. In the circumstances, the Commissioner is satisfied that the College provided Mr Wilson with as full an answer to this request as it could and that it was correct to advise him that the actual information he had requested was not held.
31. The Commissioner is therefore satisfied that the College responded correctly to requests 2, 3, 4, 6, 16, 18 and 21 by giving notice in terms of section 17 of FOISA that it did not hold the information requested. In reaching this conclusion, the Commissioner has taken into account Mr Wilson’s arguments in relation to information in his possession, but does not accept that it can be inferred from the existence of this information that the information requested by Mr Wilson is in fact held.

## Decision

The Commissioner finds that the Board of Management of Motherwell College 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.



Decision 065/2008  
Martin Wilson  
and the Board of Management of  
Motherwell College



## Appeal

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Should either Mr Wilson or the Board of Management of Motherwell College 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**  
**16 June 2008**



## Appendix

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### Relevant statutory provisions

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

##### 1 General entitlement

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

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

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

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

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

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



## Schedule

### Full details of the information requests submitted to Motherwell College by Mr Wilson on 29 December 2005

1	Copies of all Motherwell College Board of Management Committee and Sub Committee minutes from 1987 to the present highlighting those meetings and discussions involving; a) The College's unsuccessful defence of my Unfair Dismissal claim. b) The College's unsuccessful appeal against the Employment Tribunal's unanimous verdict in my favour. c) List all expenditure of public funds by the Board of Management of Motherwell College arising from its unsuccessful defence of this prosecution.
2	List the amount of public funds spent directly and/or indirectly by the Board of Management of Motherwell College to date in case number A1628/01.
3	The amount of public funds expended directly and/or indirectly by the Board of Management of Motherwell College on the commissioning of covert video surveillance in case number A1628/01.
4	Identify when the decision was taken by the Board of Management of Motherwell College to commission this surveillance, specifically who proposed this, and if these covert surveillance activities continue.
5	Forward copies of all records between 1987 and the present concerning any and all courses with a Music component submitted by Motherwell College to North Lanarkshire Council, Strathclyde Regional Council, and any others for consideration.
6	Forward copies of all my timetables for the duration of my tenure, including those timetables covering evening classes and my retraining in Computing, identifying all classes and the Departments from which my classes were drawn.
7	Forward copies of minutes from any and all meetings involving College Management and/or Senior Staff, including those with College EIS Branch representatives, in which the College's treatment of me, its proposals concerning my retraining and any other employment issue concerning me was discussed - including any and all electronic messages, internal memos, external correspondence etc.
8	List all classes and Courses offered by Motherwell College from 1987 to the present which include a Music component, including evening classes, identifying the Departments responsible for them and the musical qualifications of the staff, be they full-time and/or part-time, teaching them.



9	<p>Forward a precise definition of all those parts of the lump sum which accompanied my Unfair Dismissal by the College in June 1996. Specifically identify if;</p> <p>a) Allowances were included in this sum regarding my own pension contributions which would have been deducted from any salary had I been continuing to work throughout the notice period.</p> <p>b) If the employers pensions contributions the College would still be required to make had I been allowed to continue working throughout the notice period were included in this lump sum.</p> <p>c) If the College included the sum due for nine weeks salary, the further four weeks notice in lieu and the outstanding holiday pay owed, in this lump sum.</p>
10	<p>List the amounts of public funds spent annually from 1987 to the present by the Board of Management of Motherwell College to any and all firms of solicitors advising it, identifying each firm of solicitors, the period of their appointment, and the area of law such advice concerned in each instance.</p>
11	<p>a) On how many occasions has the College applied to Investors in People for membership?</p> <p>b) Was the College's successful application was part of a joint application?</p> <p>c) List the annual membership fee paid to the Investors in People organization by the College.</p>
12	<p>Present a definitive, unambiguous list of the College's Insurers and Insurance Brokers for each year from 1987 to the present, highlighting those responsible for the brokerage and provision of Employer Liability insurance.</p>
13	<p>What did the total annual grant received by Motherwell College amount to for each of the last two years?</p>
14	<p>List the amount of the College's funding grant for each of the last two years, any income earned by its affiliate AMCO for each of these years, and separately any surpluses remaining to the Board of Management of Motherwell College at the end of each of the last two financial years.</p>
15	<p>Forward a copy of my Personnel file together with copies of all minutes, letters, internal memos, electronic mail etc. mentioning any aspect of it.</p>
16	<p>Name any and all College Departments whose staff who have been appointed as Specialist External Examiners/Assessors for any Higher Education Funding Authority from 1987 to the present, and identify those authorities involved.</p>
17	<p>Forward copies of all assessments and outcomes of any and all manual handling and lifting assessments carried out by the College from 1987 to the present date, identifying the results and dates in each case, the signing officer in charge of these assessments and the staff and College Departments involved.</p>
18	<p>Forward copies of all assessments and outcomes of any and all manual handling/lifting and handling training given to College staff by North Lanarkshire Council from 1987 to the present date, listing all outcomes and results, identifying the signing officer/s in charge of this training and the College Departments and staff involved.</p>



19	Forward copies of all minutes of Departmental and Section meetings of the Land, Leisure and the Arts Department from 1987 to the present, and all minutes from any other College Departments and Sections whose remit involved or involves the provision and teaching of Arts subjects from 1987 to the present.
20	A list of all those Outreach Centres at which Music has been offered and/or taught by Motherwell College in co-operation with North Lanarkshire Council between 1987 and the present day, and separately a list of all evening classes offered by Motherwell College from 1987 to the present day involving Music.
21	Identify the individual/s who claimed, or gave others reason to claim, in written pleadings to the Court of Session in case number A1628/01 that; a) A janitor and a technician (Mr. John Hay) were available to lift carry and transport equipment upon request. b) The store room was shelved and two trolleys were available to transport equipment. c) I did not teach for more than 16 hours a week.