



Scottish Information  
Commissioner

**Decision 004/2008 Mr Ian Cameron and  
Aberdeenshire Council**

*Information regarding purchase of goods*

**Applicant: Mr Ian Cameron  
Authority: Aberdeenshire Council  
Case No: 200700820  
Decision Date: 15 January 2008**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 004/2008 Mr Ian Cameron and Aberdeenshire Council

***Request for information regarding the purchase of goods by Aberdeenshire Council from businesses owned or operated by Council employees, in line with its Sustainable Purchasing Policy – certain information claimed not to be held – Council also asserted that certain information had been supplied to Mr Cameron previously – Council’s response partially upheld by Commissioner***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) General entitlement; 17 (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

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Mr Cameron requested information from Aberdeenshire Council (the Council) in relation to the Council’s purchasing of goods from businesses owned or operated by employees of the Council, in line with the terms of the Council’s Sustainable Purchasing Policy. The Council responded to Mr Cameron’s request by advising that it considered it to be vexatious and as a result it was not going to comply with it. Mr Cameron 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 Mr Cameron that the review panel did not uphold that his request for information was vexatious and the review panel required the Council to consider the request again. Having considered Mr Cameron’s request again the Council advised that it did not hold any information which would answer certain parts of Mr Cameron’s request and that it had already provided Mr Cameron with other information which he was seeking in respect of other parts of his request. Mr Cameron remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Aberdeenshire Council had partially failed to deal with Mr Cameron’s request for information fully in accordance with Part 1 of FOISA. He required Aberdeenshire Council to reconsider its responses to certain parts of Mr Cameron’s information request, and to respond to these in line with Part 1 of FOISA (other than by claiming the information is not held).



## Background

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1. On 27 October 2006, Mr Cameron wrote to the Council to request the following information with reference to the Council's "Buy Local Policy" (which he stated was "implicit to" its "Sustainable Purchasing Policy"):
  - How many local businesses supplying any department within Aberdeenshire Council over the last 7 years with goods and services, have/are operated by Aberdeenshire Council staff members (full or part time staff)
  - Provide copies of written Line Manager approval where such arrangements are in place
  - Name the businesses and give full details of what was supplied
  - Please provide full details of the selection/tendering process and company information on supplier 'Fischer Racquetline Limited' in line with Aberdeenshire Council's "Sustainable Purchasing Policy" (order references supplied)
  - Please provide a full copy of Aberdeenshire Council's "Sustainable Purchasing Policy/Procurement Policy".
2. On 13 November 2007, the Council wrote to Mr Cameron in response to his request for information. In this response the Council advised that it was not required to comply with Mr Cameron's request for information as it considered that the request was vexatious in terms of section 14 of FOISA.
3. Mr Cameron wrote to the Council requesting a review of its decision on 14 November 2006. In particular, Mr Cameron did not agree that his request for information was vexatious, and considered that he had a legitimate interest in receiving a full answer to the request he had made.
4. The Council carried out a review and wrote to Mr Cameron with the outcome on 29 November 2006. It considered that it should not have dealt with Mr Cameron's request as vexatious, and advised that the appropriate section of the Council had been directed to consider his request again.



5. A further response was made to Mr Cameron by the Council on 8 December 2006, in which the Council advised that it had considered his request again but had no information which would address the first three points of his request. The Council also advised Mr Cameron that it believed it had already provided him with company information in respect of his fourth point, although it did elucidate on the selection and tendering process: it advised that its Sustainable Purchasing Policy could not have been relevant to these purchases, which had been made before that policy existed. The Council also advised that it had already provided Mr Cameron with a copy of the Sustainable Purchasing Policy/Procurement Policy in response to an earlier FOI request, and also provided him with a link to that policy in its website.
6. On 16 February 2007, Mr Cameron wrote to my Office, stating that he 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.
7. Following further correspondence, the application was validated by establishing that Mr Cameron 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**

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8. The investigating officer contacted the Council on 30 July 2007, in line with section 49(3)(a) of FOISA, asking it to provide comments on the application and to respond to specific questions in relation to it.
9. A full response was received from the Council on 29 August 2007.
10. Further communication was entered into between the investigating officer and the Council during September and October 2007 to clarify the submissions made by the Council.
11. In its responses to me, the Council explained that it was relying on section 17 of FOISA in responding to the first three points in Mr Cameron's information request. The Council submitted that it did not hold any information which would answer these parts of Mr Cameron's request, and described to my investigating officer the steps taken to establish this.



12. In respect of the information Mr Cameron requested at his fourth point, the Council advised that it gave Mr Cameron an explanation as to the selection and tendering process regarding purchases from Fischer Racquetline Limited. The Council also submitted that it provided what information it could on the company details for Fischer Racquetline Limited in its response to an earlier request of Mr Cameron's.
13. The Council also explained that it had already provided Mr Cameron with a copy of its "Sustainable Purchasing Policy" in response to a previous FOI request.
14. The Council has also provided me with copies of previous information requests Mr Cameron submitted to it under FOISA (which it considered to be relevant to my investigation), and the responses given to these.
15. In his application to me, Mr Cameron clearly set out his belief that the Council failed to address adequately any of the points in his information request of 27 October 2006. He provided me with information to support his assertion.
16. I will consider the relevant submissions of both parties more fully in my analysis and findings below.

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

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17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Cameron and the Council and am satisfied that no matter of relevance has been overlooked.
18. This decision will consider the Council's reliance on the application of section 17 of FOISA in respect of the first three points in Mr Cameron's information request.
19. The investigation will also consider whether the Council has provided Mr Cameron with information in response to his fourth point, and also whether it has provided him with a copy of its "Sustainable Purchasing Policy/Procurement Policy".



## Section 17 – Notice that information is not held

20. As has been mentioned already, the Council advised that it did not hold any information falling within the scope of the first three points in Mr Cameron's information request.
21. The investigating officer asked the Council several questions in relation to the nature and breadth of searches that it carried out to determine whether or not it held information which would address these parts of Mr Cameron's request. The investigating officer also asked the Council whether the information which had been requested at the first three points of Mr Cameron's information request was information which would be held by the Council as part of its normal business practices.
22. In responding to the investigating officer's questions, the Council explained that, having carried out a search and spoken to relevant members of staff, no list of businesses operated by employees of the Council was found. The Council also submitted that there was no process within the relevant department (Education and Recreation Service) for line manager approval being granted when purchasing items of equipment from companies owned or influenced by Aberdeenshire Council employees. Therefore the Council submitted that no record which would address this part of Mr Cameron's request was held. The Council did, however admit (it having been suggested that this would be a reasonable interpretation of Mr Cameron's second point) that its staff were required to obtain line manager's approval for other employment outwith the Council.
23. Following a request for further submissions from the Council, where the investigating officer pointed out that the information that Mr Cameron was requesting was not simply in relation to one department of the Council but to any department, the Council carried out a further search to ascertain whether it held any information which would address Mr Cameron's first three points. In its responses, the Council continued to assert that it did not hold any information which would answer these three points.
24. Having considered the submissions made by the Council in justification of its reliance on section 17 of FOISA, together with the submissions which have been made by Mr Cameron in his application to me, I am concerned that the Council may not have interpreted Mr Cameron's information request as he intended it to be interpreted. The investigating officer did raise this issue with the Council, but the Council remained satisfied that it had interpreted the request correctly and dealt with it properly. The Council also referred me to the response which had been made by its review panel in support of this view.



25. On the basis of the submissions which have been received from the Council, together with those from Mr Cameron, I am not persuaded by the Council's assertions that it does not hold certain of the information Mr Cameron has requested. This is the case particularly in relation to his first point. Mr Cameron has provided me with information in his submissions which exemplifies that the Council has in the past provided him with some information which shows that it does hold a record of a particular business which has supplied the Council with goods, and that this business is owned and operated by an employee of the Council. From the further information received from the Council, following it carrying out a further search of records for all departments as requested, there would appear to be other similar records.
26. I am therefore unable to uphold the Council's reliance on section 17 for information which would answer the first part of Mr Cameron's information request, as it is clear from the submissions made by the Council that it does (and did at the time of Mr Cameron's request) hold some information which would address this. However, I am satisfied that certain of this information in relation to one particular business was provided to Mr Cameron in response to a previous FOI request (ACW 31113) that he made. I am also satisfied that Mr Cameron still has this information within his possession, and as a consequence I do not require the Council to consider this information for this one particular company again.
27. From the information the Council has provided, I accept that it does not hold a central list of businesses which are operated by its employees. I also accept on the basis of the Council's submissions that the Education and Recreation Service does not (and did not) hold a record of written line manager approvals for individuals operating a business whilst still employed by the Council. However, it is clear from reading the information the Council has provided to me that a number of services, including Personnel, do retain copies of line manager approvals where an employee has been granted approval to carry out their own business at the same time as being a Council employee. I am satisfied that most of the information which the Council holds regarding this was held at the time of Mr Cameron's information request. As a result, I cannot uphold the Council's reliance on section 17 of FOISA regarding this part of Mr Cameron's request.
28. I am also unable to accept that the Council does not hold any information which would address the third part of Mr Cameron's request. It is apparent from the submissions I have received from the Council, including previous responses made to Mr Cameron's other FOI requests, that it does (and did at the time of Mr Cameron's request) hold information relating to the names of certain businesses owned or operated by employees of the Council and supplying the Council with goods and/or services, and details of what these businesses supplied.





29. Taking into account the response made by the Council to a previous FOI request (ACW 31113) that was submitted by Mr Cameron, however, I am satisfied that the Council has already disclosed information which would address the third part of Mr Cameron's request in respect of goods supplied by one particular business, and that this information remains in his possession. As a consequence of this I do not require the Council to consider this particular information for this one company again.
30. For the reasons outlined above I am unable to uphold the Council's reliance on section 17 of FOISA in this case. As I am not satisfied that the Council does not hold (and did not hold at the time of Mr Cameron's request) information which would address the first three points of his request. Therefore, I require the Council to consider the first three points of Mr Cameron's information request again.

#### **Information relating to the fourth point in Mr Cameron's information request**

31. As mentioned already Mr Cameron also asked for information as to full details of the selection/tendering process and company information on a supplier called "Fischer Racquetline Limited", in line with the Council's Sustainable Purchasing Policy. In making this request, Mr Cameron made reference to specific goods which had been purchased by the Council from this company.
32. In responding to this part of Mr Cameron's request, the Council did provide him with an explanation as to why it did not hold any information relating to the selection/tendering process for the purchases it made from Fischer Racquetline Limited. The Council explained that the purchases from Fischer Racquetline Limited were not subject to the Council's selection/tendering process and why this was the case. The Council also explained that it did not hold any information to show that the purchases made from this company were in line with its Sustainable Purchasing Policy as the purchases in question were concluded prior to the Sustainable Purchasing Policy being agreed.
33. I understand from reading the Council's Sustainable Purchasing Policy that although this came into effect in 2005, prior to this there was an interim Sustainable Purchasing Policy which was in effect from September 2001. In its submissions to my Office the Council explained that although the interim policy was in place at the time that the purchases were made from Fischer Racquetline Limited, this policy would not have any effect on the purchase of goods where there was only one supplier (as in the case of Fischer Racquetline Limited).
34. Having taken into consideration the submissions and other relevant information provided by the Council, I accept that it has provided what information it can by way of explanation in responding to this part of Mr Cameron's request, and that no further information is held on this.





35. Responding to his request for information relating to the company details for Fischer Racquetline Limited, the Council made reference to a response it had made to a previous FOI request of Mr Cameron's . The Council claimed that this previous response had provided Mr Cameron with company details for Fischer Racquetline Limited, although he argued that the details supplied were those of a different company.
36. When my investigating officer asked the Council to confirm whether it held any information in relation to the company details for Fischer Racquetline Limited, it argued that the Education Service believed it had provided what information it could, given that this company had been taken over by another company approximately four years ago (and it had provided Mr Cameron with trading details for this other company).
37. In a further submission, the Council explained that it did not hold any information as to the trading address or the VAT registration number for Fischer Racquetline Limited. The Council advised that after Fischer Racquetline ceased to be the sole importer of Fischer products, Huntly Nordic Ski Centre no longer had any interest in the company. Having considered the Council's most recent submission along with all other relevant information, I accept this to be the case.
38. Having considered the information which the Council provided to Mr Cameron in response to his request and request for a review, together with the most recent submission from the Council, I appreciate that the Council was seeking to be helpful in providing Mr Cameron with details of the trader who took over from Fischer Racquetline Limited. However, I do not consider that the information that the Council has given to Mr Cameron was sufficient to fulfil his request, as it related to a completely different company. It is my view that the Council should have explained to Mr Cameron that it was seeking to rely on section 17 of FOISA in respect of this information, as it did not hold any information (at the time of his request) concerning the trading address and VAT registration number of the trader concerned.
39. I am therefore not satisfied that the Council responded properly to Mr Cameron's request for company information for Fischer Racquetline Limited as it should have issued Mr Cameron with a notice under section 17 of FOISA to the effect that the information was not held.

#### **Request for a copy of the Council's "Sustainable Purchasing Policy"**

40. Mr Cameron also requested a copy of the Council's "Sustainable Purchasing Policy/Procurement Policy".



41. In responding to this part of Mr Cameron's request, the Council advised him that it had provided him with a paper copy of this policy previously. However, it did also provide Mr Cameron with a link which he could use to access this policy via the Council's website.
42. Having accessed the Council website using the link provided I am satisfied that this does provide access to the Council's Sustainable Purchasing Policy.
43. I understand from reading Mr Cameron's appeal to me that he is concerned that he is not being given access to the whole Sustainable Purchasing Policy. Mr Cameron is of this view as he believes that information which was quoted to him in response to a previous FOI request, which concerned when the Council should seek tenders for purchases. He understood that this information should be contained within the Sustainable Purchasing Policy, but he was unable to find it in the document he was directed to.
44. From considering the submissions that have been provided to me by the Council, together with accessing the Sustainable Purchasing Policy via the website link given, I am satisfied that Mr Cameron has been supplied with the Sustainable Purchasing Policy which he specifically asked for in his information request.
45. It is my understanding that the information which Mr Cameron considered should be in the Sustainable Purchasing Policy is actually information which may be recorded in another document or set of documents held by the Council, possibly its standing orders or financial regulations. I also understand from the Council (and am satisfied from its submissions) that it does not have a "Procurement Policy".
46. As indicated at paragraph 42 above, I am satisfied that Mr Cameron has been provided with a copy of the Council's Sustainable Purchasing Policy and that this fulfils the fifth part of his request to the Council. Although it is clear from his appeal to me that Mr Cameron was seeking something more than this he did not convey this in his request or his request for a review. Therefore, I accept that the Council has responded fully to the fifth part of Mr Cameron's information request.

## Decision

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I find that Aberdeenshire Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cameron.



I find that Aberdeenshire Council did respond adequately to the first part of Mr Cameron's fourth point and fully to his fifth point.

However, I find that in failing to either provide Mr Cameron with the information that it held or a notice under section 16 of FOISA in relation to the information he had requested under the first three points of his information request, the Council did not comply with Part 1 of FOISA. I find that the Council was wrong to rely on section 17 of FOISA in respect of the information requested in these first three points..

I therefore require Aberdeenshire Council to reconsider the first three points of Mr Cameron's request and to respond to these in line with Part 1 of FOISA, other than by a notice under section 17. I require Aberdeenshire Council to do this within 45 days of receipt of this notice.

In relation to the second part of Mr Cameron's fourth point, I find that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA in providing him with information which did not in fact meet the terms of that part of the request. I find that the appropriate response to that part of the request would have been to give Mr Cameron notice that the information was not held in terms of section 17 of FOISA. Having reached that conclusion, however, I do not consider it necessary to require the Council to take any further action in that connection.

## **Appeal**

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Should either Mr Cameron or Aberdeenshire Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**15 January 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.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.