

**Decision 181/2007 Mr Brian Ross and Dundee City Council**

*Annual surplus generated by Dundee Contract Services*

**Applicant: Mr Brian Ross**  
**Authority: Dundee City Council**  
**Case No: 200700657**  
**Decision Date: 27 September 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 181/2007 Mr Brian Ross and Dundee City Council

***Request for information relating to the annual surplus generated by Dundee Contract Services – some information disclosed to Mr Ross – section 17 of the Freedom of Information (Scotland) Act 2002 (information not held) applied – decision upheld by the Commissioner***

### Relevant Statutory Provisions and Other Sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1 (General entitlement); 2 (Effect of exemptions); 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

---

Mr Ross requested information from Dundee City Council (the Council) in relation to the annual surplus that had been generated by Dundee Contract Services. The Council responded and released some information to Mr Ross which addressed part of his information request. The Council advised Mr Ross that the other information that he had requested was not recorded by the Council.

Mr Ross 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 Ross that it upheld its original decision without modification. Mr Ross remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Ross's request for information in accordance with Part 1 of FOISA, by claiming that the information in question was not held.



## Background

---

1. On 12 January 2007, Mr Ross wrote to the Council requesting certain information following a report in the *Dundee Courier* newspaper that the projected annual surplus generated by Dundee Contract Services had soared to £595,000. In particular, he requested the following:
  - A breakdown of where this income had been generated from
  - How much of this income was generated from work billed to home owners of ex-council houses
  - A breakdown of what the £595,000 was used for.
2. On 15 February 2007, the Council wrote to Mr Ross in response to his request for information. In its response, the Council provided Mr Ross with a breakdown of where the projected surplus was generated from and indicated that this surplus would be transferred to the Council's General Fund. It also advised that Dundee Contract Services did not bill the owners of ex-council houses. It stated that the other information that Mr Ross was seeking was not recorded and therefore could not be provided to him.
3. On 12 March 2007, Mr Ross wrote to the Council requesting a review of its decision. He expressed surprise that some of the information he had requested was not recorded, given that the Council had been able to provide him with a breakdown of where the surplus was generated. While accepting that Dundee Contract Services did not themselves bill owners of ex-council houses, he reiterated his request for the figure billed by the relevant Council department that had been generated by direct labour. He also sought clarification of what the General Fund covered.
4. On 19 April 2007, the Council wrote to notify Mr Ross of the outcome of its review. The Council advised Mr Ross that it upheld the content of the original decision which was provided to him on 15 February 2007. The Council also provided Mr Ross with an explanation based on its interpretation of his request for a figure, and with an explanation of what its General Fund covered.
5. On 1 May 2007, Mr Ross 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.
6. The application was validated by establishing that Mr Ross 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 Investigation

---

7. On 16 May 2007, a letter was sent to the Council notifying it that an application had been received from Mr Ross and asking it to comment on that application, in terms of section 49(3)(a) of FOISA. The Council was asked to provide an explanation of its assertion that certain of the information requested by Mr Ross was not held, with details of which provision of FOISA it was relying on in making this assertion and of the searches that it carried out to assess whether it held the information.
8. A response was received from the Council on 22 June 2007. Within this response the Council indicated that it was relying on section 17 of FOISA in support of its assertion that certain information was not recorded. The Council also outlined the searches that it had carried out to ascertain whether it held that information.

## The Commissioner's Analysis and Findings

---

9. In coming to a decision on this matter, I have considered all of the submissions and other information that have been presented by both Mr Ross and the Council, and I am satisfied that no matter of relevance has been overlooked.
10. As indicated already in this decision notice, Mr Ross submitted an information request to the Council for information relating to the surplus of £595,000 which had been generated by Dundee Contract Services. In its responses to Mr Ross, the Council advised that certain of the information was not held, as it was not recorded by the Council. While the Council's response as to what was not held could have been clearer, I understand it to have been saying, in effect, that it could not identify a proportion of the surplus generated from work billed to owners of ex-council houses, and that it could not identify more specific uses of the surplus than its allocation to the General Fund. The Council does not, however, appear to have considered it necessary to seek clarification of Mr Ross's request when it was received, although in responding to Mr Ross's request for review the Council's Chief Executive did offer to assist with the request given clarification of what Mr Ross was looking for.



11. The Council did not cite any particular provisions of FOISA in its response to either Mr Ross's information request or his request for a review. However, it did cite section 17 (Notice that information is not held) of FOISA in response to my investigating officer's request for submissions. In any event, I am satisfied from the Council's responses to Mr Ross that their import was clear (i.e. that the information was not held) and therefore that they met the technical requirements of section 17.
12. I will now go on to consider the Council's reliance on section 17 of FOISA.

### **Section 17 – Notice that information is not held**

13. In order to determine whether the Council was correct to cite section 17 of FOISA in respect of elements of the information that Mr Ross was seeking (as more particularly described in paragraph 10 above), I must be satisfied that the Council does not hold (and did not hold at the time of Mr Ross's request) information which would address those parts of his request.
14. In its response to my investigating officer, the Council has provided me with submissions to show the nature of the searches that it carried out to ascertain what, if any information it held which would answer the relevant parts of Mr Ross's request for information. The Council has shown that it was able to provide Mr Ross with a breakdown of the projected annual surplus, as this was information which is contained within its financial and management information systems. The Council has also advised me that because Dundee Contract Services did not hold information relating to the works carried out in respect of owner occupied property, this information could not be provided to Mr Ross. Furthermore, the Council asserted that the information that Mr Ross had requested was not information which would normally be held by Dundee City Council, that the Council did not have a legal or statutory duty to hold this information and that it had never held information of this type.
15. The Council was less specific in its submissions in relation to the uses made of the surplus. It is clear, however, that the request related to a projected surplus rather than one which had been generated and had been or was being applied, and I am satisfied in the circumstances that following the review the Council had provided Mr Ross with all of the information it could reasonably be expected to hold on this matter.
16. In correspondence with the Council, my investigating officer asked whether the information that the Council had claimed was not held could be gathered from other sources and provided to Mr Ross. In its response, the Council stated that this would not be possible and in the circumstances I accept this as reasonable.



17. Having considered the submissions that have been made by the Council and all of the other information provided to me for the purposes of this investigation, therefore, I am satisfied that the information that Mr Ross is seeking in respect of a figure representing the proportion of the Dundee Contract Services surplus generated from work billed to owners of ex-council houses, is not held by the Council (and was not so held at the time of Mr Ross's request). From the information available to me, I am also satisfied that the Council gave as complete a response as it was able to do in relation to what the surplus was used for and that, in all the circumstances, it could not be expected to hold further information on this matter. I am therefore satisfied that the Council relied on section 17 of FOISA correctly in its response to Mr Ross.

## **Decision**

---

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

I find that by relying on section 17 of FOISA, the Council complied with Part 1.



## **Appeal**

---

Should either Mr Ross or Dundee City 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 of receipt of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**27 September 2007**



## 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- (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.

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –





- (a) the provision does not confer absolute exemption; and
  - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- (a) section 25;
  - (b) section 26;
  - (c) section 36(2);
  - (d) section 37; and
  - (e) in subsection (1) of section 38 –
    - (i) paragraphs (a), (c) and (d); and
    - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

## **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.

