

# Decision Notice



Decision 079/2011 Mr James Cannell and Glasgow City Council

Private care home placements

Reference No: 201100228  
Decision Date: 20 April 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Cannell requested from Glasgow City Council (the Council) information relative to the withholding of private care home placements and the Council's compliance with Care Commission Standards. The Council responded by providing certain information. Following a review, as a result of which the Council advised that it held no further information falling within the scope of his request, Mr Cannell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Council provided further information to Mr Cannell, the Commissioner found that the Council had dealt with Mr Cannell's request for information in accordance with Part 1 of FOISA. He 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) sections 1(1) and (4) (General entitlement) and 17(1) (Information 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 3 October 2010, Mr Cannell wrote to the Council requesting the following information:
  - a) How many private care home places were withheld under proposals passed by the Executive Committee for 2009/10 and 2010/11?
  - b) Does Glasgow City Council fully subscribe in their homes to the care standards as passed by the Scottish Government and monitored by the Care Commission?
  - c) How many people does the Council have working within their care homes who are carrying out community service handed down to them by the Courts?
2. On 20 October 2010, the Council wrote to Mr Cannell seeking clarification as to which proposals passed by the Executive Committee he was referring to.



3. On 28 October 2010, Mr Cannell wrote to the Council and clarified the scope of his request a) as follows:  
*In the last two years Glasgow City Council withheld 200 placements each year from the private sector. In each of these financial years, I want it quantified both in numbers and the amount of savings. It is very clear to me that the money saved from these placements was not intended for any other use by the Council and quite clearly committed a fraud against the both the National Government and also the Scottish Government.*
4. The Council responded on 24 November 2010. In relation to request a), the Council informed Mr Cannell that information was held within certain reports available on the Council website. It provided Mr Cannell with copies of the reports for ease of reference. In relation to requests b) and c), the Council informed Mr Cannell that it fully subscribed to the National Care Standards and provided the number of persons carrying out Community Service at its care homes.
5. On 3 January 2011, Mr Cannell wrote to the Council requesting a review of its decision. He referred to experience which he believed indicated that the Council did not subscribe to the National Care Home Standards in relation to individual choice of home.
6. The Council notified Mr Cannell of the outcome of its review on 3 February 2011. In relation to request a), the Council advised that it had provided Mr Cannell with numbers and the amount of savings for 2009/10, together with the overall planned redirection of resources for purchased services for 2010/11. It advised that it did not hold any further information falling within the scope of this request. It also reiterated that it subscribed to the National Care Home Standards in its own care homes.
7. On 7 February 2011 Mr Cannell 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 Mr Cannell 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.
9. Neither Mr Cannell's request for review nor his application to the Commissioner made any reference to request c). This decision will not, therefore, consider how the Council dealt with that request.
10. The Commissioner has also considered the terms of request b), which was covered by both the request for review and the application to the Commissioner. Essentially, this is a request for a statement of opinion rather than a request for recorded information. As such, the Commissioner does not consider request b) to fall with the terms of FOISA and will not consider it further.



## Investigation

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11. On 2 March 2011, the investigating officer notified the Council in writing that an application had been received from Mr Cannell, 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 explain the steps it had taken to identify and locate the information Mr Cannell had requested. It was also asked to clarify certain points relating to request a).
12. The Council's submission to the Commissioner indicated that no placements had been withheld, as suggested by Mr Cannell's request, explaining that the placements had simply not been made (following reductions in the Council's budget and as a result of changes in national policy). It advised that the Choice Directive did not permit it to refuse an individual access to private care home facilities, and consequently that it did not hold information on the number of individuals refused such facilities. It confirmed the actual reduction in the number of purchased care home places in 2009/10. All of this information was provided to Mr Cannell in the course of the investigation.
13. The Council also confirmed that it did not hold information when it received Mr Cannell's request as to any actual reduction in the number of placements for the year 2010/11. That financial year was still ongoing at the time and therefore the relevant information had not been created.
14. The relevant submissions obtained from Mr Cannell and the Council will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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15. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Cannell and the Council and is satisfied that no matter of relevance has been overlooked.

### Information held by the Council

16. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).



17. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mr Cannell's request a) reasonably and took adequate steps to establish what information it held which fell within the scope of that request. In reaching this conclusion, he has noted that both the original request and the request for review refer to placements withheld, suggesting refusal to place in particular cases (and arguably the denial of an entitlement) rather than simply an overall reduction in the number of placements: having considered the Council's submissions, he accepts that placements were simply reduced in number rather than being (on any reasonable interpretation of the word) withheld.
18. The Commissioner is therefore satisfied that the Council was correct to give Mr Cannell notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request a), in addition to that provided in response to the request. In providing such information as it did in response to request a), he is satisfied that it dealt with that request in accordance with section 1(1) of FOISA. While he is pleased that further contextual information was provided to Mr Cannell in the course of the investigation, he considers that to have been the provision of advice and assistance (in accordance with section 15(1) of FOISA), rather than the provision of further information falling within the scope of the request.

## DECISION

The Commissioner finds that Glasgow City Council (the Council) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cannell.

## Appeal

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Should either Mr Cannell or Glasgow 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 after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**20 April 2011**



## 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.

...

- (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.

...

##### 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.

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