

# Decision Notice



Decision 080/2011 Mr James Cannell and Glasgow City Council

Placements in Council care homes

Reference No: 201100032  
Decision Date: 21 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) the date on which an instruction had been given to social workers to make elderly care placements in its own care homes before using private or voluntary sector homes. The Council responded by indicating that it had no policy requiring such an arrangement and therefore did not therefore consider itself to hold such information. Following a review, Mr Cannell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, although the Commissioner was not entirely satisfied with the Council's handling of Mr Cannell's request for information, he accepted that the Council had been correct to give Mr Cannell notice that it did not hold the requested information.

## 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) (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 4 October 2010, Mr Cannell wrote to the Council requesting the following information:  
“When were Glasgow City Council Social Workers told to direct people who were looking for placements in Elderly Care to Council Care Homes before Private and Voluntary Sector Care Homes?”
2. The Council responded on 28 October 2010, indicating that it did not have a policy to direct service users in the way described by Mr Cannell in his request, and therefore did not consider itself to hold the information he had requested.
3. On 1 November 2010, Mr Cannell wrote to the Council requesting a review of its decision, indicating that he had been informed of the existence of such an instruction.



4. The Council notified Mr Cannell of the outcome of its review on 2 December 2010, upholding its original decision on the grounds it did not have a policy to direct service users to its own care homes before private or voluntary sector ones.
5. On 3 January 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.
6. 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.

## Investigation

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7. On 13 January 2011, the Council was notified in writing that an application had been received from Mr Cannell, given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Council was asked to explain what steps it had taken to establish whether it held any information on an instruction (as distinct from a policy) falling within the scope of Mr Cannell's request, with details of any relevant searches.
8. Following receipt of the Council's original submission, the investigating officer sought and obtained further comments. All submissions received from both the Council and Mr Cannell, insofar as relevant, will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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

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

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is that information held at the time the request is received. Where a Scottish public authority receives a request for information which it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.



11. In its submissions to the Commissioner, the Council contended that an instruction of the kind described in Mr Cannell's request could only have been given by officers at Senior Management level within its Social Work service. In the process of dealing with the request, these officers had been asked whether they had issued such an instruction and had confirmed that they had not. An instruction from any other source would be unauthorised and, therefore, the Council submitted, not a true instruction at all. The Commissioner has difficulty with this approach – and for that matter with the robustness of simply checking with those theoretically responsible for giving an instruction as a means of verifying whether such an instruction exists.
12. In the Commissioner's view, it is certainly conceivable (in a real as opposed to an ideal world) that a management instruction might be given without proper authority. He also considers that any such instruction, if on the face of it lawful and otherwise reasonable, would be likely to be accepted as authorised by those receiving it and thus go unchallenged and be implemented. The Commissioner would therefore consider it unreasonable to attempt to confine the interpretation of the word "instruction" to one underpinned by proper authority. In this particular case, he also notes the Council's reference in its responses to Mr Cannell (both initially and on review) to the absence of a relevant policy: he has no doubt that a management instruction (properly so called) might exist in the absence of a supporting policy.
13. In the course of the investigation, however, the Council carried out further searches to establish whether a relevant instruction existed. From the outcome of these searches, the Commissioner is satisfied that the Council has taken adequate steps in the circumstances to identify and locate any information it holds which would, on a reasonable interpretation, fall within the scope of Mr Cairns' request. Having considered all of the submissions he has received, therefore, on balance he is satisfied that the Council was correct to give Mr Cannell notice that it did not hold the information he had requested.

## DECISION

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

Decision 080/2011  
Mr James Cannell  
and Glasgow City Council



## Appeal

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Should either Mr Cannell or the 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**  
**21 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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