

# Decision Notice

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**Decision 137/2015: Oxton House Rest Home and Glasgow City Council**

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## **Step Up Service**

Reference No: 201500957

Decision Date: 26 August 2015



Scottish Information  
Commissioner

## Summary

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On 5 March 2015, Oxtton House Rest Home (Oxtton House) asked Glasgow City Council (the Council) how much it paid to private care homes per week for the Step Up Service for one individual.

The Council initially told Oxtton House that the information was exempt from disclosure under FOISA. After review, it stated that it did not hold the information.

Following an investigation, the Commissioner was satisfied that the Council did not hold the information Oxtton House had asked for. She did not require the Council to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 5 March 2015, Oxtton House made a request for information to the Council. It asked how much the Council pays private care homes per week for the Step Up Service for one individual. Oxtton House also asked for other information which is not the subject of this decision.
2. The Council responded on 31 March 2015. It stated that the information was exempt from disclosure under section 33(1)(b) of FOISA, because disclosure of the information would, or would be likely to, substantially prejudice the commercial interests of the care providers and/or the Council. The Council stated that the information consisted of sensitive pricing policies.
3. On 11 April 2015, Oxtton House wrote to the Council requesting a review of its decision. It did not consider the information was commercially sensitive.
4. The Council notified Oxtton House of the outcome of its review on 15 May 2015. It stated that the Step Up initiative is administered by the NHS, not by the Council, and that the Council did not pay any sum to care homes for this service. The Council explained that it was working in partnership with the NHS to develop the Step Up service. The Council confirmed it was aware of the rates which the NHS pays to the care homes which deliver this service, but stated that, if it was asked to provide this information, it would withhold it under section 33(1)(b) of FOISA.
5. On 19 May 2015, Oxtton House wrote to the Commissioner. Oxtton House applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Oxtton House was dissatisfied with the outcome of the Council's review because it considered that the information about the NHS could have been provided sooner, before it had requested a review of the Council's response.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Oxton House made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 19 June 2015, the Council was notified in writing that Oxton House had made a valid application. The Council confirmed that it was not withholding any information covered by the request from Oxton House. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions. The Council responded on 31 July 2015.
9. The Council was asked for further information about the Step Up Service. The Council provided this information.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Oxton House and the Council. She is satisfied that no matter of relevance has been overlooked.

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

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
12. The Council told Oxton House that it did not pay any sum to care homes for the Step Up Service.
13. The Council explained that the beds for the Step Up care programme are delivered by a private company, under an existing contract that the NHS had in place for the provision of "Acute Services". There were surplus beds under this contract, and the NHS requested that the private company convert these to "Step Up" beds. The Council explained that payment is made directly to the private company by the NHS under the existing "Acute Services" contract. The Council provided a copy of a recent invoice.
14. The Council submitted that the above arrangements for the Step Up Service are not formally documented anywhere. The Council provided a copy of the Operational Policy for the Step Up Service which sets out the roles of the various Council and NHS professionals involved in delivering the scheme.
15. It was noted that the Operational Policy relates to North East Glasgow solely. The Council was asked if the Step Up Service was in place in other parts of Glasgow. The Council stated that it was not.
16. The Council was asked why it had told Oxton House that the information it had asked for was exempt from disclosure, instead of telling it that the Council did not hold the information.

17. The Council stated that it initially understood that it held the information and took the view that Contractor's rates would be exempt under section 33(1)(b). However, upon review, it became apparent that the Council did not hold the requested information. The Council stated that it had then revised its position and issued Oxton House with a notice under section 17(1) of FOISA (i.e. confirming that it did not hold the information).
18. The Council acknowledged that it ought to have expressly referred to section 17(1) in its review response to make clear that it did not hold the specific information requested by Oxton House.
19. Having considered the Council's submissions and, in particular, the contents of the Operational Policy for the Step Up Service, the Commissioner accepts that the Council does not hold the information requested by Oxton House.
20. The Commissioner wishes to make it clear at this point that section 21(4) of FOISA permits an authority to modify or change its initial response at the review stage. Where this occurs, it is the authority's review response which determines whether it has complied with FOISA in dealing with the request (see section 47(1) of FOISA).
21. The Commissioner takes the view that the Council's review response did not make it entirely clear that it did not hold the information requested by Oxton House. The Council told Oxton House that it did not pay any sum to care homes for the Step Up service, but also stated: "...even although the Council holds the information about the relevant fee, if the Council were asked to disclose it, as detailed in our earlier response we would consider this information to be exempt because of the exemption contained in section 33(1)(b) of FOISA".
22. The Commissioner recommends that the Council reviews the way it responds to requests to ensure that, in future, it takes steps to identify what information that it holds before refusing to provide information. Where it does not hold the information that has been requested, this should be made clear to the requester.
23. However, the Commissioner accepts that the Council complied with Part 1 of FOISA in dealing with the information request from Oxton House, and does not require the Council to take any further action in relation to that request.

## Decision

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

## **Appeal**

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Should either Oxton House or the Council wish to appeal against this decision, they have the right to 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.

**Margaret Keyse**  
**Head of Enforcement**

**26 August 2015**

### 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.

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- (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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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**