

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2017

Public Authority: Swindon Borough Council
Address: Wat Tyler House
Swindon
SN1 2JG

Decision (including any steps ordered)

1. The complainant has requested information related to taxi and private hire vehicle compliance with the Equality Act 2010. The complainant is not satisfied with the response given by Swindon Council ('the Council') to four of his requests.
2. The Commissioner's decision is that the Council breached section 1(1)(a) with regards to requests 2 and 6 and breached section 10(1) with regards to requests 1, 2 and 6. She has decided that the Council complied with its obligation under section 16(1) with regards to requests 2 and 4.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 19 April 2017, the complainant wrote to the Council and requested information in the following terms:

"1) Please advise if you have produced, or currently intend to produce, a list of wheelchair accessible:

a) taxis

and

b) private hire vehicles

under the powers set out in S167 of the Equality Act 2010.

2) Please identify how many a) taxi and b) PHV drivers have applied for medical / physical impairment exemption under S166 of the Equality Act 2010 since S166 was commenced. If you've created a list under S167, please identify how many of the exemptions were in place before S167 and how many have been put in since.

3) Please state whether you voluntarily compiled a list of accessible taxis and private hire vehicles following the Department for Transport's guidance of 15th September 2010, which stated, in relation to section 167, "although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates". If you did produce such a voluntary list, please indicate when you did so, and provide the current list.

If you have produced a list of wheelchair accessible taxis and/or private hire vehicles under S167, or are going to, please tell me the following.

4) The date the list was instated or by which you intend to do so.

5) The accessibility requirements of a taxi for it to appear on the list.

6) How you intend to enforce drivers' compliance with S165.

5. The Council responded on 9 June 2017 as follows:

- Request 1 - the licencing authority does not hold a list of wheelchair accessible vehicles but a public register of all vehicles is available on request.
- Request 2 – information released.

- Request 3 – as request 1. In addition, the Licensing service intends to produce a list of wheelchair accessible vehicles in the future.
 - Request 4 – as request 1 and 3.
 - Request 5 – specific list not held. Since 2008, the only vehicles that can be licensed as Hackney carriages must be wheelchair accessible.
 - Question 6 – answer provided.
6. The complainant requested a review on 10 June 2017; dissatisfied with particular elements of the Council's response. He considered that the Council's response to request 1 did not address his specific request and that the responses to requests 2 and 4 did not make sense. The complainant asked the Council to explain various aspects of its response to question 6.
7. The Council provided a review on 10 July 2017. It said its answers in its initial response had been intended to be as helpful as possible and to provide as much information as possible. On review it recognised that the complainant had simply wanted answers to his specific questions. It provided the following responses:
- Request 1 – the Council has not produced a section 167 list of Hackney Carriages or Private Hire Vehicles but intends to do so by September 2017.
 - Request 2 – the Council confirmed it holds a non-statutory list that is the source of the information provided.
 - Request 4 – The Council hoped the above response clarified its position.
 - Question 6 – Council confirmed it is aware of its statutory obligations and has a local policy to ensure drivers' obligations are in place which mirrors the section 165 obligations.

Scope of the case

8. The complainant contacted the Commissioner on 8 July 2017 initially as he had not received an internal review. He remained dissatisfied following the review with his concern being that, in its original response, the Council had not provided the information he requested. The

Commissioner explained that the Council's internal review was the process by which it had hoped to address the complainant's concerns.

9. The complainant did not indicate to the Commissioner that he had a substantive complaint following the review, for example that the Council holds recorded information within the scope of one or more of his requests that it has not released.
10. As a result, the Commissioner's investigation has focussed on whether the Council's response complied with the specifics of the FOIA. Specifically, whether the Council complied with its obligations under section 1(1) and section 10(1) of the FOIA with regards to requests 1, 2 and 6, and with its obligation under section 16(1) with regards to request 2 and 4.

Reasons for decision

Section 1 – general right of access to information

11. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled:
 - (a) to be told if the information is held; and
 - (b) to have the information communicated to him or her if it is held.
12. In this case, at internal review, with regards to requests 1 and 2 the Council indicated that it has not produced a particular document, and that it holds a particular list (but not the list the complainant requested).
13. In the Commissioner's view it is debatable whether question 6 can be categorised as a request for recorded information. However, for the purposes of this notice, she has been prepared to consider that the Council should have treated it as such. She has therefore asked the Council whether it holds any recorded information falling within the scope of this request.
14. In response to the Commissioner's question, the Council confirmed to the Commissioner that it holds a non-statutory database for its own purposes but that this is not a list set out by the regulations under Section 167 of the Equality Act. The Council's response to the Commissioner does not clearly address whether it does or does not hold information falling within the scope of request 6, but she understands from it that the Council does not hold any recorded information that is relevant to this request.

15. The Commissioner has considered the responses that the Council gave to these three requests; initially and at internal review. She finds that the Council has complied with the specifics of section 1(1)(a) with regards to request 1. This is because at internal review it confirmed that it had not produced a section 167 list of Hackney Carriages or Private Hire Vehicles. While not a crystal clear confirmation that it does not hold the information requested, the Commissioner considers that a reasonable person can infer from the response that the information in question is not held.
16. With regards to requests 2 and 6, while the Commissioner appreciates that the Council was endeavouring to be helpful, because it did not make it quite clear to the complainant that it does not hold the specific information requested in these two requests she must find that it breached section 1(1)(a) with regard to these requests.

Section 10 – time for compliance

17. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days.
18. Since the Commissioner has found that the Council has not complied with section 1(1)(a) with regard to requests 2 and 6, it follows that the Commissioner must find that the Council has breached section 10(1) with regard to these requests. The Council has also breached section 10(1) with regard to request 1 as it did not confirm it does not hold the requested information within the required timescale.

Section 16 – advice and assistance

19. Section 16(1) of the FOIA says that a public authority must offer an applicant advice and assistance so far as it would be reasonable to do so.
20. The complainant considered that the Council's responses to requests 2 and 4 did not make sense. The Council clarified its responses in its internal review. It confirmed that the list to which it had referred and from which it derived the information it had given the complainant is a non-statutory list and not a list as formally set out under section 167 of the Equality Act. With regard to request 4, the Council indicated that it expected to produce a section 167 list by September 2017.
21. The Commissioner appreciates that the complainant found the Council's original response to these two requests unclear. However, she considers that the clarification the Council gave the complainant was adequate and that, in its responses to the complainant, it was endeavouring to be helpful. On balance, she has therefore decided that the Council complied with section 16(1) with regard to these requests.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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