

# Decision Notice

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**Decision 070/2019: Mrs V and Glasgow City Council**

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**Transcript from the public tariff appeal**

Reference No: 201900239  
Decision Date: 8 May 2019



Scottish Information  
Commissioner

## Summary

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The Council was asked for the full transcript of a public tariff appeal hearing. The Council told the requester it only held a partial transcript. It disclosed this to the requester.

The Commissioner investigated and found that the Council did not hold a full transcript of the hearing.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (Duty to provide advice and assistance); 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 24 October 2018, Mrs V made a request for information to Glasgow City Council (the Council). The information requested was a copy of the full transcript from the public tariff appeal hearing held on a specific date, held before the Traffic Commissioner. Mrs V explained that text from the transcript was quoted to her at a meeting she had attended with a Council employee. (Mrs V also requested other information from the Council which did not form part of her application to the Commissioner, and that information is not considered further in this decision.)
2. Traffic Commissioners are responsible for the licensing and regulation of bus, coach and goods vehicle operators, and registration of local bus services. They also deal with professional drivers at conduct hearings. The Traffic Commissioner for Scotland has a number of additional responsibilities, including for taxi fare scale appeals.
3. The Council notified Mrs V on 21 November 2018, in terms of section 17 of FOISA, that it did not hold the full transcript. The Council explained that hearings before the Traffic Commissioner are recorded but not routinely transcribed and that it had paid for part of the hearing to be transcribed to assist an investigation. The Council supplied that transcription (“the partial transcript”) to Mrs V. As the meeting was public, the Council did not redact any information in the partial transcript.
4. On 2 December 2018, Mrs V wrote to the Council requesting a review of its decision on the basis that she believed the information she had requested was held by the Council, as a named member of Council staff had confirmed that the hearing was recorded. Mrs V said that the Council staff member had been asked if the Council held the full transcript and had replied “yes” and that the recording could be made available to verify any statements.
5. The Council notified Mrs V of the outcome of its review on 6 December 2018. The Council upheld its initial response. It said that hearings before the Traffic Commissioner were recorded, but not routinely transcribed, and advised Mrs V that she could request a full transcript from the Traffic Commissioner, though a fee may be charged by the Traffic Commissioner to supply a full transcript to her.

6. On 25 January 2019, Mrs V wrote to the Commissioner. Mrs V applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs V stated she was dissatisfied with the outcome of the Council's review because she believed the information was held by the Council.

## **Investigation**

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7. The application was accepted as valid. The Commissioner confirmed that Mrs V made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
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. These related to how it had established the information it held.

## **Commissioner's analysis and findings**

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9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both Mrs V and the Council. He is satisfied that no matter of relevance has been overlooked.

### **Section 17(1) - 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 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. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
11. The Council confirmed that it still wished to rely on section 17(1) of FOISA for Mrs V's request (of 24 October 2018) for the full transcript from the public tariff appeal hearing before the Traffic Commissioner. The Council explained it had not been necessary for it to search for the information requested as the request related to a specific document that the Council's Licensing Department had to order from the Traffic Commissioner directly. The Council had initially requested a full copy of the transcript on 27 September 2018, but on 2 October 2018 had contacted the Traffic Commissioner's Office and said that it only required part of the transcript, which the Council specified. (The Commissioner was given a copy of the correspondence between the Council and Traffic Commissioner to evidence this.) Being aware of this communication, the Council employee had no need to carry out searches to establish if the full transcript was held.
12. No subsequent orders were placed by the Council's Licensing Department for a full copy of the transcript. The Council also supplied the Commissioner with a copy of the invoice for the partial transcript.
13. In her application to the Commissioner (of 25 January 2019), Mrs V explained why she believed the Council held the full transcript. The Council was therefore invited to comment on these points. The Council replied that the comments were the applicant's opinions and assumptions on why the Council should hold the full transcript. The Council explained why it had requested a partial copy of the transcript from the meeting, and repeated that "it is not normal practice for the Council to request copies of transcripts of meetings".

14. For Mrs V's comment that a named member of Council staff had confirmed that the hearing was recorded, the Council explained that, having looked into this matter, the member of Council staff had confirmed that the Council had a copy of the transcript, but did not specify whether this was the full or partial copy of the transcript. The staff member did not, the Council explained, have any involvement in the case with the Traffic Commissioner and has not had sight of the transcript.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information.
16. The Commissioner accepts that the Council has provided sufficient evidence to show - to the standard of the balance of probabilities - that it does not hold the information requested by Mrs V. In this context, it is clear to the Commissioner that in assessing whether it held the information the Council consulted the most appropriate staff and those with experience of the subject, reducing the likelihood of relevant information being overlooked.
17. The Council has also evidenced to the Commissioner, by providing a copy of correspondence and an invoice, that what was requested by it was a partial transcript, and not a full transcript. The correspondence also shows that this was held before the date of Mrs V's request. Also, the Commissioner accepts that it is not normal practice for the Council to request such transcripts, and there would be no reason why the Council would necessarily need or hold a full transcript.
18. The Commissioner is therefore satisfied, on the balance of probabilities, that the Council does not hold the recorded information which Mrs V asked for.

### **Section 15 - Duty to provide advice and assistance**

19. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. In its responses to Mrs V, the Council referred to section 15 of FOISA.
20. *The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public authorities under FOISA and the EIRs*<sup>1</sup> provides (at paragraph 9.3) that where an authority does not hold the information but is aware that it is held by another public authority, it should in its refusal notice provide the applicant with contact details of the authority holding the information and suggest that the applicant makes a new information request to that authority.
21. The Council explained to Mrs V in its initial response (of 21 November 2018) that hearings before the Traffic Commissioner are recorded, but not routinely transcribed and that it had paid for part of the hearing to be transcribed to assist an investigation. The Council therefore complied with paragraph 9.3.1 ("is good practice for an authority to explain to the applicant why it does not hold the information") of the Scottish Ministers' Code of Practice.
22. The Council also supplied that transcription ('the partial transcript') to Mrs V.
23. In its responses, the Council indicated to Mrs V that she could obtain the full transcript from the Traffic Commissioner, for a fee. Although the Council did not supply contact details for

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<sup>1</sup> <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

the Traffic Commissioner to Mrs V, it is reasonable to assume that Mrs V would be aware (due to her knowledge and the background to her request) the contact details of the Traffic Commissioner.

24. In the circumstances of this case, the Commissioner is satisfied that the Council complied with its duty under section 15(1) of FOISA.

## 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 Mrs V.

## Appeal

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Should either Mrs V 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**

**8 May 2019**

## Appendix 1: Relevant statutory provisions

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### 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.
- ...

#### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

#### 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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