

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 21 May 2018

Public Authority: Stafford Borough Council
Address: Civic Centre
Riverside
Stafford
ST16 3AO

Decision (including any steps ordered)

1. The complainant has alleged that the public authority has failed to respond to his information requests. The Council says it has provided all the relevant information it holds.
2. The Commissioner's decision is that the public authority does not hold any further information. The Commissioner does not require any steps to be taken.

Request and response

3. The complainant has been in dispute with the Council regarding its calculation of taxi licencing fees. He has made several requests for information to the Council over the last few years.
4. On 20 September 2016, the complainant requested the following information from the Council (request 1):

"Will you forward the breakdown of costs and time allocated for each licence under each heading below.

Hackney Carriage and Private Hire

Drivers' Licences

1. (a) Dual 1 year licence
2. (b) Dual 3 year licence
3. (c) Medical examination fee
(c1) Admin fee for medical

4. (d) *Criminal Records Bureau search*
5. (e) *Replacement Badge*
6. (f) *Replacement Licence*
7. (g) *Knowledge Test*
8. (h) *Knowledge Test resit*

Vehicle Licences

1. (a) *Each licence*
2. (b) *Administration fee for late production of vehicle insurance documents*
3. (c) *Annual licence condition compliance inspection*
4. (d) *Replacement Licence (copy)*

Vehicle Plates

- (a) *Replacement internal and external*
- (b) *Replacement inside plate.*

Vehicle Transfer Administration Fee

- (a) *Transfer fee as new vehicle*

Private Hire Operator's Licence

- (a) *Private Hire Operator's Licence (office base)*
Please provide how many licences or item were issued"

5. On 21 September 2016 the complainant submitted a further request (request 2):

"STAFF HOURS

You say staff total hours are 30.05% based on 2.5 staff can you give a breakdown of how this is achieved and how you have proportioned these hours to each licence."

6. The Council failed to respond to these requests within the statutory time for compliance, and the complainant contacted the Commissioner to complain on 21 December 2016. The Commissioner subsequently issued a decision notice requiring the Council to respond.¹

¹ Decision notice FS50660774, issued 22 March 2017.

7. Following the Commissioner's decision notice, the Council issued its response to the complainant on 20 April 2017. In this it provided what it considered to be the held information for the complainant's requests, which included a previous response it had issued to the complainant on 28 April 2015.
8. The complainant requested an internal review, and the Council issued the outcome of that review on 3 August 2017. This confirmed the Council's position that it considered all the relevant information had been disclosed to the complainant. It also provided an explanation of the basis for its calculations.

Scope of the case

9. The complainant remained dissatisfied with the Council's response and asked the Commissioner to investigate. Specifically the complainant was of the view that the Council ought to hold detailed information to explain how it had calculated various tax licensing fees.

Reasons for decision

Section 1: information not held

10. Section 1 of the FOIA says that public authorities are required to respond to requests for information. The authority is required to disclose information in response to a request, unless an exemption or exclusion applies. If a public authority does not hold recorded information that would answer a request, the Commissioner cannot require the authority to take any further action.
11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. Accordingly her investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps she could require the public authority to take if the complaint were upheld.
12. The Commissioner understands that this complaint relates to section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976, which states that the Council:

"...may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so".

13. The complainant is of the view that the Council has failed to provide him with detailed evidence to justify the fees and charges set. He is of the view that the Council ought to be able to produce this information in order to demonstrate compliance with the legislation cited above.
14. The Commissioner has stressed to the complainant that she can only investigate whether or not information is held by a public authority, not whether it ought to be held. If, having investigated a complaint, the Commissioner finds that the public authority does not hold the information in question, there is no further action she can require the authority to take. She cannot require a public authority to provide opinion or explanation where this is not already recorded.
15. The Commissioner asked the Council what recorded information it held that demonstrated how its fees were considered "reasonable". The Council explained that the fees and charges in force at the time of the request had been set on 1 June 2012, and had not been increased since that date. The Council confirmed that it had provided the complainant with information relating to income and expenditure which demonstrated that the fees and charges were based on cost recovery.
16. The Commissioner asked the Council what work it had undertaken when setting the fees and charges, ie before 1 June 2012. The Council explained that an individual member of staff had been responsible for this work, but had since retired. The Council was therefore unable to consult the individual in question, but it did check with colleagues in the relevant business area.
17. The Council explained that it had first calculated the cost of the whole licencing service, and then separated out the time dedicated solely to taxi licencing. The number of each of the different types of licence, and the average time taken to process each licence was then calculated. The Council used this to work out the percentage of overall taxi licencing staff time spent on each type of licence, and consequently the relative cost of each licence. The Council confirmed that the cost included staffing and non-staffing costs.

18. In terms of recorded information, the Council clarified that at the time the charges were set (2012) it would have held the staff member's original workings. In 2015 the Council used this information to provide the complainant with a letter outlining the results of the calculations. However, the Council stated that by 2017 it no longer held the original workings.
19. The Commissioner understands that the complainant is dissatisfied at the fees and charges set by the Council. However the Commissioner has again stressed that she is unable to consider the reasonableness (or otherwise) of the Council's actions. The Commissioner's remit is limited to ascertaining whether the Council is likely to hold further information relevant to the request. The Commissioner considers that the Council has provided an adequate and realistic explanation as to how it is satisfied that it does not hold any further recorded information. The Council has also provided the complainant with the recorded information that it does hold.
20. The Commissioner is unable to identify any further action that the Council could reasonably be expected to take in order to comply with the request. As has been set out above, if information is not held then it cannot be disclosed in response to a request. The Commissioner cannot comment on whether the Council ought to hold more detailed information relating to the calculation of fees and charges.
21. In conclusion, the Commissioner finds, on the balance of probabilities, that the Council does not hold any further information relevant to the request.

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:

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

Sarah O’Cathain
Senior Case Officer
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Wycliffe House
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Wilmslow
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SK9 5AF