

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2018

Public Authority: Fenland District Council
Address: Fenland Hall
County Road
March
Cambridgeshire
PE15 8NQ

Decision (including any steps ordered)

1. The complainant requested information from Fenland District Council ("the Council") about whether it has a list of accessible vehicles published in accordance with section 167 of the Equality Act 2010.
2. The Commissioner's decision is that the Council breached sections 1(1) and 10(1) of the FOIA as it did not, within the statutory time for compliance, inform the complainant in writing whether it held information of the description specified in the request nor provide him with the information.
3. The complainant has now been provided with the information he requested and the Commissioner does not require the Council to take any steps.

Request and response

4. On 4 November 2017, the complainant wrote to the Council via the website What Do They Know and requested some information under the FOIA. The terms of the request are set out in the annex to this notice from page 5 onwards.

5. The Council responded on 13 November 2017 and provided a link to some information on its website.
6. On 14 November 2017, the complainant asked for an internal review, explaining that he considered that the response had not provided him with the information he had requested.
7. On 1 December 2017, the Council responded with the outcome of the internal review as follows: *"We do not hold this data. We have sent you the website link for what information we do have. Apologies for not having the data you need. Therefore further to section 12 of the FOI act the cost of compliance would exceed the appropriate limit due to the work that would be required to capture the data. We are improving our software at the moment and it is envisaged over a period of time we will be able to get the information captured within our software to be able to report."*

Scope of the case

8. The complainant contacted the Commissioner on 8 December 2017 to complain about the way his request for information had been handled.
9. During the scope of the investigation, the Commissioner asked the Council to reconsider its position. The Council subsequently revisited the request, and provided the complainant with a full response on 25 May 2018. The complainant is now satisfied with the information that has been provided to him.
10. This notice considers the Council's compliance with the relevant procedural sections of the FOIA.

Reasons for decision

Section 1 of the FOIA – General right of access to information

11. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled:
 - a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - b) If that is the case, to have that information communicated to him.

12. Section 10 of the FOIA places a further obligation on a public authority to comply with section 1 within 20 working days of the date of the request, unless it is able to state a valid exemption.
13. In this case, the Council appears initially to have considered that all of the information requested by the complainant was on its website. After being informed by the complainant that this was not the case, it carried out an internal review.
14. The Commissioner considers that the Council's internal review response to the complainant was unclear. The Council was unclear whether it held the information, or whether in fact information may be held which the Council was, however, unable to retrieve.
15. The Council referred to section 12 of the FOIA, but since it was not able to state clearly whether it held the requested information, it does not appear to have been cited correctly.
16. The Council appears not to have given serious consideration to responding until after the involvement of the ICO.
17. The Commissioner has determined that the Council has breached sections 1(1) and 10(1) of the FOIA since it did not inform the complainant whether information was held, nor provide it to him, within the time for compliance.
18. Since the information has now been provided by the Council, the Commissioner does not require it to take any steps.

Other matters

19. The Commissioner is aware that a large number of other local authorities responded in accordance with their obligations under the FOIA to the complainant, who is conducting research, regarding information that they hold about lists of accessible vehicles. She is disappointed with this Council's initial efforts to respond, and would remind the Council of the need to consider in detail what information is held so that a request may be responded to meaningfully within the statutory time for compliance.

Right of appeal

20. 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

21. 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.
22. 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

Ben Tomes
Team manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex to Decision Notice FS50715348 – request to Fenland District Council dated 4 November 2017 made via What Do They Know¹

"I have previously made a similar request to you in April 2017. 6+ months later, I am repeating the request with some variations. I am repeating because the Statutory Guidance states *"We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions"* – 'these provisions' having been commenced on 6th April.

In response to my previous FOI request on similar matters in April 2017, you indicated that you did not have any Section 167 lists and did not at that time have any intent to create such a list.

1) The Government guidance states: *"Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra."*

Please can you indicate whether you have changed your position since April, such that you do now have a list of wheelchair accessible taxis under your powers set out in Section 167 of the Equality Act 2010, and/or a list of wheelchair accessible private hire vehicles?

2) If you do now have such a list, please provide information in response to the following questions 2a) to 2j):

2a) On what date was it put in place?

2b) The statutory guidance states *"The Government therefore recommends that a vehicle should only be included in the authority's (S167) list if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair."* Is this the definition you have used for a taxi or PHV to be considered wheelchair accessible for the purposes of the list?

2c) The statutory guidance states: *"Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'. LAs should ensure that their designated lists are*

¹ https://www.whatdotheyknow.com/request/s167_list_of_accessible_taxis_up_28

made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator." Have you published your list? Is it marked "*designated for the purposes of Section 165 of the Act*"? Is the make and model of each vehicle listed? Is each vehicle identified as a taxi or a private hire vehicle? Is the name of the operator of each vehicle given in the list? Have you made owners and drivers of vehicles on the list aware that their vehicle has been listed?

2d) The guidance states: "*it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.*" Does your list include information on each vehicle as to the size and weight of wheelchair that can be accommodated, and whether wheelchairs larger than a 'reference wheelchair' can be accommodated?

2e) The guidance states: "*We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication.*" Have you provided non-exempt taxi/PHV drivers with such guidance?

2f) The guidance states: "*We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running*". Have you updated such rules to make this clear?

2g) The guidance states: "*Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.*" Please tell me how many such applications have been made to the Magistrates Court, and how many have been successful.

2h) How many drivers has the authority prosecuted for discriminatory behaviour contrary to S165 of the Act? How many such prosecutions were successful? What were the sentences?

2i) How many drivers licensed by yourselves have been prosecuted by other people or bodies for failure to comply with S165 of the Act? How many such prosecutions were successful? What were the sentences?

2j) Where drivers have been prosecuted under S165 of the Act, thus affecting their standing as a "*fit and proper person*", what resultant disciplinary action have you taken in respect of their taxi or private hire vehicle drivers' licenses?

3) If you do not have a S167 list or lists now, please indicate if you intend to produce such a list.

4) If you don't have a S167 list but do intend to produce one, please provide information in response to questions 4a) and 4b) below.

4a) Please indicate when you intend to have the list in place.

4b) Where you have already made relevant decisions, please indicate whether you intend to comply with the elements of the statutory guidance set out in 2b) to 2f) above.

5) Irrespective of whether you have created a list or not or indeed whether you intend to create such a list, since 2010 you have been obliged to process applications under Section 166 of the Equality Act for driver medical exemptions from the duty to transport and not discriminate against wheelchair users. The Guidance states; *"the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010."*

5a) How many exemptions have you granted under S166 of the Equality Act 2010?

5b) The guidance states: *"We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner."* Do you accept or require a letter or report from a GP to process applications for driver exemption under S166?

5c) The guidance states: *"The Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant."* Have you appointed independent medical assessors to determine applications for medical exemption under S166?

5d) Please provide a copy of your application form for driver exemption under S166.

5e) The guidance states: *"Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal."*

How many appeals against refusal to issue S166 exemptions have been heard?

5f) How many appeals against refusal to issue S166 exemptions were successful?

6) The guidance states: *"We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance."*
Do you currently publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchairs into a seat within the vehicle?"

end of request