

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 June 2018

**Public Authority:** Richmondshire District Council

**Address:** Mercury House  
Station Road  
North Yorkshire  
DL10 4JX

#### Decision (including any steps ordered)

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1. The complainant has requested information with regards to section 165 - 167 of the Equality Act. The council provided its response but the complainant did not consider it was clear as to whether the list that the council had provided to him complied with section 167 of the Equality Act. He also asked the Commissioner to determine whether the council has complied with section 16 of the FOIA – advice and assistance.
2. The Commissioner's decision is that the council's response did not comply with section 1 of the FOIA but that it was not required to provide any further advice and assistance under section 16 of the FOIA in this case.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 4 November 2017 the complainant made the following information request via the 'WhatDoTheyKnow' website:

*"I am writing this Freedom of Information Request in relation to your Council's compliance or otherwise with the Government's statutory guidance on implementation of S165-167 of the Equality Act, relating to taxi services for wheelchair users. All taxi licensing bodies are obliged under S167(6) to have "due regard" to the document "Access for wheelchair users to taxis and private hire vehicles: statutory guidance" at <https://www.gov.uk/government/uploads/sy...> . The questions I*

*raise below should be interpreted as requests for recorded information under the Freedom of Information Act.*

*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 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?"*

5. The council responded to the request on 1 December 2018. The complainant requested an internal review of the response on the 7 December 2018 as he was not satisfied with the council's response.
6. The council provided its internal review on the 22 December 2017 stating it has published a wheelchair accessible list on its new website, which went live on the 19 December 2017 and provided a link to the list.
7. The council stated that it believes this list complies with the requirements under section 167 of the Equality Act 2010, however to comply fully, the council must notify the drivers, which will be done during its vehicle relicensing period, i.e. April 2018.

## Scope of the case

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8. The complainant contacted the Commissioner on 23 December 2017 to complain about the way his request for information had been handled.
9. Specifically, he was not satisfied with the council's response to the first part of his request where he asked the council to confirm whether it now has a list of wheelchair accessible taxis, and/or a wheelchair accessible private hire vehicles under the council's powers set out in Section 167 of the Equality Act 2010.
10. The complainant considers the council's response is not clear as to whether the list provided was created under section 167 of the Equality Act 2010 or not because even though the internal review response states the council believes this complies with section 167, the council's response to his previous request in April (in which the same list was provided) was that the list did not comply with section 167 of the Equality Act 2010 and it also stated it did not intend to produce a S167 list.
11. He has also asked the Commissioner to consider whether the council has complied with section 16 of the FOIA – advice and assistance.
12. The Commissioner considers the scope of the case is to determine whether the council has complied with section 1 of the FOIA, essentially whether it has confirmed if it holds a section 167 list or not.
13. The Commissioner will then consider if the council was required to provide any advice and assistance as per section 16 of the FOIA.

## Reasons for decision

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### Section 1 of the FOIA

14. Section 1 of the FOIA states:
  - (1) 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 the information of the description specified in the request, and
    - (b) if that is the case, to have that information communicated to him.

15. The Commissioner has considered the council's response to part 1) of the complainant's request. Its response was:

*"Our position has not changed since we responded to you in early November 2017, ie The list is updated annually – the current list was created 1 April 2017 – when licences are renewed as per statutory regulations, this is published on our website."*

16. The November response is in relation to the complaint's previous, similar request that he had made in April 2017 in which the council had responded to say, amongst other things:

*"We are not aware that the list we provided was compiled as a result of S167 of the Equality Act 2010" and "We simply produce a list of accessible taxi's as part of our website/customer service to the residents of Richmondshire."*

17. The council's internal review response to the complainant's latest request was:

*"We believe this list complies with the requirements under 167 of the Equality Act 2010, however, to comply fully with the Act we must notify the drivers and this will be done during our vehicle relicensing period ie April 2018."*

18. The Commissioner has asked the council for comment on this complaint and it has told the Commissioner it does not hold a section 167 list. It has stated that it is not a statutory requirement to have one. But it does provide a list of wheelchair accessible vehicles and the council is actively encouraging new vehicle proprietors to take its 'special licenses'.

19. The council considers it is more than meeting the needs of wheelchair users within its district and so does not see any added value in producing a list under Section 167.

20. On considering the council's responses, the Commissioner considers that the council has provided the list it does hold although it was less than clear as to its specific status under the Equality Act. It now seems clear to the Commissioner that, whilst the list could be said to have been curated within the 'spirit' of the Equality Act, without having completed the necessary procedural requirements, it cannot be described as a section 167 list

21. Therefore, the Commissioner finds that the council has breached section 1(1)(a) of the FOIA in this case as it ought to have stated that the specific information sought was not held.

## Section 16 of the FOIA – Advice and Assistance

22. Section 16 states:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

23. Section 16(1) says that a public authority should provide advice and assistance, so far as it would be reasonable to expect the public authority to do so', to anyone who has made or is thinking of making a request for information.

24. Section 16(2) says that if a public authority conforms to the section 45 Code of Practice<sup>1</sup> in relation to providing advice and assistance, it will have carried out its duty under section 16(1).

25. Paragraph 23 of the Commissioner's guidance<sup>2</sup> on section 16 of the FOIA states that *"A public authority may offer advice and assistance in the following circumstances:*

- *If someone needs to know what types of information the authority holds and the format in which it is available, as well as information on the fees regulations and the charging policy of the authority.*
- *If a request has been made, but the public authority cannot regard it as a valid request because insufficient information has been*

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<sup>1</sup> <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>



*provided to allow them to identify and locate the information requested.*

- *If a request has been refused, for example on grounds of excessive cost and it is appropriate for the public authority to assist the applicant in the making of a subsequent request."*
26. Section 16 of the FOIA is essentially to aid a complainant to make, clarify or refine a request.
  27. In this case, the council did not require the complainant's request to be clarified or refined in order for it to be able to respond. The complaint is that the requestor is not satisfied with the council's response to his request.
  28. The actual response provided, which should have been a refusal notice within the terms of section 17, did provide information which the council considered relevant to the request. Unfortunately, the ambiguity with which the list was described, as per its compliance with section 167 of the Equality Act, confused the status it should be afforded. So, whilst the provision of the list was well meaning and intended to provide context for the council's actions in the area of interest to the complainant, it actually served to cloud the matter.
  29. Had the council responded to the complainant in the same way it did to the Commissioner's enquiries, it may have saved the Commissioner from having to investigate and issue a decision notice on this case.
  30. Therefore, the ensuing confusion was a result of not having issued a compliant refusal notice, rather than a lack of help and assistance. As such, the Commissioner finds no breach of section 16.

## Right of appeal

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31. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**