

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2019

Public Authority: Bradford City Council
Wharfedale House
16 Wharfedale Lawns
Wetherby
West Yorkshire
LS22 6PU

Decision (including any steps ordered)

1. The complainant requested information about licensed taxis that were accessible to disabled people.
2. The Commissioner's decision is that Bradford City Council ("the Council") failed to provide a valid response within 20 working days and has therefore breached Section 10 of the FOIA.
3. As a satisfactory response has now been issued, the Commissioner does not require any further steps to be taken.

Request and response

4. On 2 May 2018, the complainant contacted the Council and requested the following information:¹

"1) Please can you indicate whether you have now implemented a list of wheelchair accessible taxis under your powers set out in

¹ The original request was lengthy and contained numerous quotes from legislation or guidance. In the interests of brevity the Commissioner has only included these quoted sections where the request would otherwise be unclear.

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'. 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) 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) 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."

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 still intend to produce such a list.

4) 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....

4a) How many exemptions have you granted under S166 of the Equality Act 2010?

4b) Do you accept or require a letter or report from a GP to process applications for driver exemption under S166?

4c) Have you appointed independent medical assessors to determine applications for medical exemption under S166?

4d) Please provide a copy of your application form for driver exemption under S166.

4e) How many appeals against refusal to issue S166 exemptions have been heard?

4f) How many appeals against refusal to issue S166 exemptions were successful?

5) 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 complainant acknowledged that some elements of his request were the same or similar to a request he had submitted in November 2017, but argued that there were some new questions in the above request and that the Council's position in respect of the other elements was likely to have changed in the intervening period.
6. On 24 May 2018, the Council issued a response. The response appeared to have been prepared in relation to the earlier request but there was no context to explain whether or not the Council was wishing to claim that its position was unchanged since responding to the previous request.
7. On 20 June 2018, the complainant requested an internal review as he argued that responding to an old and slightly different request was not the same as providing the information he had sought.
8. The Council issued a further response on 23 July 2018. Again, it was unclear which of the two requests the Council was attempting to respond to.
9. The complainant contacted the Council again on 25 July 2018 to complain that the Council had not adequately addressed his request. The Council responded again on 10 September 2018, apologising for the mistake and claiming it had now provided all the information it held.

Scope of the case

10. The complainant contacted the Commissioner on 11 September 2018 to complain about the failure, by the Council, to issue an adequate response to the request.
11. Given the confusing and contradictory nature of the Council's previous efforts at responding to the request, the Commissioner wrote to the Council on 17 December 2018 and asked the Council to revisit the request and provide a fresh response, identifying clearly where it did and did not hold information and citing exemptions where information was being withheld. The Council issued this response on 28 January 2019.
12. The complainant was satisfied with the substantive information provided, but was unhappy at the time and effort that had been required to elicit a proper response. He therefore asked the Commissioner to issue a decision notice addressing the timeliness of the response.

13. The scope of this notice and the following analysis is to consider whether the Council has complied with Section 10 of the FOIA.

Reasons for decision

14. 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.*

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

17. Section 10 of the FOIA states that a public authority must discharge its duties under Section 1(1) "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

18. From the evidence presented to the Commissioner in this case, it is clear that the Council failed to identify which information it held within the scope of the request and to disclose that information which it did hold to the complainant within 20 working days. It therefore failed to discharge either of its duties under Section 1(1) of the FOIA within the statutory period and has thus breached Section 10 of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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