

Decision Notice

Decision 131/2017: Mr Alan Nugent and Glasgow City Council

Calculation of taxi tariff

Reference No: 201700653

Decision Date: 9 August 2017



Summary

The Council was asked for information relating to the calculation of the taxi tariff for the Council's area. The Council stated it did not hold the information requested (with the exception of two reports, already published online, for which it provided weblinks) and issued a notice to this effect. The Commissioner investigated and was satisfied that the Council held no further information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 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. Both Appendices form part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 16 January 2017, Mr Nugent made a request for information to Glasgow City Council (the Council). The full text of his request is reproduced in Appendix 2 to this Decision Notice. His request referred to a meeting he attended on 15 June 2016 and a statement on the calculation of the taxi tariff for the Council's area. Part of the request covered data/research underpinning a particular statement made by a Council officer, for the years 2009 to 2016 inclusive.
2. The Council responded on 13 February 2017, informing Mr Nugent that it held only some of the information he sought and directing him to two reports it had published online.
3. On 13 February 2017, Mr Nugent wrote to the Council, requesting a review of its decision in respect of that part of the request described in paragraph 1 above. He believed there must more information held, not just two online reports. He explained what information he believed should be held and disclosed to him, particularly calculations underpinning the changes made to the tariff.
4. The Council notified Mr Nugent of the outcome of its review on 10 March 2017. It believed Mr Nugent had included a new request within his requirement for review (to which it would respond separately). The Council upheld its original decision, explaining that any calculations were carried out by an independent third party and were not held by the Council. It carried out no calculations or further research itself. The figures it provided to the third party were simply extracted from the register of current taxi licences (which was publicly available and to which section 25(1) of FOISA therefore applied), or comprised details of application fees (which it provided in a table).
5. On 12 May 2017, following a course of correspondence, Mr Nugent wrote to the Commissioner with an application for a decision in terms of section 47(1) of FOISA. Mr

Nugent stated he was dissatisfied with the outcome of the Council's review because he expected more information to be held. He provided reasons for this view and restricted his application to the years 2012 to 2016 inclusive.

6. The Commissioner can only interpret the application as relating to that part of the request described in paragraph 1 above, i.e. that part seeking data/research underpinning ("that accommodates", in Mr Nugent's words) the statement made by the Council officer at the meeting in June 2016.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Nugent made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. On 16 May 2017, the Council was notified in writing that Mr Nugent had made a valid application.
9. 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 answer specific questions. In particular, it was asked to provide details of searches carried out.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Nugent and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

Mr Nugent's submissions

13. In his application, Mr Nugent narrowed the date span to the years 2012 to 2016 inclusive. He explained his understanding of the data and contended that more information should be held.
14. Mr Nugent stated that, at the meeting he attended, a council officer made an *"extremely complex statement regarding recalibrating costs to the same operators from the present year to the past year"*. He contended that this was already done when the present year's figures were calibrated, using past figures as the baseline. He stated that the Council officer then revisited the figures at this meeting, recalibrating them again to get a different value.

15. Mr Nugent was not clear as to the calculations and base figures used. He wished to establish how the Council's figures were arrived at. He referred to perceived inaccuracies in base figures used by the Council, questioning whether the third party reviews had been based on accurate information. He did not, however, provide a clear explanation of why he considered the Council held additional information falling within the scope of his request.

The Council's submissions

16. In its review outcome of 10 March 2017, the Council advised Mr Nugent that no calculations were carried out by it. At the same time, the Council explained, it provided Mr Nugent with details of all information it held and which was passed to the third party to allow them to produce the technical reports for the 2014/15 and 2015/16 tariff reviews (which resulted in the two online reports). For the avoidance of doubt, the Council also stated that this supplementary information was not recorded information to which the Council officer had regard to when making their statement at the meeting in June 2016.
17. The Council explained the searches carried out (of its electronic document management system, paper notes and the emails of the officers concerned) and confirmed that it held no recorded information relied upon by the officer to concerned to "accommodate" their statement. The officer concerned confirmed that they had only required to rely upon personal knowledge and two reports referred to in the Council's original response to Mr Nugent.
18. The Council explained that the statement made at the meeting was in direct response to a specific allegation by Mr Nugent. It also explained that the methodology for calculating the taxi tariff had changed in January 2014 and, as the statement in question related to the current tariff, information prior to that change could be of no relevance.
19. For clarity, the Council also confirmed that the 2016/17 tariff has yet to be commissioned and consequently the figures for 2016 had not yet been collated. In any event, given that the request related to "the alleged alteration of the composite vehicle cost figure between the 2014/15 and 2015/16 reports" (the subject matter of the officer's statement), the Council did not consider the 2016 figures to fall within the scope of the request.
20. To address the possibility that information held by the third party reviewer might fall within the scope of the request (which would presuppose, of course, that the officer was aware of this information when the statement was made), the investigating officer explored the extent to which this could be regarded as held on the Council's behalf. The Council did not consider this to be the case, noting that it only provided the third party with figures by make and model, any other data specific to these makes and models being gathered by the third party themselves. The Council was only entitled to the report produced from these data, by way of a licence, and the third party was free to use the data elsewhere. The data were not subject to the Council's records management policies and procedures. Evidence was provided in support of this position.
21. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mr Nugent's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of the request.
22. Given the explanations provided, the Commissioner is satisfied that the Council holds (and held, on receiving the request) no further information – in addition to that already available to him – capable of addressing the relevant part of Mr Nugent's request of 16 January 2017.

23. The Commissioner is therefore satisfied that the Council was correct to give Mr Nugent notice, in terms of section 17(1) of FOISA, that it held no further relevant information.

Decision

The Commissioner finds that, in the respects covered by Mr Nugent's application, Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Nugent.

Appeal

Should either Mr Nugent or Glasgow City 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
Acting Scottish Information Commissioner
9 August 2017

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.

...

3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-

- (a) by the authority otherwise than-
- (i) on behalf of another person; or

...

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.

...

Appendix 2: Mr Nugent's request

At the meeting I attended on the 15.6.2016

Council officer stated "So for example, let us say that it is 45 per cent Tx4s and 55 percent E7s in 2014 and the ratio changed to 50/50 in 2015, those figures are recalculated based on that ration. So it's not a case that you look at the figures from 2014 and lift them over to 2015."

I wish to make a request for all data regarding figures in the taxi formula, that being all research, data calculations and associated paperwork for 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016 that accommodates this statement.

When one alters one figure then all other base figures must be recalibrated the list below shows the figures that would need to have been recalibrated so I would expect the corresponding data associated with the list detailed below. In short the altering of the past recorded base figures for different values in the formula a practice admitted the council carry out by this officer. I require the paperwork to verify the accuracy of the changes made

1. Taxi
2. Maintenance
3. Insurance
4. Parts
5. Labour
6. Licence fee explain why that the 2011 figure was substituted for the 2015 figure and implemented into the formula.

I presume since this statement was made at a public meeting all I have requested will be on file and should not cause any problems producing such.

Note when the insurance figure was changed to accommodate the change in the make up of operator's age in the fleet, this was put before the LRC for approval.

I also request the dates and documents when the ratio of the fleet was put forward to the LRC for approval

[Third Party] stated in the report published on the 22.1.2014 that it was not appropriate to look at the changes in the fleet on an annual basis, but it is every 5 years. This was approved.

It would appear that once again operational staff are changing the formula behind closed doors with no approval.

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