

# Decision Notice

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**Decision 037/2016: Mr Allan Nugent and Glasgow City Council**

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## **Calculation of Taxi tariff**

Reference No: 201501630

Decision Date: 16 February 2016



Scottish Information  
Commissioner

## Summary

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On 24 May 2015, Mr Nugent asked Glasgow City Council (the Council) for all information about the taxi tariff formula and, in particular, about how this was affected by the element “fair treatment of the public”.

The Council gave notice that it did not hold any information covered by the request. Following a review, Mr Nugent remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had largely complied with Part 1 of FOISA in responding to Mr Nugent’s request for information. However, when reviewing its response, it had wrongly re-interpreted Mr Nugent’s request and had failed to confirm that it did not hold any relevant recorded information (as required by section 17(1) of FOISA).

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 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. The Appendix forms part of this decision.

## Background

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1. On 24 May 2015, Mr Nugent made a request for information to the Council:  
*“I request all documents (research and calculations) relating to the taxi tariff formula from 2008 to date, which derived at the now known element in the formula FAIR TREATMENT [Mr Nugent’s emphasis] of the public, since it was stated that this was part of a mathematical formula.”*
2. On 4 June 2015, the Council asked Mr Nugent to clarify his request. The Council said its licensing section was unfamiliar with the term “fair treatment of the public” and how this formed part of the taxi tariff formula. The Council said that if Mr Nugent was referencing the expression “fair treatment of the public” from a Council document, it would assist if he could specify the document.
3. Mr Nugent clarified his request on 8 June 2015. He quoted from, and referenced, a letter from the Council to the Deputy Traffic Commissioner which referred to justifiable fair treatment of the public. Mr Nugent stated that the taxi tariff formula was designed to generate a tariff giving fair treatment to the taxi driver. He suspected the existence of a second unpublished formula, used to calculate fair treatment of the public. He stated that all elements in the taxi tariff formula are researched and given a value. He wished to know how the element “fair treatment to the public” was incorporated into the existing formula, as it appeared to affect other elements in the formula, but did not appear in any published calculations. He asked for information about its value; how it was arrived at; and by whom. He asked for any research into the justifiable guarantee of fair treatment of the public, and information on how it married up with the existing taxi tariff formula. If no research existed, he

asked the Council to explain the value of this element of the tariff, how it had been arrived at and by whom. He asked for information about the primary purpose of the original tariff.

4. On 2 July 2015, the Council responded that it did not hold information about the taxi tariff formula element "fair treatment of public". The Council explained that the term "fair treatment" was an objective of the tariff, not an element. The Council explained that the licensing authority must act in the public interest and fair treatment of the public is an implicit duty of the authority in setting the tariff. The purpose of the tariff was to give drivers "a justifiable fair return and a justifiable effective guarantee of fair treatment of the public". The Council confirmed that it did not hold a second unpublished taxi tariff formula.
5. On 7 July 2015, Mr Nugent wrote to the Council requesting a review of its decision. He believed that the Council had misinterpreted his request: he had not asked for the "mathematical value" of fair treatment of the public, but how fair treatment of the public affected the mathematical elements in the agreed formula used to calculate the tariff. Mr Nugent asked how the Council could state that the objective of the tariff was fair treatment of the public but have nothing to reference that conclusion. For the avoidance of doubt, he stated that he wanted "the research or background reports...justifying the changes in the formula to accommodate...fair treatment of the public".
6. On 4 August 2015, the Council told Mr Nugent that it was treating his letter of 7 July 2015 as a new request for information, as the questions he had asked were substantially different to the request originally submitted. The Council told Mr Nugent that if he wanted it to carry out a review of the response to the specific question he had asked on 7 July 2015 (believed to be a mistaken reference to Mr Nugent's letter of 8 June 2015), he should state the reason for his dissatisfaction with the response. In relation to what it regarded as new requests in Mr Nugent's letter of 7 July 2015, the Council asked for clarification of the time period covered by the request and whether Mr Nugent was referring to any specific change to the tariff during this time, or any change at all to the tariff.
7. Mr Nugent was dissatisfied that that the Council had treated his requirement for review as a new request and had asked for clarification. He explained by email of 4 August 2015 that he wished every piece of research from 2008 to see how the tariff had been affected. Mr Nugent referred to the wording of his initial request which he said was for "all documents, research and calculations relating to the taxi tariff from 2008 to date which derived at fair treatment of the public." Mr Nugent believed "changes were allegedly made in the formula from the day it was agreed (2007/2008) to date and there must be research to justify such changes".
8. The Council informed Mr Nugent of the outcome of its review on 28 August 2015. It stated that Mr Nugent's email of 7 July 2015 had not given reasons why he was dissatisfied with its response, so the Council had sought clarification. It stated that Mr Nugent's clarification, on 4 August 2015, removed his reference to his understanding of the role played by "fair treatment to the public". The Council advised that most of the information requested by Mr Nugent was publicly available on the Council's website and therefore exempt under section 25 of FOISA (Information otherwise accessible). The Council, by way of advice and assistance, had prepared and supplied a note setting out a timeline explaining the development and revision of the taxi tariff formula since 2008; this document contained links to the relevant Committee papers. The Council supplied a note summarising a meeting that took place on 23 February 2009 at which the taxi tariff had been discussed. It confirmed that this was all the information it held in relation to Mr Nugent's request.

9. On 3 September 2015, Mr Nugent applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Council's review because he had not received the information he had requested. Mr Nugent believed the Council had manipulated the wording of his request. He was unhappy that he had been asked for clarification; that part of his request for review had been treated as a new request; that the Council had changed the wording of his request; and that the Council had provided documents that were on its website and which corresponded to the amendments the Council had made to his request.

## **Investigation**

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10. 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.
11. 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 including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

## **Commissioner's analysis and findings**

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12. In coming to a decision on this matter, the Commissioner considered all 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.
13. By way of background, local authorities in Scotland issue licences to regulate various activities under the Civic Government (Scotland) Act 1982, including the operation of taxis. As part of the regulation of taxis, local authorities are required to set the taxi tariff for their area. When a member of the public uses a taxi to travel within the authority area, instead of the driver being able to charge any fare they wish, the driver can only charge up to the maximum fare permissible by the tariff. In most cases taxis are fitted with taxi meters to calculate the fare against the set tariff.
14. There is no set method for how authorities should set the tariff for their area, but Scottish Government guidance recommends that the tariff should be set with primary regard to the costs incurred by the taxi trade to give the trade a fair return. Guidance also recommends that authorities should not deliberately depress the tariff to the detriment of the trade for social reasons. Local authorities are required to review the tariff no later than every 18 months. In carrying out such a review the authority can seek views from bodies it considers representative of the taxi trade. The review can ultimately be appealed to the Scottish Traffic Commissioner.
15. The Commissioner's remit is limited solely to deciding whether the Council complied with Part 1 of FOISA in responding to Mr Nugent's request of 24 May 2015. The Commissioner gives no consideration here, and comes to no conclusion, as to whether the Council complied with any rules, guidance or legislation relating to its actions as a licensing authority. Such questions are beyond the remit of the Commissioner. Mr Nugent's application of 3 September 2015 states his dissatisfaction that:
  - his wording was manipulated by the Council

- the Council believed he had changed his request and treated it as a new request
  - the Council withdrew part of his request
  - the Council supplied documents which he already had
  - he had not received the information he had requested.
16. In relation to Mr Nugent's application, the Commissioner must decide whether the Council interpreted his request in a reasonable way and whether it identified and provided all information covered by his request.

*Clarification of the request*

17. Mr Nugent expressed dissatisfaction that the Council asked him to clarify his request of 24 May 2015.
18. Section 1(3) of FOISA provides that a Scottish public authority is not obliged to respond to an information request if it requires further information in order to identify and locate the information an applicant has requested, and has told the applicant so (specifying what further information is needed). A public authority is only entitled to seek such clarification if the requirement for further information is reasonable.
19. Mr Nugent's request was:
- "I request all documents (research and calculations) relating to the taxi tariff formula from 2008 to date, which derived at the now known element in the formula FAIR TREATMENT [Mr Nugent's emphasis] of the public, since it was stated that this was part of a mathematical formula."*
20. The Council strongly disagreed with Mr Nugent's allegations that it had manipulated his wording in its responses. The Council said that Mr Nugent's correspondence was very unclear, extremely difficult to understand and was essentially based on a fundamental misunderstanding of the taxi tariff formula and the way it is formulated. Therefore, in requesting clarification from Mr Nugent, the Council said it had attempted to focus his request and understand what information was required. The Council said that attempts were made to direct Mr Nugent to how the taxi tariff formula was actually calculated and what information the Council actually held. The Council did not consider that it could have been clearer in its various explanations to Mr Nugent as to how the taxi tariff formula is calculated.
21. The Commissioner understands that the difficulty the Council had in responding to Mr Nugent's request was that it appeared to be based on a misunderstanding: the factor described as "fair treatment of the public" is *not* an element of the tariff formula. If fair treatment of the public was an element of the formula, the request may have been easier to interpret and respond to, in terms of identifying whether the Council held any relevant recorded information. However, the Council knew that fair treatment of the public was *not* an element of the formula and therefore asked Mr Nugent where this term had been used. This seems a reasonable request for clarification, in the circumstances.
22. On the other hand, Mr Nugent had asked for the information because he was aware the expression "fair treatment of the public" had been used by the Council, in relation to the taxi tariff formula. Mr Nugent did not think "fair treatment of the public" was, or should be, an element of the formula and he was therefore seeking to understand how this factor related to, or affected the outcome of, the formula.

23. To the Commissioner's mind, Mr Nugent's request could be interpreted in at least two ways:
- Any information that resulted in the concept of fair treatment being incorporated into the formula (i.e. a request based on the incorrect assumption that fair treatment is part of the formula); or
  - Any information on how the concept of fair treatment of the public affected the formula itself (i.e. acknowledging that fair treatment is not part of the formula but seeking to understand how it affected the taxi tariff which was the outcome of the formula).
24. The Commissioner considers that Mr Nugent's request was not wholly clear. This is not a criticism of Mr Nugent. The way the request is worded and the use of "derived at" creates some ambiguity, as does the expression "at the now known element in the formula".
25. The Commissioner accepts that it was reasonable for the Council to seek further information from Mr Nugent to help it understand what information he was seeking. However, the request for clarification simply indicated that the Council was unfamiliar with the term "fair treatment of the public" and how this formed part of the taxi formula. It might have been helpful if the Council had let Mr Nugent know, at that stage, that there was no "fair treatment of the public" element in the taxi tariff formula.

#### *Interpretation of the scope of the request*

26. The next question is whether, having received Mr Nugent's clarification, the Council interpreted Mr Nugent's request in a reasonable manner. In his application to the Commissioner, Mr Nugent complained that, when reviewing its response to his request, the Council had manipulated the wording of his request and then provided information relating to the altered request, while failing to provide the information he had actually asked for. It is clear that Mr Nugent believes his request was not interpreted in a reasonable manner.
27. Mr Nugent's request appears to be a wide-ranging request (for "all documents"). However, it is qualified by the words "which derived at the now known element in the formula FAIR TREATMENT of the public." As noted above, the Commissioner considers that the original request could be interpreted in at least two different ways.
28. On 8 June 2015, Mr Nugent clarified his request (as described in paragraph 3 above).
29. To the Commissioner, Mr Nugent's email of 8 June 2015 appears to show that he was aware that the concept of fair treatment was not an element in the existing taxi tariff formula, although he asked whether a second, unpublished formula was being used to calculate fair treatment of the public. He asked:
- "Would you oblige me and give me sight of research into the justifiable guarantee of fair treatment of the public and the calculations evaluating fair, treatment of the public and also how it is married up with the first formula, in other words justify how you arrived at a virtual impossibility (fair treatment if the public.)"*
30. The Council explained that it had interpreted Mr Nugent's request of 24 May 2015 as being a request for all documents held by the Council which relate to and/or explain how "fair treatment of the public" is implemented as an element of the taxi tariff formula. As "fair treatment of the public" is not a mathematical element of the taxi tariff formula, the Council did not hold any relevant information and, on 2 July 2015, gave notice of this to Mr Nugent in accordance with section 17 of FOISA.

31. As noted, Mr Nugent was not satisfied with this response and made a request for review. The Council again asked for clarification, which was provided on 4 August 2015.
32. The Council considers that in his clarified review request, Mr Nugent substantially widened the scope of his initial request by excluding the reference to “fair treatment of the public”. The request therefore became a request for all documentation relating to the taxi tariff formula from 2008 to date.
33. The Commissioner does not agree with the Council. She notes that, in his review request of 7 July 2015, Mr Nugent explicitly stated that he wanted to receive “the research or background reports, that you have justifying the changes in the formula to accommodate presumably fair treatment of the public...”. The Commissioner therefore does not accept that Mr Nugent’s request for review excluded any reference to “fair treatment of the public”, or sought to widen the scope of his original request.
34. The Commissioner acknowledges that it is difficult to come to a conclusion on what would be a reasonable interpretation Mr Nugent’s request, in terms of the information that it covered. The Council’s response of 2 July 2015 made it clear that “fair treatment of the public” is not a known element of the taxi tariff formula. However, in his clarified request and request for review, Mr Nugent asked for information which shows how “fair treatment of the public” affects the calculations produced under the taxi tariff formula. He asked for information about “calculations evaluating fair treatment of the public” and “how it is married up with the first formula” (i.e. the existing taxi tariff formula). In his clarified request for review, Mr Nugent explained that the reason for his request was that the Council had implied that “fair treatment of the public” was the objective of the tariff.
35. Overall, the Commissioner is satisfied that Mr Nugent made it sufficiently clear that he was seeking information about how the concept of “fair treatment to the public” had been incorporated into the taxi tariff formula, or had otherwise affected the calculations made under the formula. Mr Nugent showed that “fair treatment to the public” was a concept which the Council had previously acknowledged as relevant to the taxi tariff formula (in its letter to the Deputy Traffic Commissioner). While his request may have been based on an incomplete or wrong understanding of how this concept did or did not affect the taxi tariff formula calculations in practice, it seems sufficiently clear to the Commissioner that the focus of Mr Nugent’s request, and his request for review, was information relating specifically to “fair treatment to the public” and not simply information relating in a general way to the taxi tariff formula.

#### **Sections 17 - information not held**

36. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case. 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.
37. The response to an information request is obviously affected by the interpretation of the request. The Commissioner has given her view on what is a reasonable interpretation of that request. She must now decide whether the Council complied with Part 1 in its response to that request.

38. Mr Nugent has asked the Commissioner to establish whether the Council holds any further information which is relevant to his request, and has complained that the information provided by the Council (which is available on its website) is not what he asked for.
39. During the investigation, the Council was asked how it established what information was covered by Mr Nugent's request. The Council replied that the officers within its licensing department were familiar with Mr Nugent's concerns in respect of the taxi tariff set by the Council. These officers also had extensive knowledge of the taxi tariff and the way in which it is calculated and were therefore able to confirm whether any information was held from their working knowledge of the taxi tariff. These officers knew that "fair treatment of the public" was not a mathematical element of the formula, and they were able to confirm that no recorded information existed.
40. The Council also searched the electronic files in its licensing department using the term "*fair treatment of the public*" and searched relevant physical files for any information that was relevant to Mr Nugent's request. The Council stated that no information was found.
41. The Council also contacted the manager of the Council's Taxi Inspection Centre to establish whether he was familiar with the term "fair treatment of the public". The Council evidenced this communication, which confirmed that the manager was not familiar with the term.
42. In relation to the information provided, the Council said it had provided Mr Nugent with links to all relevant publicly available documents, based on staff knowledge and dealings with the taxi tariff formula.
43. The Council was specifically asked if, at the date of the request, it held any recorded information which could be described as assessing "fair treatment of the public" in respect of the taxi tariff. The Council confirmed that it did not, and does not, hold any such information.
44. Having considered all the above submissions, the Commissioner is satisfied that the Council does not hold any recorded information falling within the scope of Mr Nugent's request. The Commissioner has considered the searches undertaken by the Council and is satisfied that they were reasonable and proportionate and capable of identifying any information which the Council held and which was covered by the terms of the request.

#### **Section 25(1) of FOISA - Information otherwise accessible**

45. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
46. In its review response, the Council informed Mr Nugent that information covered by his request was available on its website and provided links to the relevant web pages, relating to meetings of the Council's Licensing and Regulatory Committee in respect of the proposed tariff and the meetings between 25 April 2007 and January 2015.
47. Given that the Commissioner does not accept that Mr Nugent's request was capable of being reasonably interpreted as a general request for all information about the taxi tariff formula, she does not accept that the information available on the Council's website was covered by the request. Accordingly, she finds that the Council was wrong to direct Mr Nugent to this information. As the information was not covered by his request, the Commissioner is not required to reach a decision on whether the Council was entitled to withhold it under section 25(1) of FOISA.



## Conclusion

48. The Commissioner finds that the Council misinterpreted Mr Nugent's request, as presented in his request for review, and was wrong to respond in terms of the information already publicly available on its website. The Commissioner accepts that it was not a straightforward request, but believes it should have been apparent to the Council that Mr Nugent's concern was whether the application of the taxi tariff formula was affected by "fair treatment of the public". His request for review clearly stated that he sought research or background reports "justifying the changes in the formula to accommodate presumably fair treatment of the public", and this should have shown the Council that it was wrong to take a wider interpretation of the request.
49. However, the Commissioner accepts that the Council has shown that it does not hold any recorded information which would be covered by a reasonable interpretation of Mr Nugent's request, i.e. research or calculations which would show how the taxi tariff formula had been affected by taking into account "fair treatment of the public", since 2008.
50. As the Council did not confirm that it did not hold any information when responding to Mr Nugent's request for review, the Commissioner finds that its review response failed to comply with section 17(1) of FOISA.

## Decision

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The Commissioner finds that Glasgow City Council (the Council) largely complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Nugent.

The Commissioner finds that the Council failed to comply with section 17(1) of FOISA, in failing to give notice that it did not hold information covered by the request.

The Commissioner does not require the Council to take any action in relation to this failure.

## Appeal

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Should either Mr Nugent or the 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**  
**Head of Enforcement**

**16 February 2016**

## Appendix 1: Relevant statutory provisions

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### 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.

...

- (3) If the authority -
- (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is), then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.
- (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.

...

#### 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.

...

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