

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2017

Organisation: Halton Borough Transport Limited

Address: Moor Lane
Widnes
Cheshire, WA8 7AF

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of drivers prosecuted for failing to comply with their lawful duties to allow wheelchair users access to the buses.
2. Halton Borough Transport Limited (HBT) has explained that it is not a public authority for the purposes of the FOIA. It has therefore refused to respond to this request under the FOIA.
3. The Commissioner's decision is that HBT is not a public authority for the purposes of the FOIA. She therefore upholds HBT's position and requires no steps to be taken in this case.

Request and response

4. On 17 March 2017, the complainant wrote to HBT and requested information as described in the annex at the end of this decision notice.
5. HBT responded on 17 May 2017. It apologised for the delay in its response and stated that:

"..in 1986 the company was detached from the local authority to which we were set up as a limited company which is 99% owned by Halton council. As we are a limited company it is our belief that we do not fall within this act to which unfortunately your request for this information has been declined."
6. As HBT did not consider itself subject to the FOIA it did not offer an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 20 May 2017 to complain about the way his request for information had been handled.
8. The Commissioner's initial response on 21 June 2017 advised that HBT was not a public authority for the purposes of FOI.
9. The complainant contacted the Commissioner again on 22 June 2017 and asked the Commissioner to reconsider her response.
10. The Commissioner considers the scope of this case to be concerned with the question of whether HBT is a public authority for the purposes of the FOIA.
11. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("*Fish Legal*"), the Upper Tribunal Administrative Appeals Chamber (the "*UT*") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
12. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "*FTT*") may also hear appeals against the Commissioner's decisions and the *UT* may hear appeals against the decisions of the *FTT*.

Reasons for decision

13. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
14. If a public authority receives a request for information they are usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within the FOIA apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies.

15. The Commissioner has also referred to her own guidance on public authorities under the FOIA¹.

The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a "public authority" means-

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
- (b) a publicly-owned company as defined by section 6.

Section 5 allows the Secretary of State to designate a public authority by order.

16. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
17. The complainant maintains that various sources show HBT as 100% owned by Halton Borough Council (the council). He specifically refers to Companies House records of the latest filed Full Accounts for year ended 31 March 2016 and says it states HBT is a wholly owned subsidiary of the council. However, he has not provided any other sources.
18. The complainant therefore considers that the council are the sole owners of this company. The Commissioner has also reviewed these accounts to locate the statement made above. It falls under the heading of Retirement benefit schemes and the full statement reads:
- "Halton Borough Transport Limited is a wholly owned subsidiary of Halton Borough Council and the liability of the Pension fund ultimately rests with Halton Borough Council."*
19. The Commissioner carried out some further research and notes that the latest Annual Return dated 22 December 2015 stated there were two

¹ https://ico.org.uk/media/for-organisations/documents/1152/public_authorities_under_the_foia.pdf

shareholders, the council and the Managing Director & Company Secretary.

20. The earliest Annual Return available via Companies House dates back to 30 November 1995. This shows the total number of shares as 430,100. It further shows that the council owns 430,099 of these shares and 1 share is owned by a named individual. There has been no change to this in subsequent years.
21. The Commissioner has next referred to the Companies Act 2006²

Meaning of "subsidiary" etc

(1) A company is a "subsidiary" of another company, its "holding company", if that other company—

(a) holds a majority of the voting rights in it, or

(b) is a member of it and has the right to appoint or remove a majority of its board of directors, or

(c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,

or if it is a subsidiary of a company that is itself a subsidiary of that other company.

(2) A company is a "wholly-owned subsidiary" of another company if it has no members except that other and that other's wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.

22. A wholly owned subsidiary is a company that is completely owned by another company. The company that owns the subsidiary is called the parent company or holding company. The parent company will hold all of the subsidiary's common stock.
23. A subsidiary is a company with voting stock that is more than 50% controlled by another company, usually referred to as the parent company or the holding company. A subsidiary is partly or completely owned by the parent company, which holds a controlling interest in the subsidiary company.

² <http://www.legislation.gov.uk/ukpga/2006/46/section/1159>

24. Although a subsidiary might be wholly-owned, the subsidiary is a separate and distinct legal entity from the parent company. It is the role of the subsidiary's directors, and not the parent company, to manage the affairs of a wholly-owned subsidiary.
25. The Commissioner further notes that http://uktransport.wikia.com/wiki/Halton_Transport states that HBT is wholly owned by Halton Borough Council.

https://en.wikipedia.org/wiki/Halton_Transport states that to comply with the Transport Act 1985, the operation was transferred into a separate legal entity. Unlike many other municipal operators it was not privatised and remains owned by Halton Borough Council.
26. Due to the conflicting information available the Commissioner sought further evidence and information from HBT.
27. HBT explained that the company was formed as a limited company when the 1985 transport act came into force. Halton Borough Council under this act could not legally own or operate a municipal bus company to which a new company was formed and the Managing Director at that time became a shareholder along with the council.
28. Because Halton Transport was council owned employees of that business were eligible to be members of the LGPS super-ann pension scheme. At the time of the new company being formed the super-ann pension scheme was closed and a new scheme introduced. However because the LGPS scheme ran with a deficit the council took over this liability which is why this is stated within HBT accounts.
29. HBT also provided a copy of a share certificate issued to a named individual in June 2012.

Conclusion

30. It is clear that HBT is a subsidiary of the council as more than 50% of its shares are held by the council. The question to determine is whether it is wholly owned by the council and therefore subject to the FOIA.
31. From the research carried out, the Commissioner is satisfied that HBT is not completely owned by the council. HBT have confirmed that one private individual holds a share in the company. The Commissioner is not prepared to accept that the information provided by internet searches is 100% accurate. Neither is she prepared to accept that the statement in paragraph 17 is sufficient evidence that the council owns HBT, but rather that it remains liable for the pension fund.

32. It is therefore the Commissioner's decision that HBT is not a public authority for the purposes of FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

I want to know please:

1. How many drivers in your area have been prosecuted for failing to operate the ramp in such situations in the past year?
2. How many complaints have you had about drivers' failure to comply with their criminal duty to operate the ramp in the past year?
3. How do you ensure that drivers' crimes in this specific are punished according to the law?
4. How many times do you give warnings to a driver before prosecuting them or instigating such prosecutions?
5. What impact does such prosecution have on a driver's career?
6. Please supply your procedure for identifying, reporting and prosecuting drivers that have committed this crime.

S11 of the same Conduct Regulations places the following criminal obligation on drivers.

(2) If there is an unoccupied wheelchair space on the vehicle, a driver and a conductor shall allow a wheelchair user to board if—

- (a) the wheelchair is of a type or size that can be correctly and safely located in that wheelchair space, and
- (b) in so doing, neither the maximum seating nor standing capacity of the vehicle would be exceeded.

(3) For the purpose of paragraph (2), a wheelchair space is occupied if—

- (a) there is a wheelchair user in that space; or
- (b) passengers or their effects are in that space and they or their effects cannot readily and reasonably vacate it by moving to another part of the vehicle."

I am aware of multiple occasions in which bus drivers have failed to comply with their criminal law duty to allow wheelchair users to board the bus, sometimes even failing to stop at the bus stop, when the wheelchair space is unoccupied or where the wheelchair space is occupied but the passengers and their effects could potentially readily and reasonably vacate it by moving to another part of the vehicle. This is a criminal offence punishable by a fine of £500 and an endorsement on the driver's license.

Please provide the following information in relation to this crime.

7. In the last year, how many drivers in your area have been prosecuted for failing to allow a wheelchair user to board even though the wheelchair space is physically empty?

8. In the last year, how many drivers in your area have been prosecuted for failing to allow a wheelchair user to board even though passengers and/or their effects in the wheelchair space could readily and easily move to another part of the bus?

9. In the last year, how many drivers in your area have been prosecuted for failing to allow a wheelchair user to board, without the driver investigating to determine whether passengers or their effects occupying the wheelchair space could readily and easily vacate it by moving to another part of the vehicle?

10. How do you ensure that drivers' crimes in this area are punished according to the law?

11. How many times do you give warnings to a driver before prosecuting them or instigating such prosecutions?

12. What impact does such prosecution have on a driver's career?

13. Please supply your procedure for identifying, reporting and prosecuting drivers that have committed this crime.

As a comparator, please tell me:

14. How many bus drivers in your area have been prosecuted for other criminal offences committed whilst driving, for e.g. speeding, jumping the lights, stopping in boxed junctions and similar, in the past year?

15. What is the impact on drivers of such prosecutions?