

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 November 2017

**Public Authority:** Cheshire East Council  
**Address:** 1st Floor Westfields  
c/o Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

#### Decision (including any steps ordered)

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1. The complainant requested information related to taxi and private hire vehicle compliance with the Equality Act 2010. The complainant is not happy with the way Cheshire East Council dealt with his request.
2. The Commissioner's decision is that Cheshire East Council complied with its obligation under section 1(1). However Cheshire East Council initially failed to state whether or not it holds some of the information requested and consequently breached section 10(1) and section 16(1) of the FOIA.
3. Cheshire East Council has now fully responded to the request therefore the Commissioner does not require any further steps.

#### Request and response

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4. On 19 April 2017, the complainant wrote to Cheshire East Council ('the Council') and requested information in the following terms:

*"1) Please advise if you have produced, or currently intend to produce, a list of wheelchair accessible:  
a) taxis and b) private hire vehicles under the powers set out in S167 of the Equality Act 2010.*

*2) Please identify how many a) taxi and b) PHV drivers have applied for medical / physical impairment exemption under S166 of the Equality Act 2010 since S166 was commenced. If you've created a list under S167, please identify how many of the exemptions were in place before S167 and how many have been put in since.*

*3) Please state whether you voluntarily compiled a list of accessible taxis and private hire vehicles following the Department for Transport's guidance of 15th September 2010, which stated, in relation to section 167, "although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates". If you did produce such a voluntary list, please indicate when you did so, and provide the current list.*

*If you have produced a list of wheelchair accessible taxis and/or private hire vehicles under S167, or are going to, please tell me the following.*

*4) The date the list was instated or by which you intend to do so.*

*5) The accessibility requirements of a taxi for it to appear on the list.*

*6) How you intend to enforce drivers' compliance with S165.*

*7) The list."*

5. The Council responded on 12 May 2017 as follows:

*"1a) Yes*

*1b) Yes*

*2) 0*

*3) [No response]*

*4) N/A*

*5) Vehicles must be fully wheel chair accessible and all drivers must know how to operate ramps and restraints. Further details are available on the Hackney Carriage vehicle and Private Hire vehicle sections on our website (contained in our conditions documents)*

*6) Through our scheduled inspection and testing regime*

*7) N/A"*

6. On 13 May 2017 the complainant advised the Council that the response didn't make sense and he provided further clarification of the terms of

the request, he then formally requested an internal review on 20 May 2017.

7. Following an internal review the Council wrote to the complainant on 12 June 2017 and revised its response to provide some further information:

*"3) I can confirm that Cheshire East Council does not compile a list of accessible taxis and private hire vehicles. Therefore Cheshire East Council holds no information in response to this point.*

*4) Cheshire East Council holds no information in response to this point.*

*5) In order to appear on a list, vehicles would need to be fully wheel chair accessible and all drivers must know how to operate ramps and restraints. Further details are available on the Hackney Carriage vehicle and Private Hire vehicle sections on our website as previously advised. Please click on the link below for further information:*

*[http://www.cheshireeast.gov.uk/business/licensing/taxi\\_and\\_private\\_hire/taxi\\_and\\_private\\_hire.aspx](http://www.cheshireeast.gov.uk/business/licensing/taxi_and_private_hire/taxi_and_private_hire.aspx)*

*6) Through Cheshire East Council's scheduled inspection and testing regime.*

*7) I can confirm that Cheshire East Council does not compile a list of accessible taxis and private hire vehicles. Therefore Cheshire East Council holds no information in response to this point.*

8. The Council provided a further response to the complainant on 13 October 2017 following correspondence with the Information Commissioner's Office, in summary stating:

- The Council does not currently hold a list under Section 166 or 167 of the Equality Act 2010.
- The Council is considering whether or not to produce a Section 167 list as part of a comprehensive review of all its taxi licensing policies and procedures. This intention is not recorded anywhere.
- As the Council does not hold either a Section 166 or 167 list, then no exemptions have been applied for or granted.
- The Council confirmed that it held no further information regarding how it intends to enforce drivers' compliance with S165.
- The Council advised *"The authority to create a list of wheelchair accessible vehicles is a discretionary not a mandatory power. Cheshire East Council considers that its current conditions are sufficient to comply with the general provision under the Equality Act 2010. However, as previously stated this decision is under reconsideration as part of a wider review of Taxi Licensing Policies and Procedures."*

## Scope of the case

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9. The complainant contacted the Commissioner on 13 June 2017 to complain that he remained dissatisfied following the internal review, specifically that the responses were not helpful or informative and that some answers remained unclear. He requested that the Commissioner consider whether the Council complied with its obligations under section 16(1) to provide advice and assistance to individuals making requests for information.
10. The Commissioner contacted the Council on 5 October 2017 with a number of clarification questions. The Council responded and provided an update to the complainant on 13 October 2017. The complainant has not indicated that he has a further complaint following the issue of the updated information.
11. Therefore the Commissioner's investigation has focussed on whether the Council complied with the specifics of the FOIA. Specifically the scope of the case is to consider whether the Council complied with its obligations under section 1(1) and section 10(1); and under section 16(1) of the FOIA.

## Reasons for decision

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12. The Commissioner notes that the information requests were worded as questions. Although the FOIA does not require an authority to answer direct questions rather than requests for recorded information, the Tribunal has decided that if recorded information is held which can respond to a question then that information should be considered for disclosure to the requestor. Therefore the Commissioner considers that they were in fact requests for information regarding the existence of the lists, and for information regarding the lists.

### **Section 1 – general right of access to information**

13. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled:
  - (a) to be told if the information is held; and
  - (b) to have the information communicated to him or her if it is held.
14. The Council originally responded "yes" to questions 1a and 1b. In the internal review response it revised its position and stated that it hasn't compiled a list. This also clarified the answers to questions 3 and 4 in the original response. In answer to the Commissioners questions it further confirmed that it doesn't hold a Section 166 list and is

considering whether to produce a list under Section 167 of the Equalities Act 2010.

15. The Council responded "0" to question 2. Further information provided in response to the Commissioner's questions clarify that as the Council does not hold either list then no exemptions have been applied or granted.
16. The Commissioner has considered the responses given initially and at internal review. She considers that the Council's initial responses to questions 1a, 1b, 2, 3, 4 and 7 were vague and could be construed as misleading. However, it is also the case that public authorities are not required to answer direct questions unless they relate to information that is recorded.
17. In the internal review the Council confirmed that it does not currently compile any lists of accessible taxis and private hire vehicles and that it holds no information regarding when a Section 167 list may be instated. While this does not directly answer all of the complainants questions the Commissioner considers that the information can be deduced therefore she is satisfied that the Council has complied with the specifics of section 1(1)(a).

### **Section 10 – time for compliance**

18. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days.
19. Whilst the initial response was given in within the required timescale, the Council did not confirm that it does not hold the requested information until the internal review. The request was made on 19 April 2017, and the information was fully provided in response to the review on 12 June 2017. This falls outside of the period of 20 working days required by section 10(1) of the Act. Therefore the Commissioner has decided that the Council failed to comply with the requirements of section 10(1) with regard to questions 1a, 1b, 2, 3, 4 and 7.

### **Section 16 – advice and assistance**

20. Section 16(1) of the FOIA states that a public authority must offer an applicant advice and assistance so far as it would be reasonable to do so.
21. The complainant considered that the Councils response to his questions were "*closed and non-expansive*" and that the "*response to my FOI request is obstructive and unhelpful*".

22. The Commissioner agrees that the original response to the request was unclear, although this was rectified in the internal review response.
23. The Commissioner considers that the Council could have helpfully advised the complainant of its plans to review whether to produce a Section 167 list. Conversely, as the Council has explained that this information is not recorded then, strictly speaking, it does not constitute information held as defined by the FOIA.
24. The Commissioner finds that the Council failed to clarify whether it held recorded information in its initial response, despite the fact that it was considering whether to produce a Section 167 list. Although the Council rectified this position in the internal review response, the Commissioner has decided that there was a breach of section 16(1).

## Right of appeal

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25. 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)

26. 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.
27. 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**