

Lee Ward

Email: Lee Ward request-428640-bfb26071@whatdotheyknow.com

20 February 2018

Dear Lee,

WCC/FOI/001475/Internal Review

Further to your email requesting an internal review (received by the Council on 23 January 2018) I have now conducted an internal review in line with the Council's corporate complaints procedure and the provisions of the Freedom of Information Act 2000 ("The Act").

My decision is that the Council's response to your request complied with the requirements of the Act.

The reasons for my decision are outlined below.

Background

On 4 September 2017 the Council received the following request from you:

I wish for you to supply to me all email correspondence between Wolverhampton Licensing Department and Uber with all replies and email threads.

The Council's response to your request

The Council acknowledged your request on 4 September 2017, advised you of the need to extend the time limit for responding to your request on 2 October 2017 setting out a new deadline of 30 October 2017 and issued a final response on 25 October 2017.

The Council refused to disclose the requested information stating that it was exempt under Section 43(2), 41(1) and 40(2) of the Act and set out the reasons why the exemptions had been applied.

Your request for an internal review

On 23 January 2018, after receipt of the Council's response you emailed further stating the following:

I am writing to request an internal review of Wolverhampton City Council's handling of my FOI request 'Email correspondence'.

How can information received that complies with a public register be commercially sensitive?

How can an authorities process be classed as commercially sensitive?

I believe that this reply that I have received is hiding behind sections of the FOI Act to hide information that the authority wish to keep from the public domain to protect themselves from any issues that may arise.

May I point out that other authorities have had no issue with providing this information when asked which leads me to believe that a cover up is occurring with the request to yourselves.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://emea01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Femail_correspondence&data=02%7C01%7Cfoi%40wolverhampton.gov.uk%7Ca6df5e9588024c3339d008d5625f7f8c%7C07ebc6c370744387a625b9d918ba4a97%7C0%7C0%7C636523084661767864&sdata=Ij9NfktiGiCFosNtfcwU5v7fWBSrQLLFpQGoFyavkTo%3D&reserved=0

My decision – technical issues

My decision in this is that the Council did comply with the necessary requirements of Part 1 of the Act in its handling of your request.

I am satisfied that the Council did provide a response within the statutory time limits as set out in Section 10 of the Act.

In addition, routes of further appeal were also correctly outlined in the response provided, thus meeting the requirements of Section 17 (7) of the Act highlighting the role of the Information Commissioner's Office ("ICO") outlined at Section 50 of the Act.

I also consider that the Council did apply a valid exemption(s) to disclosure from Part 2 of the Act in its response.

My decision regarding the substance of your request for an internal review

My decision is that the Council was correct in its initial response made to you under the provisions of the Act.

For clarity, you made the request under the terms of the Act and the Council considered it accordingly.

Disclosures under the Act are judged to be made to the wider world and not to a specific person for a specific purpose.

On review I am satisfied that the information requested is commercially sensitive and would pose a risk to Uber if obtained by similar service providers enabling them to gain advantage

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in the market/industry and that the information was provided in confidence to the Council in the performance of its statutory licencing functions.

To explain further when applying the public interest test regarding the application of Section 43 provisions of commercially sensitive information the Council carried out a public interest test that considered the following factors:

Looking at the factors against disclosure, the Council considered the following points:

- **Do other exemptions apply?** In this case Section 12 could be applicable as to identify all email correspondence between the Licensing Department and Uber with all replies and email threads would require a search of every individual Licensing Officer's email account and group email account(s) and individual files where emails have been saved. Given the nature of the request it is not possible to apply any specific search criteria and as no time period has been specified and given that any unsaved emails are automatically deleted after two years in accordance with the Council's retention and disposal policy some information may no longer be held.

Further consideration also needs to be given to the application of Exemption 40(2) 'Data Protection – personal data of third parties' as communications will relate to medical and Disclosure and Barring Service (DBS) checks. This is a qualified exemption and whilst not subject to consideration as part of a Public Interest Test consideration is given to whether disclosing it would breach Data Protection principles; And

The application of Exemption 41 Information provided in Confidence as there is an expectation that the information received from Uber in respect of their business operations and information in respect of their drivers should be subject to the legal principles of the common-law test of confidence. This is an absolute exemption and is not subject to consideration as part of a Public Interest Test.

- **Regarding Prejudice or detrimental effect of disclosure**, in this case there are two elements to consider here, firstly, prejudice or detrimental effect of disclosure in respect of Uber and the running of their business operations and secondly, prejudice or detrimental effect of disclosure on their drivers.

In respect of Uber, communications between them and the Licensing Department relate to their commercial operations and the running of their business, i.e. requests to allow them to operate. Disclosure of such information would be likely to impact upon their ability to operate in a competitive environment by revealing specific information about their operating/business model and harm their legitimate economic interests.

Information in respect of drivers relates to medical and Disclosure and Barring Service (DBS) checks and as such disclosure would constitute a breach of the Data Protection principles given the sensitive nature of the information.

- **Are there any specific circumstances in this case preventing disclosure?** Correspondence will relate to operating and driver information that would not be made publicly available due to the confidential nature of the requests being handled as part of the licensing process.

- **The effect of disclosure of the requested information on the wider world/public,** in this instance whilst there is currently a high level of public interest in the running of Uber, given events in London that have received a lot of media interest, the information contained in email correspondence relates to specific compliance requirements that need to be tested, recorded and verified and by their very nature contain confidential and commercially sensitive information where disclosure would likely result in a detrimental provision of service to the public by harming the competitive environment in which taxi and private hire companies operate.

In favour of disclosure, the Council considered:

- **Would this demonstrate accountability of public money being spent?** Whilst there is no direct link to the spending of public money in respect of this request there is a financial aspect to the licensing process.
- **Would disclosure aid protection of the public from unsafe practices or rogue traders?** In general, terms the protection of the public from unsafe practices etc. is demonstrated via details of the application process being made available on the Council's website along with published information available as part of the Council's Licensing Committee and working party functions. This information provides the necessary assurance that public safety matters are given full consideration and this process would not be supported by the release of the requested information as it could hinder full disclosure of information if it were common knowledge that it would become publicly available.
- **Under what circumstances was the information received?** The information is received in confidence as part of the licensing process.
- **Are there any competition issues?** The release of detailed information in respect of operating procedures could reveal details about business models and adversely impact upon the taxi and private hire market environment where the publication of different business models could prevent entry to the market.

Further consideration was also given to:

- **Whose interests will be prejudiced by disclosure?** In this case, Uber, drivers and the Council that has a responsibility to ensure the licensing process is correctly applied.
- **How will these interests be prejudiced?**
 - Usefulness of information/detail – disclosure would have an impact upon Uber given the elevated level of media interest.
 - Degree of similarity – not applicable in this case
 - Effect on competition and the market – as previously stated the release of detailed information in respect of operating procedures could reveal details about business models and adversely impact upon the taxi and private hire market environment where the publication of different business models could prevent entry to the market.
 - Timing – There is an elevated level of media interest in connection with the legal action involving Uber in London.

- **Can sensitive information be redacted to reduce sensitivity?** In this case it is not practical as the information is either commercially sensitive or subject to the provisions of the Data Protection Act.
- **Where is the public interest for/against disclosure?** The public interest is primarily concerned with public safety. The release of all correspondence related to one specific company, in this case Uber, would not provide any overall assurance that this requirement is being met.
- **Is the information commercial in nature? (for this element, the information needs to relate to a commercial activity, either of the Council or the Contractor.)** The requested information relates to commercial activity of the Council in relation to its licensing activity and Taxi and Private Hire companies operate in a competitive environment.
- **Is the information subject to confidentiality provided by law?** In this case yes, as part of the licensing process.
- **Is the confidentiality provided to protect a legitimate economic interest? (This condition is satisfied if disclosure would adversely affect a legitimate economic interest of either the Council or organisation the confidentiality is designed to protect and harm would be caused to a legitimate economic interest, not just a potential risk that harm might occur.)** In this case yes, applicants have an expectation that the Council will keep their information secure and given that any operator or driver can submit any application to any local authority in England and if such information was not kept secure this would adversely affect income received by the Council as applicants would go to other local authorities who could guarantee confidentiality.

The legitimate economic interests of Uber would also be adversely affected by revealing specific details about their operating/business model to competitors.

In summary, the Council considers that it would not be in the public interest to release this information as it will be damaging to the both the economic interests of the Council and Uber as the information is of a commercially sensitive information and would also breach the provisions of the Data Protection Act as it relates to third party personal information of drivers.

Other issues

In respect of the point you raised “that other authorities have no issue with providing this information when asked which leads me to believe that a cover up is occurring with the request to yourselves” I must point out that the Council takes its responsibilities to comply with the requirements of the Act extremely seriously. Where it is appropriate to do so the Council will always disclose information to requestors and makes this information available on our disclosure log.

I note from the history of your requests listed on ‘Whatdotheyknow’ you have assessed three of the requests submitted to Wolverhampton as successful, one as partially successful and this request as being subject to internal review. The only comparable request listed was submitted to Sandwell Council which I note is also subject to an internal review. Therefore, unless you have sent out requests to other local authorities directly, outside of the remit of ‘Whatdotheyknow’ I can only disagree with your assertion that other authorities have provided you with the information.

This concludes my response. If you are not content, you may contact the Information Commissioner who can be contacted at:

The Information Commissioner's office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Yours sincerely,

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