

Bath & North East Somerset Council
Request for Information

**Information Governance Team -
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15th January 2018

Mr Paulley

Dear Mr Paulley

Internal Review Request 2093/17 re Case Ref 1872/17

Thank you for your request for an internal review dated 14th December. We can now respond as follows.

Request History

On 14th December we responded to your request received on 4th November as follows:

"Requested information

I am writing this Freedom of Information Request in relation to your Council's compliance or otherwise with the Government's statutory guidance on implementation of S165-167 of the Equality Act, relating to taxi services for wheelchair users. All taxi licensing bodies are obliged under S167(6) to have "due regard" to the document "Access for wheelchair users to taxis and private hire vehicles: statutory guidance" at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf . The questions I raise below should be interpreted as requests for recorded information under the Freedom of Information Act.

I have previously made a similar request to you in April 2017. 6+ months later, I am repeating the request with some variations. I am repeating because the Statutory Guidance states "We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions" - "these provisions" having been commenced on 6th April.

In response to my previous FOI request on similar matters in April 2017, you indicated that you did not have a Section 167 list but were intending to create such a list in the relatively imminent future.

1) The Government guidance states: "Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of

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wheelchair users, fail to provide them with assistance, or to charge them extra."

Please can you indicate whether you do now have a list of wheelchair accessible taxis under your powers set out in Section 167 of the Equality Act 2010, and/or a list of wheelchair accessible private hire vehicles?

[We have not produced a list at the time of this request](#)

2) If you do now have such a list, please provide information in response to the following questions 2a) to 2j):

2a) On what date was it put in place?

2b) The statutory guidance states "The Government therefore recommends that a vehicle should only be included in the authority's (S167) list if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair."

Is this the definition you have used for a taxi or PHV to be considered wheelchair accessible for the purposes of the list?

2c) The statutory guidance states: "Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'. LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator."

Have you published your list? Is it marked "designated for the purposes of Section 165 of the Act"? Is the make and model of each vehicle listed? Is each vehicle identified as a taxi or a private hire vehicle? Is the name of the operator of each

vehicle given in the list? Have you made owners and drivers of vehicles on the list aware that their vehicle has been listed?

2d) The guidance states: "it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated."

Does your list include information on each vehicle as to the size and weight of wheelchair that can be accommodated, and whether wheelchairs larger than a "reference wheelchair" can be accommodated?

2e) The guidance states: "We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication."

Have you provided non-exempt taxi/PHV drivers with such guidance?

2f) The guidance states: "We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running".

Have you updated such rules to make this clear?

2g) The guidance states: "Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the

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sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list."

Please tell me how many such applications have been made to the Magistrates Court, and how many have been successful.

2h) How many drivers has the authority prosecuted for discriminatory behaviour contrary to S165 of the Act? How many such prosecutions were successful? What were the sentences?

2i) How many drivers licensed by yourselves have been prosecuted by other people or bodies for failure to comply with S165 of the Act? How many such prosecutions were successful? What were the sentences?

2j) Where drivers have been prosecuted under S165 of the Act, thus affecting their standing as a "fit and proper person", what resultant disciplinary action have you taken in respect of their taxi or private hire vehicle drivers' licenses?

3) If you do not have a S167 list or lists now, please indicate if you still intend to produce such a list.

Please see response to question 1

4) If you don't have a S167 list but do intend to produce one, please provide information in response to questions 4a) and 4b) below.

4a) Please indicate when you intend to have the list in place.

4b) Where you have already made relevant decisions, please indicate whether you intend to comply with the elements of the statutory guidance set out in 2b) to 2f) above.

5) Irrespective of whether you have created a list or not or indeed whether you intend to create such a list, since 2010 you have been obliged to process applications under Section 166 of the Equality Act for driver medical exemptions from the duty to transport and not discriminate against wheelchair users. The Guidance states; "the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010."

5a) How many exemptions have you granted under S166 of the Equality Act 2010?

There have been no exemptions requested or granted under s166 of the Equality Act 2010.

5b) The guidance states: "We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner."

Do you accept or require a letter or report from a GP to process applications for driver exemption under S166?

We would require full report from the applicants GP and/or Consultant before any exemption would be granted.

5c) The guidance states: "The Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant"

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Have you appointed independent medical assessors to determine applications for medical exemption under S166?

No.

5d) Please provide a copy of your application form for driver exemption under S166.

We do not have any application forms for driver exemptions.

If someone wished to request an exemption, they would need to write in. Each case would be taken on its own merits.

5e) The guidance states: "Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal."

How many appeals against refusal to issue S166 exemptions have been heard?

None

5f) How many appeals against refusal to issue S166 exemptions were successful?

None

6) The guidance states: "We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance."

Do you currently publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchairs into a seat within the vehicle?

Not at this time"

Internal Review

On 14th December we received your request for an internal in which you stated:

"Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Bath and North East Somerset Council's handling of my FOI request 'S167 List of Accessible Taxis: update after 6 months - B previous date set'.

In response to my request for information,

"3) If you do not have a S167 list or lists now, please indicate if you still intend to produce such a list."

you replied

"Please see response to question 1"

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Your response under Question 1 was

"We have not produced a list at the time of this request"

Your response to Question 1 does not provide the information I requested in Question 3, that being if you still intend to produce a list.

In addition, you haven't responded to my requests for information in Question 4:

"4) If you don't have a S167 list but do intend to produce one, please provide information in response to questions 4a) and 4b) below.

4a) Please indicate when you intend to have the list in place.

4b) Where you have already made relevant decisions, please indicate whether you intend to comply with the elements of the statutory guidance set out in 2b) to 2f) above."

One could infer from the above that you no longer intend to produce a list. But this is in contrast with your previous response, at <https://www.whatdotheyknow.com/request/401860/response/979343/attach/html/3/Requested%20info%20706.pdf.html>

in which you said:

"We have not as yet produced such a list, however we will be looking into doing this later this year."

You then responded that you intended to bring in the list when officer time allowed.

I should therefore be grateful if you could answer my requests for information set out in Questions 3 and 4 clearly.

Do you, or do you not, still intend to create a S167 list?

If you do, when do you anticipate doing so by?

Will your list comply with the requirements set out in the statutory guidance?

NB: this is not a new request for new information - this was in my original FOI request but you didn't provide it".

Determination and Action Required

I have now been able to review your initial request, together with our response and your request for an Internal Review. I have forwarded your review request to the service area which has now been able to clarify as follows:

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"We do not have a list in place at this time, however we may look at introducing one at a later date. Any list produced in the future will be compliant with the relevant legislation and all statutory guidance will be taken into consideration".

No further information is held.

No further action required.

If you are not content with the outcome of the internal review, you have the right to appeal directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or by visiting their website: www.ico.org.uk

Kind regards,

Jeff Wring
Divisional Director - Risk & Assurance