

CITY OF
WOLVERHAMPTON
COUNCIL

Doug Paulley

Email: Doug Paulley request-443017-e1fa4068@whatdotheyknow.com

11 January 2018

Dear Doug,

WCC/FOI/001656/Internal Review

Further to your email requesting an internal review (received by the Council on 11 December 2017) 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 did not fully comply with the requirements of the Act.

The reasons for my decision are outlined below.

Background




On 6 November 2017 the Council received the following request from you:

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://emea01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F593350%2Faccess-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf&data=02%7C01%7Cfoi%40wolverhampton.gov.uk%7C26e37831760e4991ab9008d523231d8a%7C07ebc6c370744387a625b9d918ba4a97%7C0%7C1%7C636453556106121891&sdata=4qREHU29rgmOysW25X8kTWySLuRqEXZ48LI%2FEHoBIJ8%3D&reserved=0 . 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

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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 any Section 167 lists and did not at that time have any intent to create such a list.

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

Please can you indicate whether you have changed your position since April, such that 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?

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 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 intend to produce such a list.

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?

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?

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

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

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?

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

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?

The Council's response to your request

The Council acknowledged your request and issued a final response on 30 November 2017.

The Council stated it held the information you requested and applied the exemption under Section 21 of the Act directing you to where the information could be accessed via the following link:

<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=12867&p=0>

Your request for an internal review

On 8 December 2017, after receipt of the Council's response you emailed further stating the following:

Dear Wolverhampton City Council,

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

I am writing to request an internal review of Wolverhampton City Council's handling of my FOI request 'S167 List of Accessible Taxis: update after 6 months - E previous no intent'.

You have employed the exemption for information that is already reasonably accessible to me and have simply pointed me to your response to a previous FOI request I made in April 2017.

That is not legitimate for the following reasons.

1) Matters could have changed since April. In fact, they should have done - the statutory guidance issued under S167 of the Equality Act, to which local authorities are legally obliged to hold due regard, strongly recommends that licensing authorities produce S167 lists by October 2017. The Public Sector Equality Duty obliges authorities to take all steps to increase equality between those with the protected characteristic of disability and those without. Authorities are therefore obliged to have considered whether or not to produce a S167 list. This should be in the minutes of your licensing committees. So simply pointing me to your response of 8 months ago is not helpful or a valid response to my FOI request.

2) I didn't ask for the same information in April and therefore the information I requested was not provided in your response to that request. I state it again:

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

Please can you indicate whether you have changed your position since April, such that 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?

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 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 intend to produce such a list.

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?

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?

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"

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

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

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?

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

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?

Please don't mess me about any further: provide the actual information I requested and do so without further delay. You are the only one of the 347 licensing authorities to attempt to pull this one on me - none others have attempted to use this exemption and pointed me to their previous response, for the simple reason that the information I have requested this time is not the same information I requested last time.

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%2Fs167%2Flist%2Fof%2Faccessible%2Ftaxis%2Fup%2F83&data=02%7C01%7Cfoi%40wolverhampton.gov.uk%7C82fabd916f3248faf5c908d53e652f5b%7C07ebc6c370744387a625b9d918ba4a97%7C0%7C0%7C636483526669302110&sdata=Py%2Fq05UwfJBeOSwlrT8K89W81jW4Ot6O38QdheyNUcl%3D&reserved=0>

My decision – technical issues

My decision in this case is that the Council did not fully comply with the necessary requirements of Part II, Section 21 of the Act as the information, in this instance, was not reasonably accessible. The precise directions provided to information did not provide an appropriate response to the information requested.

Routes of further appeal were 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 in Section 50 of the Act.

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

In this instance the exemption in Section 21 of the Act is not engaged.

Section 1 of the Act places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon, Section 17 of the Freedom of Information Act 2000 requires City of Wolverhampton Council, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states why the exemption applies.

I can confirm that City of Wolverhampton Council holds the information that you have requested, and the responses are set out below:

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

Please can you indicate whether you have changed your position since April, such that 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?

No, the Council does not currently maintain a list of wheelchair accessible taxis or private hire vehicles.

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?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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 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.

Not Applicable.

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?

None.

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?

None.

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?

Not Applicable.

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

It is under consideration.

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.

No date fixed.

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.

Not Applicable.

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?

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None.

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 require a medical assessment undertaken by a Medical Practitioner of our choosing, at their expense.

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"

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 a form.

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?

Not Applicable.

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

Not Applicable.

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?

No.

Other issues

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

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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Yours sincerely,

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Senior Information Governance Officer

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Email: martin.eades@wolverhampton.gov.uk