

Decision Notice

Decision 122/2015: Mr Allan Nugent and Glasgow City Council

Meeting minutes and mandates in respect of Taxi Tariff

Reference No: 201500400

Decision Date: 29 July 2015



Scottish Information
Commissioner

Summary

On 4 August 2014, Mr Nugent asked Glasgow City Council (the Council) for information about a meeting between the Council and Glasgow Taxis Ltd, and mandates submitted by the union, Unite. The Council responded by supplying some information and stating that it did not hold other information. It refused to provide information from the mandates on the grounds that it was “sensitive personal data” and exempt from disclosure. Following a review, Mr Nugent remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council did not hold any mandates from the members of Unite, and had failed to give Mr Nugent notice of this. The Council had provided the information which it held, and had correctly given notice that it did not hold other information covered by his request. She did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections (1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 4 August 2014, Mr Nugent made the following information request to the Council:
“I require the names of all attendees and a full transcript of the meeting and minutes which took place between Glasgow City Council and Glasgow Taxis Ltd on the 23rd of February 2009 also copies of the most up to date mandates submitted by unite union (cab section) I believe there to be 141 mandates. I think the department that attended this meeting was the licence and regularity department that [named person] was in charge of at the time and who was in attendance at the meeting. I also think [named person] from Glasgow taxis Ltd was also in attendance along with others.”
2. The Council responded by letter dated 5 August 2014. The Council stated that its records indicated that a meeting took place on 23 February 2009 between Local Authority Officers and representative [sic] of the Taxi Trade to discuss the application of the Tariff. The Council explained that a formal record of the outcome of the meeting was made, but this did not note the individual persons who attended. The record, however, did note the Agreed Elements of the Tariff and was retained as part of the Council’s overall file on the Taxi Tariff. The Council provided the record of the meeting to Mr Nugent. The Council gave notice, in accordance with section 17 of FOISA, that it did not hold some of the information requested, and that it was not held by anyone else on the Council’s behalf. It no longer held records that may have listed the attendees at the meeting on 23 February 2009.
3. In respect of Mr Nugent’s request for mandates submitted by Unite, the Council stated that it would consider these signed mandates to constitute “sensitive personal data” in respect of the individual who signed the mandate. The Council believed the exemption in section 38(1)(b) of FOISA would apply as the release of this data would be a breach of the Council’s responsibilities as a data controller in terms of the Data Protection Act 1998 (the DPA).

(Section 38(1)(b) of FOISA exempts personal information from disclosure if to do so would breach any of the data protection principles in the DPA.) The Council suggested that Mr Nugent contact Unite directly to ascertain if it was willing to release the mandates to him.

4. On 14 August 2014, Mr Nugent wrote to the Council requesting a review of its decision on the basis that he found it “extremely strange” that the Council no longer held records of that meeting, although it held records of earlier meetings. Mr Nugent confirmed that he only wished the date of the mandate being signed, and the remaining information, such as name and signature, could be blanked out. Mr Nugent confirmed that he wished to see the mandates checked by the Council, not any current mandates held by Unite.
5. The Council notified Mr Nugent of the outcome of its review on 17 September 2014. The Council explained that it had disclosed the formal record of the outcome of the meeting. The Council confirmed that it did not hold some of the information covered by the request, and that some information was exempt from disclosure under section 38(1)(b) of FOISA.
6. On 27 February 2015, Mr Nugent wrote to the Commissioner. Mr Nugent applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Nugent stated he was dissatisfied with the outcome of the Council’s review because he did not believe that the exemption applied or that the Council did not hold certain information.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Nugent made a request for information to a Scottish public authority and asked the authority to review its response to his request before applying to her for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
9. On 15 May 2015, the Council wrote to Mr Nugent. The Council referred to Mr Nugent’s request for “the most up to date list of mandates submitted by Unite and held by Glasgow City Council giving Unite the right to represent the Glasgow Taxi Trade”. The Council explained that, while reviewing the matter further in respect of the Commissioner’s investigation, the Council’s Licensing Section advised that no up-to-date mandates from Unite are held by the Council, or by any other person on behalf of the Council.
10. During the investigation, the Council informed Mr Nugent that its Licensing section received from Unite, on 28 February 2014, a list of 158 taxi operators represented by Unite. The Council provided the Commissioner with a list of the operators, and its reasons for considering the information to be sensitive personal data, exempt from disclosure under section 38(1)(b) of FOISA.

Commissioner’s analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Nugent and the Council. She is satisfied that no matter of relevance has been overlooked.
12. By way of background, the Licensing Section of the Council is responsible for licensing various activities under the Civic Government (Scotland) Act 1982 (“the 1982 Act”) including

the provision of taxi services within its area. Part of this regulatory remit requires the Council to set the "Taxi Tariff" for its area - this is essentially the fare structure that governs how much taxi drivers can charge passengers for journeys within the city boundary. Under the 1982 Act, the Council has a legal duty to review this tariff at an interval of no more than 18 months.

13. As part of the review of the tariff, the 1982 Act specifies that Council is required to "consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area" (section 17(4A)). Where the Council completes a review of the taxi tariff it may or may not determine whether to adjust the current taxi tariff. Any licensed taxi operator can appeal the Council's decision to the Scottish Traffic Commissioner. This results in a formal appeal procedure, the rules of which are set out in the Licensing and Regulation of Taxis (Appeals in Respect of Taxi Fares) (Scotland) Order 1985.
14. Mr Nugent sought information that related to this regulatory process. Mr Nugent requested four items of recorded information;
 - The names of all attendees (at a meeting between the Council and Glasgow Taxis Ltd on 23 February 2009)
 - A full transcript of that meeting
 - Minutes of that meeting
 - Copies of the most up to date mandates submitted by Unite (cab section).
15. The Council's submission confirmed that, under of section 17 of FOISA, it had given notice that it did not hold the names of the meeting attendees, or a full transcript or minutes of the meeting. The Council had provided a note described as the formal record of the outcome of the meeting. During the investigation, the Council submitted that it held a list of operators, but no mandates.
16. Mr Nugent accepted that the list of operators represented by Unite would constitute sensitive personal data in terms of the DPA.

Section 17 – information not held

17. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
18. During the investigation, the Council was asked how it established that it did not hold some of the information covered by the request.
19. The Council responded that "all the information" was held centrally in hard copy files and electronic folders and managed by the Principal Officer of the Licensing Section. To establish what information was held, at the time of the request, this officer referred to the hard copy files relevant to the 2009 tariff and located the official record for the 23 February 2009 meeting.
20. The Council explained that, in 2014, extensive searching of all the Licensing Section's records had been required to collate data provided to the Scottish Traffic Commissioner in respect of an appeal. The Principal Officer of the Licensing Section had overseen the

collation of the documentation for that appeal, and it was from this process - and their own expert knowledge of the subject matter - that the officer could confirm that the information provided to Mr Nugent was the official record of the meeting of 23 February 2009. The officer was also able to confirm that searches of all the Council's centralised records in respect of the tariff did not uncover any other records produced in connection with the meeting.

21. The Council supplied the Commissioner with information relating to the 2014 appeal to the Scottish Traffic Commissioner as evidence that it had maintained accurate records in relation to the taxi tariff. The information presented by the Council to the Scottish Traffic Commissioner was the note of the meeting disclosed to Mr Nugent.
22. In his requirement for review, Mr Nugent referred to the Council holding records of similar, earlier meetings (25 October 2005 and 25 April 2007), and queried why records of later meetings were not available. The Council commented that it was unsure what Mr Nugent meant in this respect: it had provided Mr Nugent with the official record of the meeting about which he asked.
23. The Council commented that it does not employ shorthand writers as a matter of course to produce full transcripts for any matters in connection with the tariff. The Council therefore questioned why anyone should think a full transcript of a meeting would be held
24. The Council was asked if it *had* held any information that fell within the terms of the request, but no longer held that information. The Council replied that its Licensing Section operates a document retention policy of five years, so it would only hold information for five years unless there was a clear statutory or procedural reason to hold it longer. The Council commented that Mr Nugent's original information request was submitted more than five years after the meeting on 23 February 2009. It stated that the official record of the meeting of 23 February 2009 required to be retained beyond the five year retention limit as the Council was likely to rely on this document when defending appeals against the taxi tariff in future.
25. The Council commented that its Licensing Section may have held meeting requests, Outlook calendar records of room booking forms or other notes of the meeting which could have indicated which officers were in attendance but, if they did, this is no longer information that they hold or would be expected to hold.
26. The Council was asked if there was any legal or good practice requirement on the Council to hold recorded information (i.e. a minute or attendee list) relating to such a meeting. The Council said its duty to fix the Taxi Tariff for Glasgow was set out in the 1982 Act and there was no legislative requirement that would require the three items of information requested by Mr Nugent to be specifically created and retained for this period of time.
27. Mr Nugent suggested that information about the meeting had in the past been disclosed by the Council in response to an information request. Mr Nugent provided the name of the requester and a rough indication of the date of the request (2009-2010). The Council was asked if it retained its response to that FOI request and, if so, whether the response contained any information that would be captured by Mr Nugent's request, beyond that already sent to him.
28. The Council conducted a search for the period 1 January 2009 - 31 December 2010 in relation to such an information request and response. The Council found no requests relating to Unite and received from a person of the name Mr Nugent had supplied for that time period. The Council said it had considered whether there were any information requests from a person with this name which could come under the general "Licensing sphere" during this

period; however, at present, the Council can only do a search on its systems under “surname” or “postcode” and not on a generic heading of licensing requests. The Council commented that it has recently started a spreadsheet in order that searches can be carried out for such types of request, but it does not go as far back as 2009.

29. Mr Nugent asked about a meeting of the Licensing Board which is listed on the Council’s online calendar of meetings for 23 February 2009. The Council confirmed that this meeting was not the meeting to which Mr Nugent’s request relates. It stated that the meeting referred to in his request was an operational level meeting between Council Officers and representatives of the Taxi Trade. Details of this type of meeting would not be published on the Council’s online calendar. For the avoidance of any doubt, the Council supplied the Commissioner with the agenda from the Licensing Board meeting on 20 February 2009.
30. Mr Nugent also asked for the “most up to date” list of mandates. The Council explained that it did not have individual signed mandates provided by Unite: all it had was a list from Unite showing the operators who were currently members of the union. The Council supplied this list to the Commissioner. The Council also supplied the Commissioner with the report to its Licensing and Regulatory Committee which referred to this list.
31. Mr Nugent submitted that such a list was not equivalent to signed mandates giving the signatory’s consent. Mr Nugent commented that, if the Council only held a list, then the most up to date mandates, in the sense he intended, were the mandates previously provided to the Council, i.e. before February 2014.
32. The Commissioner accepts Mr Nugent’s view that the list of taxi operators that Unite provided to the Council is not the information he asked for and is not covered by the terms of his request.
33. The Council was asked by the investigating officer whether, at the time of Mr Nugent’s request, it held *any* signed mandates of the sort Mr Nugent believed were held, even if they predated the list of operators received in 2014. The investigating officer asked if such mandates would have been included in the searches the Licensing Section of the Council had carried out for information falling within Mr Nugent’s request.
34. The Council made clear that Mr Nugent’s initial request stated that he sought the “most up to date mandates signed by Unite the Union”. This wording, together with other aspects of the request, specifically a DPA request seeking a copy of a mandate, led the Council’s Licensing Section not to extend the scope of their investigation to detailed searches of records relating to previous reviews of the taxi tariff. Notwithstanding this, the Council stated that Unite do not provide “signed mandates,” but simply a list of operators that they are mandated to represent. As such, the Council confirmed that it does not hold any “signed mandate” of the type envisaged by Mr Nugent.
35. Having considered all the above submissions, the Commissioner is satisfied that the Council does not hold any recorded information falling within the scope of Mr Nugent’s request other than the official meeting record provided to him. The Commissioner has considered the searches undertaken by the Council and is satisfied that they were reasonable and proportionate and would have identified any information which the Council held and which was covered by the terms of the request. In reaching this conclusion, the Commissioner has taken into account the following:
 - the information falling within the request is held by the Council in a way that the Council describes as a specific, identifiable and searchable;

- the actual searches undertaken by the Council to assess the information it held were reasonable and proportionate and likely to identify relevant information;
 - the Council staff involved in searching for the information had experience and knowledge of the subject, reducing the likelihood of searches being faulty or relevant information being overlooked;
 - the information was of a type that was recently collated for the purposes of a statutory appeal to the Traffic Commissioner;
 - the age of some of the information is such that it would not be required to be kept by the Council in terms of its record management policy or any other legislation;
 - the Council has co-operated fully with the Commissioner's investigation and the Commissioner has seen nothing to indicate that the Council is deliberately withholding information covered by Mr Nugent's request.
36. The Commissioner finds that the Council was wrong to indicate that it held mandates, in refusing to provide this information to Mr Nugent on the grounds that it was exempt from disclosure under section 38(1)(b) of FOISA. The Council has now made it clear that it did not hold any mandates, either from 2014 or from any previous date. The Commissioner notes that the Council failed to address this point in its review of the response to Mr Nugent's request. The Commissioner finds that the Council failed to give Mr Nugent notice that it did not hold the mandates he had requested, as it was required to do by section 17(1) of FOISA.
37. As no mandates from union members are held by the Council, the Commissioner is not in a position to consider whether, as Mr Nugent suggested, the mandates could be redacted in a way that would provide him with information about the date of the mandate, without breaching the DPA.
38. The Commissioner finds that the Council properly gave notice to Mr Nugent that it did not hold other recorded information covered by his request, as required by section 17(1) of FOISA.

Commissioner's remit

39. Mr Nugent raised concerns about the Taxi Tariff, representation under the 1982 Act and other similar matters. The Commissioner gives no consideration here, and comes to no conclusion, as to whether the Council complied with any rules, guidance or legislation relating to the regulatory framework of taxi licensing. Such questions are beyond the remit of the Commissioner.

Decision

The Commissioner finds that Glasgow City Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Nugent.

The Commissioner finds that the Council failed to give notice, as required by section 17(1) of FOISA, that it did not hold some information covered by Mr Nugent's request.

The Commissioner finds that the Council correctly gave such notice in relation to other information covered by Mr Nugent's request.

The Commissioner finds that the Council provided Mr Nugent with the information which it held and which was covered by his request, as required by section 1(1) of FOISA.

The Commissioner does not require the Council to take any action.

Appeal

Should either Mr Nugent or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

29 July 2015

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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(4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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17 Notice that information is not held

(1) Where-

(a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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