

# Decision Notice

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## Decision 181/2014 Midlothian Taxi Owners Association and Midlothian Council

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### **Breakdown of Fees relating to taxis**

Reference No: 201401042

Decision Date: 18 August 2014



Scottish Information  
Commissioner

## Summary

On 18 March 2014, the Midlothian Taxi Owners Association (MTOA) asked Midlothian Council (the Council) for a breakdown of its new fees for taxis, including the Taxi Vehicle test and the Taxi Drivers Licence. On review, the Council stated that it had given MTOA all the information it held in relation to the breakdown of costs and provided further explanation of why the fee had risen.

Following an investigation, the Commissioner found that the Council did not hold a breakdown of the fees.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1), (3) and (4) (General entitlement); 17 (Notice that information is not held)

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

## Background

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1. On 18 March 2014, the secretary of MTOA wrote to the Council about the increase in fees for both the Taxi Vehicle test and the Taxi Drivers licence. He asked for a total breakdown of both fees, including the administration charge for the Taxi Vehicle test.
2. Having received no response from the Council, MTOA wrote to the Council on 21 and 28 April 2014, requesting a review of its failure to respond.
3. The Council notified MTOA of the outcome of its review on 9 May 2014. The Council apologised for not responding. The Council stated that it had given MTOA as much information as it held in relation to the breakdown of costs, based on variable costs identified in previous correspondence with MTOA (the Council detailed those cost headings again). The Council confirmed that the information "in the detail which you require does not exist."
4. On 14 May 2014, MTOA wrote to the Commissioner, stating it was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that MTOA made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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6. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.

## Commissioner's analysis and findings

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7. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both MTOA and the Council. She is satisfied that no matter of relevance has been overlooked.

### Whether the Council held any information covered by the request

8. The Commissioner understands that MTOA is seeking recorded information which would show why the specified taxi fees are set at their current levels, e.g. calculations that would justify the charges with reference to various costs incurred by the Council, such as the cost of staff time.
9. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that held by the authority at the time the request is received, subject to qualifications not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
10. The Council was asked to explain whether its position was that it had already provided MTOA with all the information it held, or whether its review response was intended to give MTOA notice that the Council did not hold the information it had asked for.
11. The Council explained that its review response of 9 May 2014 was intended to reinforce information that had already been given to MTOA in response to a previous request. The Council stated that the information had also been discussed at meetings of the Hire Car Liaison Group, when the position had been explained again. The Council stated that it had given MTOA as much information as was available in a letter dated 12 June 2013. The Council provided the Commissioner with copies of the letter of 12 June 2013 and an earlier letter of 17 April 2013, which provided MTOA with some information about Taxi Examination Centre costs.
12. The Council took the view that it had provided all the information it held which was covered by the terms of the request, and that it did not hold information which would give a more detailed breakdown of the fees. In relation to an estimated breakdown of staff time costs of £13,833.91, the Council stated that the information was held across an extremely broad spectrum. Even if the information was collated, it would require "a sophisticated set of judgements" to assimilate whether the information fell within the scope of the exercise or not.
13. The Council noted that its review response had referred to the requirement for the Council to ensure that the cost of administering the licensing regime is met from income received, and that the fees and charges are assessed on estimated costs. The review response had described the various heads of expense that the Council had incurred in relation to such costs, but the Council did not hold any recorded information that would provide absolute precision about the way that fees are calculated.
14. The Council was asked by the investigating officer if there was any legal duty, good practice, etc. that would require the Council to record the information which MTOA had requested. The Council was advised that MTOA understood that the Council is obliged only to meet its costs and not make a profit out of taxi licensing, and did not see how the Council could do this unless it was aware of how the fees were set.

15. The Council responded that there was no legal or other duty which would require it to record the information. The Council commented that, in terms of the Civic Government (Scotland) Act 1982, the Council, as licensing authority, regulates Hire Car activity; and in terms of section 12 of the 1982 Act:

*“shall charge such fees in respect of taxi and private hire car licences and applications for such licences as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in carrying out their functions under sections 10 to 23 (other than section 19) of this Act in relation to such licences.”*

The Council stated that licence fees do not relate simply to the application process, but include other elements of process that need to be carried out across the range of the activity.

16. It is clear that the Council had already provided MTOA with a significant amount of information and explanation about its fees relating to taxis and private hire cars. This information did not satisfy MTOA, who want a more detailed breakdown of the fees. The Commissioner must decide whether the Council holds information which would allow a more detailed breakdown of the fees, or whether the Council has already given MTOA all the relevant information it holds and was correct to give notice, in its review response, that it did not hold information covered by the request.
17. FOISA gives a right of access to recorded information held by a Scottish public authority. It does not require an authority to create information in order to respond to a request for information. An authority can, of course, choose to create information and supply it to a person requesting information, but there is no requirement under FOISA to do so. In this context, the Commissioner has considered her previous decision, *Decision 210/2013 Mr Alan Laing and the Scottish Ministers*<sup>1</sup> where the distinction between creation and collation of information was examined.
18. In that decision, the Commissioner found it was relevant to consider whether the information requested could be collated without the need for any complex judgment. If no complex judgement was required to collate it, she concluded that the information should be provided. If complex judgement was required, she concluded that the information was not held by the public authority.
19. In the current case, the Commissioner is satisfied that the detailed information required by MTOA is not held by the Council. In relation to the estimated breakdown of staff costs, which make up part of the costs incurred by the Council in relation to taxi licences, the Commissioner accepts that this information is not readily available and, if the Council were to attempt to collate it from existing information sources, this would require considerable judgement to determine what information should be included in the calculation. In the circumstances, the Commissioner accepts that the Council does not hold the information.
20. The Commissioner is satisfied that the Council took reasonable and proportionate steps to identify and locate any information it held and which was covered by the request. She accepts that these steps were based on a reasonable interpretation of the request and knowledge of the Council's internal processes in licensing, and an awareness of the information previously provided to MTOA. The Commissioner accepts that the Council complied with Part 1 of FOISA in dealing with the request from MTOA, as it correctly gave

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201300911.aspx>

notice (as required by section 17(1) of FOISA) that it did not hold the information which MTOA had asked for.

21. In its correspondence with the Commissioner, MTOA made several points about what it thought the Council should do in respect of recording information and justifying the charges in respect of licensing. However, the Commissioner's remit in carrying out this investigation extends only to the consideration of whether the Council actually held the relevant information requested.

## **Decision**

The Commissioner finds that Midlothian Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Midlothian Taxi Owners Association.

## **Appeal**

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Should either Midlothian Taxi Owners Association or Midlothian 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**  
**18 August 2014**

## Appendix

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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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- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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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