

# Decision Notice

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**Decision 081/2018: Mr Gary Hughes and Aberdeen City Council**

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## **Taxi testing**

Reference No: 201701865

Decision Date: 11 June 2018



Scottish Information  
Commissioner

## Summary

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The Council was asked “how many taxi tests conducted in January to May 2016 were failed by the taxi tester and the result was changed to a pass by staff at a specific location”. The Council replied that the answer was none.

The Commissioner investigated and found that the Council failed to respond to the request for information in accordance with Part 1 of FOISA. This was because the Council failed to identify all of the relevant information it held. The Commissioner required the Council to carry out a new review of its handling of the request and provide the applicant with a new review response.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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

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1. On 10 August 2017, Mr Hughes made a request for information to Aberdeen City Council (the Council). The information requested was (in Mr Hughes’ words): “how many taxi tests conducted in January to May 2016 were failed by the taxi tester and then the result was changed to a pass by admin staff...”
2. By way of background, section 11 of the Civic Government (Scotland) Act 1982 requires the Council - as a licensing authority - to inspect and test taxis. These inspections are conducted by Fleet Services within the Council’s Communities, Housing and Infrastructure Directorate. Fleet Services carry out a physical check of the vehicles to ensure they comply with the manual provided by the Licencing Team within the Council’s Legal and Democratic Services.
3. The Council responded on 18 August 2017 to Mr Hughes that the answer to his question was none. The Council explained that taxi tests are conducted by a mechanic or MOT tester and this decision is not changed by administrative staff. The Council said that “only trained MOT testers and mechanics can make these decisions”.
4. Later that day, Mr Hughes wrote to the Council requesting a review of its decision on the basis that he did not think the Council’s response supplied accurate information. He said he was aware of 130 tests during the specified period for which results had been changed by a member of the administrative team.
5. The Council asked Mr Hughes to confirm that he was seeking a review on the basis of information held and recorded by the Council, and asked him to supply any evidence he had to allow the Council to review its decision. The Council also supplied information about its complaints process, should Mr Hughes feel that this was a more appropriate way to have his concern addressed.
6. Mr Hughes replied on 22 August 2017, confirming that he wished a review under FOISA, rather than to proceed with a complaint. He explained the process involved in the taxi testing,

but declined to supply the information to the Council to which he had referred. Instead, he explained in detail the process by which the Council could find the information he had requested:

*“The electronic data can be accessed from taxi licensing who can supply the results for the time period in question. The tester’s results are then cross referenced with the electronic data. This will show a fail sheet, but the electronic data will say pass or pass with minor defects. If the data does not match then this is an instance where the admin staff entered a pass where they should have entered a fail.”*

7. The Council notified Mr Hughes of the outcome of its review on 20 September 2017. The Council explained that the Fleet Manager undertook a check of the Council’s electronic database (GLAMIS) for the period in question. The Council was satisfied that the relevant Council service had carried out a sufficient search for the information, covering the requested time period of January to May 2016. The Council decided that the information provided to Mr Hughes was accurate and upheld its original response.
8. Under its duty to provide advice and assistance in section 15 of FOISA, the Council explained that taxi tests are recorded in GLAMIS, which has a “drop down” list to record the taxi-tester who carried out the test. At present, not all taxi testers, including the Fleet Manager, were available in the drop-down list. If the name of the tester was not available, administrative support staff entered their name to allow the process to be completed and to enable the taxi-operator to work. The Council emphasised that this did not mean that the administrative officers changed taxi test fails to passes. The Council’s Review Panel agreed to recommend that the electronic database system be reviewed to ensure that the drop-down list is kept up-to-date with names of those involved.
9. On 26 October 2017, Mr Hughes applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Council’s review because he had asked the Council to verify the information by checking consistency between the recorded hard copy information with the electronic record. He believed the response provided by the Council did not show the whole picture.

## **Investigation**

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10. The application was accepted as valid. The Commissioner confirmed that Mr Hughes made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
11. 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.
12. The Council provided comments to the Commissioner on several occasions during the investigation, in response to further questions from the investigating officer. Mr Hughes also provided comments to the Commissioner in respect of his application.
13. The Commissioner’s staff also met with the Council on 10 April 2018 to discuss the process of recording the taxi-testing inspections and inspect records (a sample of taxi inspection sheets for the period in question) relating to this application.

14. On 31 May 2018, the Commissioner's staff again met with the Council to compare the hard copy inspection records with the relevant entries on the Council's GLAMIS database, in relation to Mr Hughes' application.

## Commissioner's analysis and findings

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15. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both Mr Hughes and the Council. He is satisfied that no matter of relevance has been overlooked.

### Section 1(1) of FOISA – General entitlement

16. 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. Section 73 of FOISA defines "information" as "information recorded in any form" (subject to conditions that are not relevant here).
17. Mr Hughes' request is specific: how many taxi tests conducted in January to May 2016 were failed by the taxi tester and the result changed to a pass by administrative staff at Kittybrewster. Initially, the Council supplied an answer: none. The Council confirmed in its review that the information provided (i.e. the answer "none") was accurate. The Council was clear that it was not giving notice that it did not hold information covered by Mr Hughes' request: its position was that it did hold the required information to respond to his request. The Council explained that it had used the recorded information it held (and "the expert knowledge of the most relevant officers") to respond accurately to Mr Hughes' request.
18. The Council explained that information about taxi tests is held in hard copy in Fleet Services' premises and on the GLAMIS database which is under the control of the Council's Licencing Department.
19. Mr Hughes' dissatisfaction was that the Council had not located the information he requested because it had not made reference to all the records it held (the comparison of hard copies of the taxi-inspection sheets for the period and the GLAMIS database). He believed that if that process of comparison were followed, the response he would receive would not be "none" or "zero", but a number showing instances when taxi tests conducted in January to May 2016 were failed by the taxi tester and then the result was changed to a pass by administrative staff at the location.
20. The Council considered that it had complied with Part 1 of FOISA and was not seeking to apply any exemptions as it believed that it held the information required to respond to Mr Hughes' question. The Council, however, referred in its submission to the Commissioner to *Decision 089/2012 Ms Fiona Townsley and Perth and Kinross Council*<sup>1</sup>, and in particular to paragraph 63, where the Commissioner said:

"It should be stressed that the remit of the Commissioner extends to deciding whether a Scottish public authority has complied with Part 1 of FOISA in responding to an information request. When information is supplied by a Scottish public authority in response to a request and the requester is dissatisfied because he or she believes that the information is

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201101469.aspx>

misleading, inaccurate, contains errors, or is otherwise deficient, this is not something that the Commissioner can address in terms of FOISA.”

21. The Council is correct to state that the Commissioner has no remit in terms of FOISA in deciding upon the accuracy of recorded information held by a Scottish public authority. In this case, however, if the paper records held by the Council showed a “Fail” recorded by the taxi tester that was recorded by an administrator as a “Pass” (on the GLAMIS database), that would be information covered by the request. To that extent, the Commissioner is not assessing the accuracy of the recorded information, but rather the extent of information held by the Council and covered by the request.
22. It is important to understand this distinction. The Commissioner is assessing whether the Council complied with Part 1 of FOISA in supplying recorded information (the answer “none”). The Commissioner is not deciding whether the information recorded on any taxi inspection sheets or on GLAMIS is correct, true or accurate.
23. The Council was asked by the Commissioner if it still held the information Mr Hughes had supplied to it in 2016 as that would show examples of test result records which Mr Hughes believed fell within his request. The Council replied that it did not hold the information supplied to it by Mr Hughes. That is, it still held all the taxi inspection tests, but not the subset that Mr Hughes had drawn to its attention. The Commissioner was therefore unable to look at that subset of the recorded information to assess whether Mr Hughes’ contention was correct.
24. To enable the Commissioner to understand the information it held, the Council was asked to explain briefly the process it used to inspect taxis. The Council explained that where a taxi passes, the inspection sheet is filled in as a pass, signed by the Taxi Tester and sent to the reception with the pass certificate. The pass is issued to the Taxi Presenter by a member of the Support Team. The Support Team member then arranges the next test date and the pass is then recorded in the GLAMIS system. There is a mandatory field which is a drop down menu which allows the Support Team to record the signatory of the pass. If GLAMIS is not updated, the taxi will show as being out of test and therefore should not be trading and could be stopped from trading until the pass is verified. All Pass and Fail Inspection Certificates are signed by a Taxi Tester and countersigned by the Fleet Services Manager.
25. The Council was asked to explain the extent of its searches in this system and why these would have been likely to locate any information covered by the request. The Council explained that Fleet Services ran a report on the GLAMIS database and compared that with the hard copies, which are signed off by the Taxi Tester. The Council stated that no taxis were tested or passed by anyone other than a Taxi Tester and that GLAMIS is accurate with regard to Test Result details. Only the Taxi Tester detail on the GLAMIS system is not fully accurate (as explained in paragraph 8). The main evidence of the Pass is the signed hard copy of the test sheet, which remains the proof that no taxis have been passed as fit by anyone other than a Taxi Tester (or Fleet Services Manager following rectification of any minor issues).
26. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain what information is held.

27. In this case, the Commissioner is not satisfied, on the balance of probabilities, that the Council identified all recorded information covered by Mr Hughes' request. Having considered the competing arguments and submissions, the Commissioner is of the view that it was not reasonable for the Council to conclude that the recorded information is "zero" or "none".
28. Crucially, the Council does not appear to have examined sufficiently the GLAMIS database to the level of detail required to identify the recorded information held that would answer Mr Hughes' request. It is not enough, in the Commissioner's opinion, simply to answer "none" on the basis that a member of administrative staff would and could not pass a taxi presented for testing. Something more is required. Similarly, in the Commissioner's opinion, it was not enough either only to examine the hard copies of the inspection sheets completed by the testers and conclude that none of the sheets had been manually amended.
29. Whilst the majority of requesters will not be in a position to explain to a public authority how it can check whether information is held, Mr Hughes has knowledge of the processes involved in taxi testing, and is aware of what information would need to be studied to provide the response to his request.
30. Mr Hughes' requirement for review of 18 August 2018 explained to the Council the process he thought would find the recorded information he had requested:

"The electronic data can be accessed from taxi licensing who can supply the results for the time period in question. The tester's results are then cross referenced with the electronic data. This will show a fail sheet, but the electronic data will say pass or pass with minor defects. If the data does not match then this is an instance where the admin staff entered a pass where they should have entered a fail."
31. It is disappointing that the Council did not follow the process outlined by Mr Hughes, when reviewing its response to his request.
32. As noted above, the Commissioner's staff visited the Council on 31 May 2018 to compare information on GLAMIS with the hard copy inspection sheets – essentially to engage in the search method recommended by Mr Hughes. The Commissioner's staff inspected approximately 10 records in hard copy and on GLAMIS. Although only a few records were checked, this was sufficient to show that the answer provided to Mr Hughes ("none") was inaccurate. The scope and thoroughness of the searches carried out by the Council were not, in the Commissioner's opinion, sufficient. As a consequence, the Commissioner cannot accept that the information disclosed to Mr Hughes represented all the recorded information covered by his request, or that its response complied with section 1 of FOISA.
33. As stated above, the Council no longer holds a record of the examples identified by Mr Hughes himself. The only way to address the request seems to be to compare the hardcopy inspection sheets for the period in question – *where the taxi tester had failed the taxi* - with the results for the same tests on GLAMIS, as input by administrative staff. This method would ensure that all recorded information falling within Mr Hughes' request is identified.
34. Taking into account the above points on adequacy of searching, the Commissioner therefore requires the Council to carry out a new review of its response to Mr Hughes' request.
35. As stated in previous decisions, the Commissioner has no remit in terms of FOISA to decide what recorded information should be held by a public authority, nor how it should be held. Similarly, 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 taxi-testing,

or in respect of addressing any complaints about such testing or the way in which results were recorded. Such questions are beyond the remit of the Commissioner.

## **Decision**

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The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hughes. The Council failed to identify and provide the information covered by Mr Hughes' request. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to conduct another review and respond again to Mr Hughes by 26 July 2018.

## **Appeal**

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Should either Mr Hughes 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.

## **Enforcement**

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If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**11 June 2018**

### 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.

...

- (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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