

Decision Notice

Decision 203/2016: Mr Allan Nugent and Glasgow City Council

Taxi tariff calculations and report

Reference No: 201600751

Decision Date: 27 September 2016



Scottish Information
Commissioner

Summary

On 11 February 2016, Mr Nugent asked Glasgow City Council (the Council) for the 2015 taxi tariff calculations and report.

The Council interpreted his request as seeking the 2015/16 tariff review report, which was due for publication in the next 12 weeks and was therefore considered exempt from disclosure under section 27(1) of FOISA. Following a review, Mr Nugent remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had properly responded to Mr Nugent's request for information in accordance with Part 1 of FOISA, as the Council was entitled to withhold the information under section 27(1) of FOISA at the time Mr Nugent made his request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 27(1) (Information intended for future publication)

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 11 February 2016, Mr Nugent made a request for information to the Council, within the context of ongoing correspondence over the taxi tariff. He asked for a copy of the 2015 tariff calculations and report.
2. The Council responded on 8 March 2016. The Council interpreted Mr Nugent's request as seeking the 2015/16 tariff review report. It stated that this report would be published no later than twelve weeks from the date of his request, and therefore considered the information to be exempt from disclosure under section 27(1) of FOISA.
3. On 9 March 2016, Mr Nugent emailed the Council requesting a review of its decision. He stated he had asked for "the 2015 tariff review based on the comparison figures dated 2014 with 2015", and commented that the Council had received the completed 2015 tariff in December 2015.
4. The Council notified Mr Nugent of the outcome of its review on 6 April 2016. The Council explained that there was not a separate taxi tariff review for 2015: the taxi tariff was set for the periods 2014/15 and 2015/16. The Council noted that the 2014/15 taxi tariff review compared figures from 2013 with the figures taken in February 2014, and was accessible on the internet. Consequently, the only outstanding tariff review was 2015/16. Based on Mr Nugent's statement "I asked for the 2015 tariff review based on the comparison figures 2014 and 2015", the Council considered that it was the 2015/16 taxi tariff report which Mr Nugent required. This report was due for publication within twelve weeks and the Council considered it to be exempt from disclosure in line with section 27(1) of FOISA.
5. On 25 April 2016, Mr Nugent applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Nugent stated that he was dissatisfied with the outcome of the Council's

review because he did not believe that the Council would publish the taxi tariff review within twelve weeks.

Investigation

6. 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 that request before applying to her for a decision.
7. On 27 May 2016, the Council was notified in writing that Mr Nugent had made a valid application. The case was allocated to an investigating officer.
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 21 July 2016, the Council was asked for further submissions on its reliance on section 27(1) of FOISA, and provided these.
10. On 24 and 25 August 2016, the investigating officer provided Mr Nugent with information from the Council about the timings of different stages of the review process, and links to the online versions of the taxi tariffs from the previous two years.
11. Mr Nugent was invited to explain why, in his view, the public interest favoured disclosure of the information which had been withheld under section 27(1) of FOISA. Mr Nugent reiterated that he was seeking the 2015 to 2016 tariff review (based on figures taken from 28 February 2015 compared to figures from 28 February 2014). He explained why he did not accept that the recently published report was the 2015/16 tariff based on the 2014/15 figures or “the methodology of the formula” (i.e. the formula by which the taxi tariff had been calculated in previous years).

Commissioner’s analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of 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.
13. The Commissioner would emphasise that her remit is to assess and decide whether the Council complied with FOISA in responding to Mr Nugent’s request. The Commissioner does not have the power to assess whether the Council’s review and setting of the taxi tariff is valid, or the accuracy of the information associated with that process. In what follows, where the Commissioner has considered the processes the Council followed, this has been purely in the context of establishing and considering what relevant information the Council holds in relation to the matter specified by Mr Nugent.

Information covered by Mr Nugent's request

14. In his request to the Council, application to the Commissioner and correspondence during the investigation, Mr Nugent has questioned whether the taxi tariff based on the figures taken in 2015 compared to 2014 has been published.
15. Mr Nugent provided the Commissioner with a copy of a recently published document entitled: "Review of taxi tariffs in the City of Glasgow"¹ and questioned whether this was supposed to be the current taxi tariff. He noted that this document included a comparison of two years, referred to as "year a" and "year b" (i.e. without specific dates being given). During the investigation, the Council confirmed that "year a" and "year b" referred to figures and calculations relating to February 2014 and February 2015, respectively. This information was passed on to Mr Nugent. However, he maintained that the document was not the 2015/16 taxi tariff review which he had asked for.
16. The Commissioner has considered the submissions from both the Council and Mr Nugent, and has concluded that the Council interpreted Mr Nugent's request correctly and reasonably, in considering his request for information from the 2015/16 tariff review. Mr Nugent has disputed this. However, he has confirmed that he requires information from a document which includes a comparison of figures from February 2015 with figures from February 2014. The Commissioner finds this description matches the information in the 2015/16 tariff review.
17. The Council explained that the undated document which Mr Nugent provided to the Commissioner ("Review of taxi tariffs in the City of Glasgow"²) is the technical calculations report which forms part of the Council's overall 2015/16 taxi tariff review. The Council directed the Commissioner to the full report which was published online³ (Item 5 (attached appendices) of the meeting of the Council's Licensing and Regulatory Committee (the Committee) on 4 May 2016.)
18. The Commissioner is satisfied that the full report presented to the Committee (and available online) includes the 2015/16 taxi tariff review.
19. The Council has explained its process for reviewing the taxi tariff, and outlined the information created by this process. The Commissioner has not included this explanation in full in this decision notice. The Council commented that, ideally, tariff reviews should commence shortly after February in any given year, but delays to the implementation of recent tariffs meant that the Council was currently finalising the 2015/16 tariff review and could not commence the 2016/17 review until the 2015/16 review is complete. The Council stated that, although the methodology uses annual reviews for reliability, this does not equate to any legal requirement to commence a review at a specific time each year. The statutory requirement is that tariff reviews should be no longer than 18 months apart.

Commissioner's conclusions

20. The Council has provided a detailed explanation as to how the taxi tariff is reviewed, adopted and published. On the basis of the Council's explanation, the Commissioner accepts that the only information which the Council holds and which is covered by the terms of Mr Nugent's request is the information which was presented to the Committee and which is now available

¹ <https://www.glasgow.gov.uk/councillorsandcommittees/viewSelectedDocument.asp?c=P62AFQDNT18181ZLNT>

² <https://www.glasgow.gov.uk/councillorsandcommittees/viewSelectedDocument.asp?c=P62AFQDNT18181ZLNT>

³ [http://www.glasgow.gov.uk/councillorsandcommittees/agenda.asp?meetingid=14485:](http://www.glasgow.gov.uk/councillorsandcommittees/agenda.asp?meetingid=14485)

online. The Commissioner is aware that Mr Nugent does not accept this, but she has found no evidence to suggest that the Council holds any other information matching his description of the information he required.

21. The Commissioner is satisfied that the Council correctly understood Mr Nugent's request to cover information from the 2015/16 taxi tariff review. The Commissioner finds that the Council has given a satisfactory explanation to show why there was no "missing" review for 2015, as suggested by Mr Nugent. It is evident from the information provided by the Council that the date when the taxi tariff review has been presented to the Committee, and the date it has been adopted by the Committee, has gradually become later and later in the calendar year. The 2008/09 taxi tariff report was presented to the Committee in July 2008 and was adopted in August 2008, whilst the 2015/16 tariff report was presented to the Committee in May 2016 and adopted in June 2016. The Council has explained that the statutory requirement is for a review at least every 18 months, and not necessarily an annual review.
22. As she is satisfied that the information presented to the Committee on 4 May 2016 is the information covered by Mr Nugent's request, the Commissioner must go on to consider whether the Council was correct to withhold this information under section 27(1) of FOISA at the time of his request.

Section 27(1) - Information intended for future publication

23. Section 27(1) provides that information is exempt from disclosure where the following tests are met:
 - (i) the information is held with a view to its being published by a Scottish public authority or any other person at a date not later than twelve weeks after that on which the request for the information is made;
 - (ii) when the request is made, the information is already being held with that view; and
 - (iii) it is reasonable in all the circumstances that the information be withheld from disclosure until the intended publication date.
24. This exemption recognises that, where it is intended to make information available, public authorities should, within reason, have space to be able to determine their own publication timetables and deal with the necessary preparation, administration and context of publication.
25. It should be noted that there is no requirement within section 27(1) that publication must actually take place as planned: only that the information must be held with a view to publication at the time the request is received.
26. The exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.

The Council's submissions

27. Mr Nugent submitted his request on 11 February 2016. The taxi tariff information was published on the Council's website less than 12 weeks later on 4 May 2016. The Council submitted that it had received a copy of the taxi tariff review report from Transport Research Partners (who were contracted to carry out the tariff review) on 31 December 2015. It accepted that, at the time Mr Nugent made his request, the Council already held the information.

28. The Council explained that once the taxi tariff review report has been finalised, it has to be considered by the Committee, publically advertised for one month, then reconsidered by the Committee and adopted. The 2015/16 tariff had been delayed due to a number of factors by the time Mr Nugent made his request on 11 February 2016. The staff in the Council's Licensing Department had therefore already decided that taxi tariff review report should be presented to the Committee as soon as possible and no later than 4 May 2016. At the time Mr Nugent's request was received, it was intended that the report would be finalised and, once finalised, it would be published at the next available Committee.
29. In adopting the tariff, the Council also has to fix a date for the fare scales to come into effect. This date has to take into account the process of writing to all licence holders advising when the tariff comes into effect and giving a window of 14 days to submit an appeal to the Traffic Commissioner. The timescale for bringing the tariff into effect also has to consider the potential logistics and time required to recalibrate 1419 taxi meters if the new tariff differs from the previous one.
30. The Council explained that the dates of the Committee meetings are fixed by Committee Services months in advance. The Council would be in recess from 27 June 2016 to 1 August 2016. Consequently, the Committee meetings would have to take place prior to recess in order to have the new tariff in place by 23 August 2016 and to comply with the statutory requirement for a review to be carried out at least every 18 months.
31. The last Committee meetings before recess were scheduled for 15 and 16 June 2016: the taxi tariff was adopted by the Committee at the meeting on 15 June 2016. The very last Committee meeting that the taxi tariff report could have been submitted to was on 4 May 2016 in order that the public consultation could take place and a further report provided to Committee on either 15 or 16 June. The Council submitted that this was known at the time of Mr Nugent's request.
32. Having considered the Council's submissions, including the key points noted above, the Commissioner accepts that the Council did have a settled intention to publish the 2015/16 taxi tariff review within 12 weeks of Mr Nugent's request. Given the explanations given by the Council, she is also satisfied that it was reasonable in all the circumstances that the Council withheld the review from disclosure until the intended publication date. The Commissioner is therefore satisfied that section 27(1) of FOISA applies.

Public interest

33. The exemption in section 27(1) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Having decided that the information is exempt under section 27(1), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

The Council's public interest submissions

34. The Council explained that the elected members of the Committee did not have sight of the information requested by Mr Nugent until the document was included in their Committee papers shortly before the Committee meeting on 4 May 2016. The Council argued that it was not in the public interest to disclose the information prior to this. It is in the public interest for public authorities to be able to determine their own publication timescales, and have the required space to deal with the necessary preparation, administration and context of publication.

35. The Council submitted that, at the time Mr Nugent made his review request, the taxi tariff review report was yet to be finalised. Releasing the document early, when it was still in draft form, would not have been in the public interest as it could have contained misleading errors.
36. The Council acknowledged the public interest in openness and transparency and recognised that any request under section 1 of FOISA is potentially in the public interest.
37. However, the Council pointed out that there is an established process in place to allow for representations and comments to be made on changes to the taxi tariff. In accordance with section 17(4A) of the Civic Government (Scotland) Act 1982, following the licensing authority's proposal of new taxi fare scales, the proposed scales must be published in a newspaper circulating in its area:
 - (i) setting out the proposed scales
 - (ii) explaining the effect of the proposed scales
 - (iii) proposing a date on which the proposed scales are to come into effect and
 - (iv) stating that any person may make representations in writing until the relevant date.
38. The Council must then consider any such representations.
39. The Council submitted that this public consultation period allows for scrutiny of public decision making and for the public to make representations on the taxi tariff. It argued that the public interest in disclosure of the information is satisfied by this consultation period and by the publication of the taxi tariff information on the Council's website.

Mr Nugent's public interest submissions

40. During the investigation, Mr Nugent was informed that the Council was still relying upon section 27(1) of FOISA, in relation to the 2015/16 tariff review and that the Council considered it would not be in the public interest to disclose such information into the public domain before it was available to the elected members of the Committee.
41. Mr Nugent was asked for his views. In response, he commented that he would not expect the Council to publish a tariff in the public domain, until it had been before the Committee.

The Commissioner's conclusions on the public interest

42. In considering the public interest in favour of disclosure, the Commissioner recognises the general public interest in disclosing information held by Scottish public authorities.
43. The Commissioner accepts that it was in the public interest for the Committee to be allowed space and time to consider the new taxi tariff before it was published. The Commissioner has also taken into account that the procedure for adopting the new tariff includes a period in which all licence holders are notified and have the opportunity to comment and appeal.
44. In conclusion, the Commissioner is satisfied that, on balance, the public interest in this case favours maintaining the exemption, as the public interest in disclosure of the information before the intended date of publication was outweighed by the public interest in giving elected members time to consider the taxi tariff review report.
45. The Commissioner therefore finds that the Council correctly withheld the information requested by Mr Nugent under section 27(1) of FOISA.

Decision

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

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

27 September 2016

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

27 Information intended for future publication

- (1) Information is exempt information if-
- (a) it is held with a view to its being published by-
- (i) a Scottish public authority; or
 - (ii) any other person,

at a date not later than twelve weeks after that on which the request for the information is made;

- (b) when that request is made the information is already being held with that view; and
- (c) it is reasonable in all the circumstances that the information be withheld from disclosure until such date as is mentioned in paragraph (a).

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