

East Lothian Council

FOI Ref: 2018/504576

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://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf . The questions I raise below should be interpreted as requests for recorded information under the Freedom of Information Act.

I have previously made two similar requests to you, one in April 2017 and one in November 2017. I am now requesting an update to assess the impact of implementing this legislation, 12 months after it was commenced. Please note: this request is not identical to my previous requests and in any case asks for updated information as of the time of sending the request. It is therefore not appropriate to respond simply "see previous answer" or "situation unchanged".

In response to my previous FOI request on similar matters in November 2017, you indicated that you had implemented a S167 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 still 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?

Yes, East Lothian Council (ELC) does.

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2) If so, please provide information in response to the following questions 2a) to 2i):

2a) 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?

Yes.

2b) 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?

Yes to these points (for operators only, not drivers).

2c) 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?

No.

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2d) 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?

No.

2e) 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?

Yes, on the conditions.

2f) 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.

No appeals have been made.

2g) 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 prosecuted.

2h) 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 prosecuted.

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2i) 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?

None prosecuted.

3) 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."

3a) How many exemptions have you granted under S166 of the Equality Act 2010?

None.

3b) 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?

ELC would require a doctor/medical report although we have not received any such applications.

3c) 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?

Yes.

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3d) Please provide a copy of your application form for driver exemption under S166.

ELC does not have an application form. In view of this, under Section 17(1)(b) of the Act, I must formally advise you that ELC has been unable to comply with this part of your request as the information you require is not held.

3e) 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?

None.

3f) How many appeals against refusal to issue S166 exemptions were successful?

Not applicable.

4) 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.

Finally, it may help to explain that Freedom of Information legislation only applies to information which is held or recorded by a public authority. It does not apply to views, opinions, intentions or questions which simply require a yes/no answer. In view of this, some of the questions asked are not technically valid for the purposes of this legislation as they are not requests for specific recorded information that ELC may or may not hold.

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In order to assist you, however, colleagues have addressed the questions posed to the best of their knowledge. For future reference, a link to the "Tips for Requesters" page of the Scottish Information Commissioner's website has been provided which you may find useful:

<http://www.itspublicknowledge.info/YourRights/Tipsforrequesters.aspx>