

# Decision Notice 030/2022

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## Leader of the Council's taxi journeys: "approved duties"

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**Applicant: The Applicant**

**Public authority: Glasgow City Council**

**Case Ref: 202000111**



Scottish Information  
Commissioner

## Summary

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The Council was asked about the taxi journeys undertaken by the Leader of the Council, in particular what “the approved duties were for each journey”. The Council stated that it did not hold the reasons for the journeys.

Following an investigation, the Commissioner was satisfied that the Council did not hold the information.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held)

Local Government (Allowances and Expenses) (Scotland) Regulations 2007 (the 2007 Regulations) regulation 2 (definitions of “the 1973 Act” and “approved duty”) (Interpretation)

Local Government (Scotland) Act 1973 (the 1973 Act) section 49(2) (Provisions supplementary to sections 45 to 48)

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 18 November 2019, the Applicant made a request for information to Glasgow City Council (the Council). The Applicant had received a log of taxi journeys made by Councillor Aitken, the Leader of the Council. The Applicant asked for clarification on a number of the journeys, specifically, “what the approved duties were for each journey that meant [Councillor] Aitken was reimbursed.”
2. The Council responded on 17 December 2019. It:
  - explained, in relation to the “approved duty” which Councillor Aitken was carrying out, that it regarded Leaders carrying out the business of being Leader as attending “any meeting or conference to which the member has been appointed or invited by Glasgow City Council or a committee to attend”
  - explained, on the assumption that the Applicant was asking a more specific question about what the Leader was doing on each of the occasions highlighted, that it does not hold information on behalf of elected members (information held by the Council is not held for the purposes of FOISA if it is held on behalf of another person – section 3(2)(a)(i)) – this would include information such as the Leader’s diary
  - notified the Applicant that, while the Council held an annotated extract of the Leader’s diary (which had been obtained by its press office to allow it to answer questions following the disclosure of the Leader’s taxi log) which included some information which fell within the scope of the request, the extract was exempt from disclosure.

3. On 18 December 2019, the Applicant wrote to the Council, requesting a review of its decision. The Applicant argued that, if the Leader's diary was not held by the Council, there must be another method of verifying the claims made. He suggested one way to answer his request would be for the Council to provide him with the claim forms submitted by the Leader for the journeys highlighted in his request.
4. The following day, Council asked the Applicant to clarify why he was dissatisfied with its response (for a request for review to be valid, it must specify the matter which gives rise to dissatisfaction – section 20(3)(c)(ii) of FOISA). The Applicant made it clear that his dissatisfaction was with the fact that the Council had told him it did not hold the information – he understood that the Council held expense claim forms from which it could ascertain what the Leader attended and the associated taxi expenditure.
5. The Applicant also confirmed that he was content for his further questions (copies of claim forms and the identity of the person who had oversight of these forms) to be treated as new requests. (The Council's responses to these requests are not considered in any detail in this decision. However, the Commissioner notes that the Council subsequently notified the Applicant that it did not hold invoices or claim forms, given the way taxis for the Leader are organised.)
6. The Council notified the Applicant of the outcome of its review on 20 January 2020. The Council confirmed that it did not hold the Leader's diary for the purposes of FOISA. It did not address whether it held other records from which the information the Applicant had requested could be obtained.
7. The following day, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of the Council's review. He believed the Council did hold information and questioned how the Council could have made payments to the Leader for carrying out her public duties if it did not have access to information which could confirm what the Leader attended.
8. The Applicant commented that the Council had made payments from public funds to the Leader on the basis that she was carrying out duties associated with her role as Leader. In his view, the Council could not authorise such payments without knowing what the Leader attended to allow payment and on what basis. The Applicant believed the information must be held by the Council in its own right.
9. The Commissioner confirmed that the Applicant 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. The dissatisfaction expressed by the Applicant in his requirement for review and application are consistent with his request for information.

## Investigation

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10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 19 February 2020, the Council was invited to comment on this application and to answer specific questions. These focussed on the Council's interpretation of the request and its basis for stating that it held no information on the reasons ("the approved duty") for the Leader's journeys. This included a question about the Leader's diary.

## Scope

11. On 4 March 2020, the Council questioned the interpretation of the Applicant's request. It understood that the only matter the Applicant was seeking a decision on was whether the Council held the reasons behind the Leader's taxi journeys. It noted that, although it had told the Applicant that the information would be held in the Leader's diary, it should instead have advised him that it was "likely" that the information would be contained in the diary – Council officers had not, in fact, had sight of the diary, and so could not state definitively what it contains.
12. The investigating officer confirmed, on 7 August 2020 (after a delay caused by Covid-19), that the Commissioner agreed with the Council's interpretation and that the application was not solely about whether the Council held the Leader's diary. The investigating officer asked the Council to explain how it had established it did not hold the information and for an explanation on how the Council scrutinises the expenditure in question.

## Validity

13. On 2 October 2020, the Council wrote to the Commissioner questioning whether the application was in fact valid. It noted that the request asked what the approved duties were for each highlighted journey that meant Councillor Aitken was reimbursed. The Council considered the application may be technically invalid because the Leader was never actually reimbursed, all taxis having been paid on account by the Council and not by Councillor Aitken personally.
14. The Commissioner does not agree that the application is invalid. It is important the requests are interpreted reasonably. It is clear to the Commissioner that the focus of the request, request for review, etc. has always been on whether the Council holds information which explains why taxi journeys taken by the Leader were paid for out of the public purse. Although the Applicant used the word "reimbursed", the meaning of the request was clear. It would be artificial to draw a distinction here. If the Council had considered that it required further information to identify and locate the requested information, it could have asked the Applicant to provide further information (section 1(3)), but it did not take this step.

## Disclosure of travel logs

15. During the investigation, the Council told the investigating officer that it had re-examined the travel logs received by the Council's Financial section from the Leader's office. These logs provided information about the Leader's taxi journeys to allow Finance officers reconcile and publish councillors' expenses on its website. For some (although not all) of the journeys, these forms also contained a description of the event that was attended. Some of these entries were minimal, for example "dinner", "attend event" or "attend visit".
16. The Council reconsidered whether this information fell within the scope of the Applicant's request. The Council was of the view that it did not, given that the descriptions did not explain why the Leader attended the events in terms of the definition of "approved duties."
17. However, the Council considered, under its duty to provide advice and assistance (section 15(1) of FOISA), that it would have been helpful to have disclosed information from the logs to the Applicant. It did this on 7 October 2020.

## Commissioner's analysis and findings

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18. 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, subject to certain qualifications which are 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.
19. The Commissioner's investigation is focussed on whether the Council was entitled to notify the Applicant that it did not information about the "approved duties". The Council's submissions to the Commissioner, supporting the argument that the information is not held, fall into the following categories:
  - (i) the Leader is not reimbursed for taxi expenditure
  - (ii) the approved duties are not recorded in any other form by the Council.
  - (iii) the Leader's Diary is not held for the purposes of FOISA
20. The Council's submissions are considered in detail below.

### Reimbursement and claim forms

21. The Council noted that the Applicant had asked a specific question about which "approved duty" (as defined by legislation) the Leader was undertaking on each of the occasions highlighted.
22. The Council described "approved duties" as attendance at Council meetings, duties in connection with council functions, conferences/seminars etc., nominee to other bodies, group meetings, duties undertaken by chair or vice chair or other senior councillors, members surgeries, constituency/committee work and meetings with named Officers.
23. This is based on regulation 2 of the 2007 Regulations (see Appendix 1), which adopts the definition of "approved duty" in the 1973 Act (again, see Appendix 1).
24. The Council understood that the Applicant was looking for the information which explained the capacity in which the Leader attended the various events associated with each taxi journey, to assess whether the use of the taxi was for Council or personal purposes.
25. The Council clarified that, when leaders of the Council order taxis, they do so on account rather than by submitting claim forms. No claim forms are held in relation to the Leader's taxi journeys and this was why the information regarding the reasons for the journeys were likely to be mainly contained within the Leader's diary and not in information held by the Council.
26. The Council explained how it established that it did not hold the requested information (the underlying reasons for taxi journeys made by the Leader of the Council). Discussions took place with the Executive Head of Compliance, Financial Services, who is responsible for the processing and governance of Elected Member expenses. The Executive Head of Compliance advised that, when Leaders of the Council order taxis, they do so through the Council's taxi account rather than by submitting claim forms and do so without prior approval. This is done by the staff within the Leader's office telephoning the taxi company to make the request for transport and quoting the Council's account information which allows the Council to be invoiced and charged for the journey. There is currently no process, the Council explained, which required a Leader retrospectively to provide information to the Council

regarding the reason for a taxi journey. Accordingly, no information as to the reasons for the Leader's taxi journeys was held by the Council.

27. The Council explained that the Executive Head of Compliance's team only receives a weekly statement from the Council's Neighbourhoods and Sustainability Department, which administers the organisation of the taxi account. This statement provides only the name of the passenger; time of pick up; location of pick up point; location of drop off point and cost. The Council's Neighbourhoods and Sustainability Department holds no other information regarding the taxi journeys.

### **The Leader's Diary**

28. The Council submitted that it did not hold the Leader's Diary for the purposes of FOISA: as noted above, if a Scottish public authority holds information on behalf of another person, the information is not held by that authority for the purposes of FOISA (section 3(2)(a)(i)). If the information requested is held on behalf of another person, the authority must give the applicant notice under section 17(1) of FOISA.
29. If an authority holds information on behalf of another person, it will not control that information in the same way as it would if it held the information in its own right. The authority would not have the power to delete or amend that information without the owner's consent, nor would it be able to apply its own policies and procedures to it without such consent. The Commissioner recognises that this is not necessarily a binary question - information may be held on behalf of another person and, at the same time, by the authority itself for its own purposes.
30. The Council stated that it does not hold information held by or on behalf of Elected Members. Information held by Council staff in the Leader's office is not held by the Council for the purposes of the freedom of information legislation - it is held on behalf of the Leader. This includes information such as the Leader's diary: section 3(2)(a)(i) therefore applied.
31. One of the services that the Council provides its elected members, including the Leader of the Council, is the provision of ICT. This includes providing IT equipment and supporting software on the Council's IT network. The Council also provides support staff to its elected members to assist them in carrying out their duties. However, while the information created by elected members (or by support staff acting on their behalf) and held within the elected members' own accounts and directories may be stored on the Council's IT system, this information is not held by the Council, but is held by the councillors themselves.
32. The Council submitted that the information does not relate to the business of the Council itself and accordingly sits on the Council's IT systems only as a matter of administrative convenience. The Council's reference to the Commissioner's Guidance on "Section 17: Information not held" which notes that councillors are not Scottish public authorities in their own right, and do not hold information for the purposes of FOISA. The Council did not consider there was an appropriate connection between the Leader's diary and the functions of the Council so as to make this information "held" by the Council.
33. The Council also noted that councillors are data controllers in their own individual right, each being registered separately with the (UK) Information Commissioner (the ICO). The Council is a separate data controller, itself registered with the ICO. The Council acts as a data processor to each elected member and the Council has Data Processor Agreements in place with every councillor individually. The Leader's diary has been created by her, or by support staff acting on her behalf and in line with the data processor agreement between the Council

and the Leader. It is not a "Council" document and Council officers (other than the support staff) do not have access to or sight of this diary.

34. In this particular case, having considered the information held and the submissions, the Commissioner is satisfied that the information in the Leader's Diary is held solely on behalf of the Leader and not on its own behalf. There is no implication that the Council requires to have available to it the Leader's Diary so that it can monitor or oversee or any such other activity.
35. Consequently, the Commissioner is satisfied that the Leader's Diary is not held by the Council for the purposes of FOISA. The Commissioner is therefore not required to consider whether the content of the Leader's Diary falls within the scope of this request.
36. For completeness, the Council referred to the "Members' Diary" for Councillor Aitken, published on its website, which details Councillor Aitken's attendance at Council and Council committee meetings. The Council did not consider that online diary fell within the scope of the Applicant's request. The Commissioner agrees: it does not go into the detail requested by the Applicant.

### **Does the Council hold other information which would answer the information request?**

37. As noted above, the information to be provided in response to a request is that falling within the scope of the request and held by the authority at the time the request is received.
38. 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 why the information is not held. Having considered all the relevant submissions, the Commissioner accepts that the Council has taken adequate and proportionate steps to establish the information it held which fell within the scope of the Applicant's request.
39. In reaching this conclusion, the Commissioner has taken into account the following:
  - the enquiries undertaken by the Council to assess the information were reasonable and proportionate and likely to identify relevant information
  - the Council's searches also took account of the staff within the Council with the most expertise in assessing if relevant information was held by the Council, and 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 Council conducted searches using relevant criteria and those searches successfully located some information provided to the Applicant in an attempt to assist. This evidenced that the Council was able to identify the extent to which information was collected and retained, showing that the searches were capable of locating and retrieving any relevant information.
40. The Commissioner is satisfied that the information requested is not held by the Council for the purposes of FOISA and that it was entitled to give him notice, in terms of section 17(1) of FOISA, that it did not hold the information.

## Concerns raised by the Applicant

41. The Applicant queried how the Council can scrutinise the use of public funds for taxi journeys if it does not hold recorded information on the purpose of the journey. However, the Commissioner's remit extends only whether the Council actually held the relevant information requested. The Commissioner cannot comment on whether a public authority should have recorded any, or more, information about a particular issue unless that relates to compliance with Part 1 of FOISA – which, in the present application, it does not.

## Decision

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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 the Applicant. The Commissioner finds that, in respect of the matters specified in the application, the Council does not hold the requested information.

## Appeal

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Should either the Applicant 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**

**9 March 2022**

### 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.

...

- (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 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.

...

#### 3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
- (a) by the authority otherwise than-
    - (i) on behalf of another person;

...

#### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

#### 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.

...

## **Local Government (Allowances and Expenses) (Scotland) Act 1973**

### **2 Interpretation**

In these Regulations –

“the 1973 Act” means the Local Government (Scotland) Act 1973;

...

“approved duty” has the same meaning as in section 49(2) of the 1973 Act;

...

## **Local Government (Scotland) Act 1973**

### **49 Provisions supplementary to sections 45 to 48**

...

- (2) In sections 45, 45A, 46 and 48 of this Act the expression “approved duty”, in relation to a member of a body, means any of the following duties that is to say –
  - (a) attendance at a meeting of the body;
  - (aa) attendance at a meeting of a committee, or sub-committee, of the body if such attendance is –
    - (i) as a member of;
    - (ii) at the invitation or; or
    - (iii) expressly authorised by,the committee or, as the case may be, sub-committee or is at the invitation of, or expressly authorised by, the body;
  - (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the body or any of its committees or sub-committees;

- (c) where, in pursuance of a duty imposed or a power granted to the body by any enactment or instrument (including a Royal Charter), he has been appointed by or on the nomination of the body to be a member of some other body prescribed for the purposes of this paragraph (whether or not also prescribed for the purposes of sections 45 to 47 of this Act), the doing of anything as a member of that other body for the purposes of, or in connection with, the discharge of the functions of that other body,

...

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