

**Taxis Committee – 27<sup>th</sup> April 2011**

**Report of the Director of Corporate Resources**

**Taxi Committee Hearings**

**Purpose of Report**

1. To review the policy that Taxi Committee Hearings should be held in private session.

**Background**

2. At the Council meeting on the 28<sup>th</sup> of February 2010 the Director of Corporate Resources was requested to review the policy that Taxi Hearings should be held in private session and report the findings to the Taxis Committee.
3. Since September 1989 the majority of Taxis Committee hearings have been held in private session, the exception, being policy reports, which are held in public session. This decision to hold hearings in private session was made by the then Chief Legal Officer in consultation with the then Chairman of the Administration, Property and Legal Committee.
4. The Taxis Committee hear a wide range of cases at its meetings which include applications for the grant/renewal/review of private hire and hackney carriage driver's and private hire operator's licences where there are criminal convictions; medical issues; non compliance with licence conditions; driving offences; plying for hire; and charging more than the metered fare for the journey. In addition the Committee also hear complaints from the public in relation to the conduct of the drivers/private hire operators.
5. All applicants for the grant/renewal of a hackney carriage/private hire driver's licence are required to submit an enhanced Criminal Bureau Report (CRB), a medical report and to sign a DVLA mandate to enable a copy of the applicant's current driving licence to be sent to directly to the Council.
6. The enhanced CRB report discloses all convictions recorded against the applicant whether spent or not and in addition any information which the police hold and consider relevant to the application.
7. The Council is a registered recipient of Disclosure Information and has been issued with the CRB Code of practice. This code was presented to Parliament pursuant to Section 122 (2) of the Police Act 1997 and in accordance with this code: -
  - Certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

- Certificate information must be kept securely, in lockable, non portable, storage containers with access strictly controlled and limited to those who are entitled to see it a part of their duties.
- Once the relevant decision has been made the certificate information should not be kept any longer than necessary and no longer than 6 months without consultation with the CRB.
- Once the retention period has elapsed the certificate information must be immediately destroyed by secure means.
- Disclosure information can only be shared with relevant persons in the course of their specific duties relevant to recruitment and vetting process.

8. Under the section headed “Offences” the code states that it is an offence to:

- Disclose information contained within a Disclosure to any person who is not a member, officer or employee of the Registered Body

9. The Council is required to sign an agreement with the DVLA in relation to the provision of the Driver Licence Validation Service. (Copy of the current driving licence). This agreement states under the heading Consent at point 6.1.5: -

- Consent and records relating to any DVLA enquiry must only be used for the specific purpose of the enquiry made.

And

Under Data Protection – at point 5.1.2

it is an offence under the Data Protection Act 1998 for a person, knowingly, or recklessly without the consent of the data controller, to obtain or disclose data or the information contained in the data or to procure the disclosure to another person the information contained in personal data.

10. The medical reports received by the council cannot be disclosed to the public under the Data Protection Act 1998.

11. The Licensing Officer has consulted the Council's Information Management Officer in relation to the disclosure to the public of the information contained in the Taxis Committee reports and he has made the following observations: -

There are two points under the Data Protection Act 1998 which would allow the release of information i.e.-

Explicit consent of the data subject, or, any legislation that stipulates the report needs to be placed into the public domain.

There is no legislation in relation to Taxi and Private Hire that stipulates the reports need to be placed in the public domain and even if the explicit consent of the data subject was gained Information Governance has highlighted other areas of concern in relation to the reports.

The reports contain sensitive personal information relating to taxi drivers i.e.: -

- Details of previous convictions/driving licence endorsements
- Ethnicity – persons name alone can highlight the ethnicity of the person,
- Photographs, signatures and other personal data which could lead to identity theft issues.

In addition

- Publishing in the public domain would be a breach of the service agreement between the DVLA and a breach of the CRB Code of Conduct
  - Some reports contain large amounts of information that relate to third parties, witnesses and complainants.
  - There is also a concern that the releasing of this information would breach Article 8 of the Humans Rights Act:-
    1. Everyone has the right to respect for his private and family life, his home and correspondence
    2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of protection of health or morals, or for the protection of the rights and freedom of others.
    3. There is a strong argument that the public should be aware of drivers/operators who commit criminal offences/motoring offences; who breach licensing conditions; or who provide a poor service to their customers. Hearings held in public would go some way to addressing this point.
12. Given that convictions in the Magistrates'/Crown courts are in the public domain consideration has been given to obtaining a court register extract in relation to relevant convictions recorded against a taxi/private hire driver. However, the CRB report would have furnished the original information and it should be noted that the courts have an average charge of £75.00 per extract.
13. The Licensing Officer contacted West Midlands neighbouring Councils and six other Councils for their policy in relation to Taxi Hearings. This was to enable the Committee to have a clear overview of current policies in relation to Taxi Hearings, both inside and outside our immediate vicinity. The responses are collated below: -

Solihull Borough Council	Private Session
Sandwell Borough Council	Private Session
Birmingham City Council	Private Session
Wolverhampton City Council	Private Session
Stockton-Upon –Tees Council	Private Session

Newcastle City Council	Private Session
Leeds City Council	Private Session
Bristol City Council	Private Session
Peterborough City Council	Private Session
Reading Borough Council	Private Session

Birmingham, and Solihull Council's historically held Taxi hearings in public session but they changed their policy when the CRB and Data Protection legislation were enacted.

14. This application falls within the Council's responsibility for Taxi and Private Hire Licensing which has a direct link to the Council's key corporate priority that safety matters.

### **Finance**

15. There are no financial implications to the Council.

### **Law**

16. The Local Government (Miscellaneous Provisions) Act 1976 and The Town Police Clauses Act 1847 governs the licensing of hackney carriage and private hire.
17. The Police Act 1997 governs the Disclosure of Information in relation to the Criminal Records Bureau.
18. The Data Protection Act 1998 governs the disclosure of personal information.
19. In accordance with Part 1 of Schedule 12A of the Local Government Act 1972 exempt information relevant to Taxi Committee reports means information that falls within the following categories: -
  - Information relating to any individual
  - Information which is likely to reveal the identity of the individual
  - Information relating to the financial or business affairs of any particular person (including the authority holding that information)


The Director of Corporate Resources can determine that there will be no advance disclosure of information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Equality Impact**

20. This report takes into account the Council's policy on equal opportunities.
21. The Licensing of Private Hire and Hackney Carriage vehicles and drivers will impact on children and young people through their transportation in licensed vehicles.
22. There has been no consultation or involvement of children and young people in developing this review.

## **Recommendation**

23. Since the introduction of the Council's policy to hold Taxi reports in private session, the Police Act 1997 and the Data Protection Act 1998 have been enacted together with the introduction of the Driving Licence Validation Service. These pieces of legislation together with relevant codes of practice have made it extremely difficult for reports on individuals to be held in public. It is therefore recommended that such reports continue to be held in private session, notwithstanding the arguments to the contrary highlighted in this report.



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DIRECTOR OF CORPORATE RESOURCES

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## **List of Background Papers**