

23 May 2024

**Case reference: IC-302035-R5W0**

We are now in a position to respond to your information request which was clarified on 30 April.

**Request**

*"Please provide all legal advice that you possess with regard to the case law of Montague and the issue of reviews (not the aggregation issue)."*

We have handled your request for recorded information under the Freedom of Information Act 2000 (FOIA).

**Our response**

We understand your request relates to the Tribunal decision in Montague v Information Commissioner and Department for International Trade (2022) [UA-2020-000324-GIA] dated 13 April 2022, available at the link below.

[https://assets.publishing.service.gov.uk/media/6273a6ec8fa8f57a41d53ee9/UA\\_2020\\_000324\\_000325\\_GIA.pdf](https://assets.publishing.service.gov.uk/media/6273a6ec8fa8f57a41d53ee9/UA_2020_000324_000325_GIA.pdf)

Further to our request for clarification, you confirmed on 30 April that the "issue of reviews" related to two topic areas discussed in the decision, i.e. how the ICO treats these in its handling of complaints under section 50 of FOIA as regulator (paragraphs 72 to 90), and the time at which public authorities should consider the prejudice test (paragraphs 47 to 71).

We hold some information within scope of your request. This is being withheld under the provisions of section 42 of the FOIA and further details on this are provided below.

Section 42 FOIA

The requested information constitutes legal advice between client and lawyer which is subject to legal professional privilege and is being withheld in accordance with section 42 of the FOIA.

Section 42(1) of FOIA states that:

'Information in respect of which a claim to legal professional privilege [...] could be maintained in legal proceedings is exempt information.'

This is not an absolute exemption and we must consider whether the public interest favours withholding or disclosing the information.

The public interest factors in favour of lifting the exemption:

- The public interest inherent in the FOIA, i.e. the assumption of disclosure that is associated with the 'right to know' contained in section 1.
- The public interest in the ICO being open and transparent in the work that we do.

The public interest factors in favour of maintaining the exemption:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege.
- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice. Disclosing legal advice of this nature would lead to a reticence in seeking advice and the provision of that advice. This could lessen the effectiveness of the advice process and potentially undermine the client's ability to make fully informed legal decisions.

Taking into account the above factors, we have concluded that the public interest favours maintaining the exemption and we are withholding the requested information.

### Advice and assistance

You can find relevant details in relation to the Tribunal decision in our guidance at the following ICO webpages.

[The prejudice test](#)

[The public interest test](#)

We also provide information on how we handle FOI complaints in our [FOIA EIR casework service guide](#).

This concludes our response to your request. We understand this response may be disappointing but hope the information provided above is helpful.

## Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days. You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority. You can [raise a complaint through our website](#).

## Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

**For information about what we do with personal data  
see our [privacy notice](#)**