

10 June 2024

## **IC-302035-R5W0: Internal Review Response**

I write further to your email of 25 May 2024, in which you requested an internal review of our response to your information request, which we handled under the above case reference number.

I am a Senior Information Access Officer. I can confirm that I have had no prior involvement in the handling of this request. My role is to review the application of the Freedom of Information Act 2000 (FOIA) in relation to your request.

Section 45 of the FOIA requires the publication of a code of practice, designed to assist public authorities handle requests under this legislation.

This guide recommends that public authorities put in place an internal review process for FOIA responses, which our guide suggests should be triggered whenever a requester expresses dissatisfaction with the outcome of a request they have made.

### **Review**

The purpose of this review is to look again at your request and the way it was handled. You requested the following information:

*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).*

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).

The request handler confirmed that we hold information that falls within scope of the request, and that this has been withheld in accordance with Section 42 of the FOIA. In your reply you stated your belief that "the public interest in disclosure outweighs the private interest of the ICO in withholding this information".

I have reviewed the information and am satisfied that Section 42 has been correctly applied. The withheld information constitutes legal advice between lawyer and client, and I am satisfied that the public interest test in this case does not favour disclosure, for the reasons provided in the response.

While I agree that there is general public interest in disclosure, for the reasons outlined by the request handler, I also agree with their assessment that there is a public (rather than a purely private - as your reply to our response asserts) interest in clients being able to seek and receive full and frank legal advice in order to make informed legal decisions.

Our consideration of the public interest is always informed in the first instance by Bellamy and Secretary of State for Trade and Industry (EA/2005/0023): "...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest..." Therefore we will always need to consider the inherent public interest in the maintenance of legal professional privilege (LPP).

I have considered [our guidance](#) in relation to this exemption, as well as the factors this mentions in relation to the public interest test. There is little I can add to the points already made by the request handler, and to provide further details (e.g. about the factors that favour maintaining the exemption) could risk disclosing details about the contents of the withheld information (thereby undermining the application of the exemption).

With the above points in mind, I do not uphold your request for review. I am satisfied that Section 42 has been correctly applied, that the public interest does not favour disclosure, and that the information should be withheld.

## Complaint procedure

If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. Please follow the link below to submit your complaint:

<https://ico.org.uk/make-a-complaint/>

## Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



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