

Date: 7 June 2024

IC-305998-X7L5

Request

You asked us:

"The below is a request under the Freedom of Information Act 2000 to the Information Commissioner's Office (ICO), relating to its use of a third-party company called Exela Technologies Limited (Exela) to process and scan incoming mail.

Initial contract

Please provide;

- 1. any information held relating to the tendering process, internal discussions and decisions taken which resulted in Exela being chosen as the third-party provider for the ICO.*
- 2. information about how many other third-party companies were considered for the contract.*
- 3. any information held relating to the cost and initial duration of the contract with Exela.*

Continuation of contract

In anticipation of staff returning to the office post-lockdown, all departments and teams within the ICO were required to submit a "ways of working" document, which detailed how in-person attendance in the office would be managed in such a way as to ensure all operational needs of the ICO were met.

In relation to these consultations, please provide;

4. *any information held relating to decisions taken which reference the handling, processing, scanning of incoming postal mail; including any documented rationale for the continuing use of an external third-party mail provider, given that the ICO has a dedicated mail room, as well as the staff and technological resources necessary to resume doing this role in-house.*
5. *any information held about the extension or continuation of the contract with Exela.*
6. *any information held about the ongoing cost of this contract.*
7. *any cost-benefit analysis that was carried out which looked at continuing to use Exela, versus bringing the process back in-house.*

Going forward

Please provide;

8. *any information held relating to the future continued use of Exela as a third-party provider, including information about how long any contract or agreement is likely to run for, as well as any ongoing costs for retaining Exela as a third-party provider.*
9. *any information held about decisions taken or the rationale for continuing to use a third-party provider when the facilities already exist on-site at Wycliffe House to do this internally.*

Risk assessment / due diligence

Exela has received a lot of negative press coverage in recent years, specifically in connection to a £4.5million contract from the government to digitally scan copies of wills for probate applications, with severe and significant backlogs having an impact on individuals at a time when they are identified as vulnerable.

(<https://www.thisismoney.co.uk/money/markets/article-9784531/Blundering-Essex-firm-Exela-Technologies-admits-losing-families-wills.html>)

Digital Will Scanning Service Widely Criticised By Experts - Today's Wills and Probate (todayswillsandprobate.co.uk)

Harlow firm at centre of major backlog of probate applications - Your Harlow

In light of Exela's reputation at the time, please provide;

10. any information held about risk assessments or impact assessments relating both to the use of Exela as a third-party generally, and in relation to the abovementioned concerns about its handling of another public sector contract; including conversations, comments or observations relating to risks and/or concerns about using them as a third-party provider.

11. any information held relating to risk assessments or impact assessments which assessed the risk of using a third-party processor at all, given the requirements placed on the ICO by the UK GDPR, DPA 2018 and FOI to handle such information securely and confidentially. Please include any information held, in the form of discussions, email correspondence, comments, minutes, etc where the business need to outsource this process was weighed against the legislative requirements of the above, and any decisions that concluded the business need outweighed these concerns.

Service standards

Significant backlogs have been identified with similar contracts being handled by Exela. As case materials sent to the ICO are frequently time-sensitive and require adherence to specific legal requirements around the timing of service, disclosure, etc; please provide;

12. a breakdown of the number of times Exela has failed to successfully complete contracted work for the ICO within agreed service standards, including details of the length of backlogs, delays, etc.

13. a breakdown of any instances where material sent for scanning has been lost or cannot be located, either internally or externally.

14. any information held by the ICO or Exela which indicates where a loss or delay in the contracted service has consequently resulted in the ICO failing to successfully execute its regulatory functions.

15. any information held about service complaints from employees, members of the public, and/or other stakeholders, held by the ICO or Exela."

We received your request on 13 May 2024. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

Conducting the searches necessary to confirm if we hold the information you have asked for would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

Although I do have concerns concerning the burden that another point of your request will impose, which I will talk about in my advice and assistance, this response will focus on this element of your request:

"any information held about service complaints from employees, members of the public, and/or other stakeholders, held by the ICO or Exela."

While we do record instances where a member of the public has raised a service complaint in the context of case work, we do not hold information that is so granular to allow us to easily and readily identify service complaints arising from the service standards of Exela. With this in mind, we are unable to run a quick automated report on this type of information and in order to locate the information you're looking for, we would have to conduct a manual search of hundreds of cases.

The ICO received on average approximately 33 service complaints a month according to data I have requested. Further, based on our [income and expenditure](#) data (in particular, our publication on 2022/23 spend over £25,000), it seems that Exela started to provide services on or around June 2022. I would estimate that during this time, we have received in the region of 750 service complaints.

Assuming that each search would take approximately 5 minutes to complete – and it is certain that some searches would take much longer than that – this would equate to over 62 hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

However, I would add that this only encapsulates service complaints as recorded on cases in our case management system. The discovery of information pertaining to service complaints raised by employees or stakeholders would be

significantly more challenging owing to the fact that these complaints, if any in scope of your request even exist, are most likely going to be handled outside of a case management system. The request has already exceeded the cost limit and this is before we would have to conduct organisation-wide searches to find complaints about Exela from staff and stakeholders, if such information even exists. This would be far reaching and, as a result, would be extremely burdensome.

With the above in mind, I have no difficulty coming to the conclusion that the request has exceeded the cost limits. I have provided some advice and assistance below, which will advise how the request might be modified such that it's more likely that we can respond to it in addition to some of the wider concerns with the request's viability that do not directly relate to the section 12 conclusion.

Advice and assistance

First and foremost, in relation to the reasons the request hit the section 12 limit, I would ordinarily advise reducing the time period in order to bring the request under the cost limit. However, in the present case, the reduction that would be necessary in order to bring the request under the cost limit, taking into account the scoping necessary for the wider request, would be fairly drastic and may result in searches that do not produce any meaningful information.

Further, even if the time period were a single day's worth of information held, then it would still not reduce the burden of having to find service complaints from members of staff and stakeholders about the service provided by Exela, if any such complaints exist. This is because such complaints are not going to exist in the context of a case management system, which is searchable, but would likely exist on disparate places that would require broad, organisation-wide consultation.

With the above in mind, I cannot recommend any limitation that would improve the chances of finding staff and stakeholder service complaints about Exela. Additionally, a significant reduction in the time period for service complaints held on our case management system would be necessary to bring this element under the cost limits in the context of the wider request, elements of which are also very burdensome. A significant reduction of the time period risks turning up no data of interest as we may, for example, have received 20 complaints in one three month period but zero complaints in another.

We would need to consider if it is in the public interest for us to dedicate the resources necessary to carry out this kind of search, or whether it represents an unreasonable burden on us as a public authority.

The above covers the subject matter of this response more broadly – a refusal under section 12. However, I do have some other concerns about your request that I wanted to provide advice on. My concerns are two fold. First, there are some elements which would be burdensome which may be grossly oppressive in the context of the wider request that may need to be revised. Second, there are some elements which clearly either overlap or are duplicate requests that might be better combined under a single heading.

In relation to the elements that I consider would be burdensome, I refer to point four of your request:

"4. any information held relating to decisions taken which reference the handling, processing, scanning of incoming postal mail; including any documented rationale for the continuing use of an external third-party mail provider, given that the ICO has a dedicated mail room, as well as the staff and technological resources necessary to resume doing this role in-house."

The ICO has over 1000 members of staff, which as you have alluded to will be separated into teams which will each have their own 'Team Ways of Working' document. Your request for *any* information held about decisions made with reference to handling, processing and scanning of incoming mail could not be more broad in both the kind of information it potentially encapsulates as well as the spread and distribution of where such information could be.

Although it is convenient to assume that such decision-making was exclusively made by designated decision-makers, 'Team Ways of Working' documents were drafted in consultation with the teams themselves to allow them to work in a way that was most productive and beneficial for that team. There could therefore be information in scope of the request from any number of any members of any team across the ICO, requiring organisation-wide searches. This issue could potentially be overcome by asking what information is held on the topic of incoming post in 'Team Ways of Working' documents, which would represent the actual decision taken, if any at all.

In relation to duplication, your first point asks for all information relating to the tendering process, internal discussions, and decisions which resulted in Exela being chosen. This is very broad, but you then go on to also request:

- In point three, you ask for any information relating to the cost and initial duration of the contract.
- In point six, you ask for any information about ongoing costs of the contract.
- In point eight, you ask for information about how long any contract or agreement is likely to run for, as well as any ongoing costs for retaining Excela as a third-party provider.

I consider the cost, initial duration, and ongoing costs are all information that would already fall in scope of point one and these points would therefore benefit from consolidation.

Further, point five asks about information held about the extension or continuation of services provided by Exela and point eight also asks about information held about the future continued use of Exela. Extensions or continuations of service and future continued use are, in my view, materially the same and I am also of the view these would benefit from consolidation.

Finally, point 10 asks for risk assessments or impact assessments relating to the use of Exela or a third party in general, but then point 11 asks for risk assessments or impact assessments which assess the risks of using a third party processor at all. Although there are some nuances between these two points, I do also think they would benefit from consolidation and simplification.

While the above advice has been provided to help you formulate a request which has a better chance of not hitting the cost limit or being a grossly oppressive burden, I would hasten to add that results are not guaranteed and any future request will need to be assessed on its individual merits and nuances.

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](#) on our website.

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



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