

9 October 2024

Case Reference IC-333197-F9B0

Request

You asked us for information about payment to the Information Commissioner's barrister for the purposes of a First Tier Tribunal case EA/2022/0288.

You specifically asked for the documented confirmation of the amount paid and the date on which the amount was paid to the barrister.

We received your request on 12 September 2024.

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

Our response

The total payment amount was £1200. This was recorded in an invoice to the ICO which was dated 5 December 2023. The payment date was 20 December 2023.

We cannot disclose the documented confirmation of this (the actual invoice), because it contains information which is exempt under section 43 (commercial interests) of the FOIA. Please see below for further details.

FOIA section 43

Some of the information you have requested is exempt from disclosure under section 43 of the FOIA. Section 43(2) states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

A 'person' may be an individual, a company, the public authority itself or any other legal entity. Our guidance on what constitutes a commercial interest states:

"A commercial interest relates to a person's ability to participate competitively in a commercial activity."

Section 43 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Prejudice test

We find that disclosure of this information would prejudice the commercial interests of the external barrister in this case and the commercial interests of the ICO.

If we disclose the rates for specific services belonging to an identifiable barrister, this information could be used by other parties to undermine the barrister's current commercial position or to gain an unfair advantage ahead of them for any potential future commercial activities.

It could also prejudice the ICO's ability to negotiate in commercial dealings in the future by giving away information about the specific values of services obtained in our previous transactions.

In addition, disclosure would damage the ICO's reputation for handling information about the particular prices, services or selling points associated with specific commercial entities. This may make it harder for the ICO to attract commercial parties to bid for services for the ICO in the future.

Our argument for the potential prejudicial effects is also supported by the following facts:

- The ICO and other bodies are likely to need to obtain legal services for future litigation
- We can reasonably assume the barrister in this case intends to advertise their services in the future, and we can reasonably assume there will be other providers of commercial legal services who will also be in contention for future work opportunities
- We are committed to publishing our FOI responses into the public domain, so the information will be widely and easily accessible

Overall, this means we can reasonably settle on the fact that there is a defined harm which is likely to be caused by disclosure.

Public interest test

We have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- the public interest in knowing the specific cost breakdown of legal services which have been provided to the ICO, to provide transparency about how the ICO has used its resources and about the specific nature of the services it has obtained or procured

The factors in withholding the information are:

- the public interest in maintaining trust in the ICO as a commercial party, by ensuring that the provision of services to the ICO doesn't come at an unfair cost by being overly transparent with their information
- the public interest in protecting the ICO's commercial interests, to the extent that it gives the ICO the ability to negotiate effectively for services it needs in the future

- the public interest in the ICO's impartiality as a public body, by avoiding unnecessary interference with commercial interests and avoiding skewing competition in any particular direction

Having considered these factors, we are satisfied that it is appropriate to withhold the information in the fee note.

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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