

3 October 2024

IC-330008-W2K0

Request

You asked us:

"I kindly request a record of all tribunal cases involving local authorities from the past five years. Could you also provide a summary of the findings for each case, listed by individual local authority, and include any relevant case references or outcomes?"

If possible, I would appreciate it if the information could be presented in a format that highlights key details such as the nature of the dispute, the decision of the tribunal, and any subsequent actions taken."

We received your request on 5 September 2024.

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

Our response

I can confirm that we hold information in scope of your request.

We hold summaries and records of tribunal cases in a number of formats. We are providing some information in scope of your request, and some information is being withheld.

First, please find attached two csv files which show a log of both First-Tier Tribunal cases (FTT Cases) and Upper Tribunal cases (UT Cases). We hold a log that tracks tribunal cases along with a range of information – in this case, we have only provided the relevant information to your request which is held on the log. This consists of the case reference (both the tribunal case reference and the relevant ICO complaint/decision notice case reference), the name of the public

authority involved, the date of the appeal decision, and the outcome.

Regarding this log, the information we hold is not categorised by sector. The information we have identified as relating to local authorities was extracted through searches for "councils" and "boroughs", among some more specific searches, across any party listed as an appellant, second respondent, or third party.

Please also note that the UT Cases file contains the names of cases, which includes the name of the appellant. In cases where the appellant's name is in the public domain, we have included it in the file. In cases where the appellant's name is not in the public domain (generally where cases have been withdrawn), we have not included their name. Any cell which includes "withheld s40(2)" is where we have not included the name of the appellant. This has been done in reliance on section 40(2) of the FOIA. Further information on this can be found below.

Secondly, please find attached the FOI Policy summaries we hold on which relate to local authorities. These are created by our FOI Policy team for a select number of cases, and include a summary of the case and the findings of the tribunal, which we have identified as falling in scope of your request.

Please note that we have not included the policy considerations and other analyses that are also produced as part of this work. This is because the scope of your request extends only to summaries of the tribunal cases, and not any analysis we have carried out as a result of these decisions. This information has been removed from the FOI Policy summaries. Please note that this information has not been redacted or withheld; as we have considered it to be outside of the scope of your request, it has simply been removed and not considered for disclosure.

Finally, we also hold some summaries that are produced by our legal team and distributed internally within the ICO. We consider such summaries to be legal advice, and so the information that is held in scope of your request in this respect has been withheld under section 42 of the FOIA. Further information on this can be found below.

Please note that decisions for tribunal cases are published. If you are interested in a particular case and we do not hold a summary of the findings, you may wish to search through the public records of decisions. The relevant FTT cases can be found [here](#), and UT cases can be found [here](#).

Information withheld

FOIA section 40(2)

Some information has been redacted from our response. It is exempt under section 40(2) of the FOIA.

Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

FOIA section 42

I can confirm that we hold some information which is subject to legal professional privilege and is withheld from our response in accordance with section 42 of the FOIA.

Section 42(1) of the FOIA states:

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about legal advice provided by the ICO's legal teams to internal clients.

With the public interest factors in favour of maintaining the exemption including:

- 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;
- The disclosure of legal advice could have a chilling effect on both policy officers and legal advisers by dissuading them from discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption.

This concludes our response to your request.

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
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