

Response to Request for Information

Reference FOI 002125
Date 29 March 2018

Class Action Lawsuits

Request:

This is a request made in accordance with, and under, the Freedom of Information Act 2000. The request is made to Wolverhampton City Council ("WCC").

I request that you provide me with a copy of:

1. any contract connected or related to services provided to WCC in order to allow WCC to participate in class action lawsuits. This request extends to contracts and documents related to class action lawsuits in which WCC participates on its own behalf, and class action lawsuits in which WCC participates on behalf of West Midlands Pension Fund?
2. a summary of the fees paid to entities that provide WCC with class action securities litigation. The summary should include the fee paid, the entity to which it has been paid, the date the fee was paid and a description of the way in which the fee was calculated?

We can state that the Council does hold information relevant to your request however I consider that the information is exempt from disclosure under Section 42 of the Freedom of Information Act.

Section 42 of the Freedom of information Act

Section 42 of the Freedom of Information Act sets out an exemption from the right to know information protected by Legal Professional Privilege. The information has been communicated between lawyers and clients. This information cannot be disclosed because the confidential relationship between lawyer and client is protected.

When assessing whether or not it was in the public interest to disclose the information to you, despite the exemption being applicable, we took into account the following factors:

Public interest considerations favouring disclosure

There is a general public interest in authorities being accountable for the quality of their decision-making and ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability. Transparency in the decision-making process and access to the information upon which decisions have been made can enhance this accountability. It could also be seen that there is a public interest in some cases in knowing whether or not legal advice has been followed.

Public interest considerations favouring withholding the information

Section 42 reflects a strong public interest in the Council being able to communicate freely with its legal advisers to provide and receive advice in confidence and there are legal agreements with the providers of the funds, and their existence.

Council departments require high quality and comprehensive legal advice for the effective conduct of their business. That advice needs to be given in context and with a full appreciation of the facts, which is necessary to be sought and given in a timely fashion to ensure policy develops in a fully informed way. The legal adviser needs to be able to present the full picture to his, or her, departmental clients, which not only includes arguments in support of their final conclusions, but also the arguments that may be made against them. It is in the nature of legal advice that often sets out the possible for and against arguments a particular view of weighing up their relative merits. Without such comprehensive advice the quality of the Council's policy and decision-making would be much reduced for the following reasons:

- it would not be fully informed and this would be contrary to the public interest;
- there is a risk that should legal advice (provided internally) be disclosed, it could mean lawyers and Departments are likely to avoid making a permanent record of the advice given and/or only make a partial record of the advice provided in future policy/decision-making processes for compensation claims and litigations cases.
- to disclose information provided in a legal capacity to a third party could breach the confidentiality status of privileged communications with in-house lawyers.
- It may also affect confidential communications between in-house lawyers and third parties when seeking evidence for the purposes of litigation claims from an expert.

Disclosure of legal advice provided in confidence also has a high potential to prejudice the Council's ability to defend its legal interests, particularly when the advice has been fully considered and presented without fear or favour, which are neither in the public interest. To disclose such information could result in serious consequential loss, or at least, a waste of resources in defending unnecessary challenges. The latter may result in poorer decision-making because the decisions may not be taken on a fully informed basis.

We have reached the view that, on balance, the public interest is better served by withholding this information under Section 42 of the Act at this time

You can find out more about Section 42 by reading the extract from the Act and some guidance points we consider when applying this exemption.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/42> and further guidance <http://www.justice.gov.uk/guidance/foi-exemptions-guidance.htm> .