



Information Commissioner's Office
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ICO Disclosure Log – Response to Request

Request Ref: FOI/815
Date of Response: 15/02/08

Response:

- 1. The average amount spent by the ICO responding to Information Tribunal appeals where the appellant is a member of the public appealing for information under the Freedom of Information Act.**
- 2. The average amount spent by the ICO responding to Information Tribunal appeals where the appellant is a public authority.**

We do not hold information that would completely satisfy this part of the request. However, in an attempt to assist, we have examined the information we record for external legal expenditure incurred in dealing with appeals (this is primarily external Counsel's fees). These are not broken down by reference to whether the party appealing is a public authority or the person making the request. However, we have sought to make such an identification (where that was possible) from the information available to me in order to arrive at an approximate average figure. Based on the figures available since 2005-06 to the present, the approximate average external expenditure on appeals brought by public authorities is £3143.70 and those by the person or body making the request is £2024.07 (this may be a member of the public, the media, campaigning organisation, private company etc). Some appeals for example will be dealt with entirely by in-house lawyers and there will be no external expenditure. Also, a proportion of appeals will be dealt with entirely on the papers and this will clearly involve far less expense than, for example, an appeal which is determined following a four day oral hearing. There are also added complications in that in some cases, and the recent MP's expenses appeal which was heard on 7th and 8th February is an example, both parties can appeal the Commissioner's decision.

- 3. The number of decisions for and against the ICO where the appellant is a member of the public.**
- 4. The number of decisions for and against the ICO where the appellant is a public authority.**

This information is available from the Information Tribunal itself and as such is exempt under section 21 of the Act. All of the Tribunal's decisions are published on the Information Tribunal's website (<http://www.informationtribunal.gov.uk/Decisions/foi.htm>). However, it is important to note that the decisions of the Tribunal are often not as straight forward as simply coming down in favour of or against the ICO. The Tribunal may, for example, uphold an appeal in full or only in part. They may agree entirely with the Commissioner's legal analysis but come to a different decision on a finding of fact. On the converse they may disagree with the Commissioner's analysis but nevertheless decide that his decision was correct.

- 5. Whether it is ICO policy to contact the initial requester when notified of the date of the tribunal hearing brought by a public authority**

The ICO does not as a matter of course notify the original requester when we are notified of the date of a hearing by the Tribunal. However, as soon as an appeal is received (whether by the requester or the authority) the ICO writes to the other party informing them that an appeal has been made and advising them to contact the Information Tribunal if they require further information. That other party can apply to the Tribunal to be joined as an additional party to the appeal. As a party, they would be notified direct by the Tribunal about hearing dates. Whether the initial requester chooses to apply to be joined is a matter for them entirely, and whether they are joined is a decision for the Tribunal. By virtue of the Information Tribunal (Enforcement Appeals) Rules 2005 (<http://www.opsi.gov.uk/si/si2005/20050014.htm>) the Tribunal can join a person as a party to an appeal if they consider it is “desirable” to do so. There might be cases where the Commissioner would consider that the non-appealing party could assist the Tribunal in its determination of the appeal and so might suggest to the Tribunal that it considers joining the other party. In other cases the Tribunal might of its own motion join another party to an appeal. The Tribunal does publish the dates of hearings on its website (http://www.informationtribunal.gov.uk/Documents/PendingAppeals/CurrentCaseUpdate_210108.pdf). For the most part, appeal hearings are open to members of the public.

6. The proportion of Information Tribunal cases where the ICO (or its legal representatives) contact the initial requester when preparing for oral hearings of the Information Tribunal.

As explained above, the ICO contacts the party who has not appealed once the appeal is received. The ICO would not ordinarily contact the initial requester (or in the converse case the public authority) in preparation of his case for hearing. It is important to recognise the Commissioner’s position in relation to appeals brought against his decisions. He does not, for example, side with the public authority in an appeal brought by the initial requester nor conversely would he side with the requester when facing an appeal brought by the public authority. The Commissioner’s role is impartial and independent and, in relation to an appeal, is to explain why he made the decision he did.