



Resolution

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December 2023
FOI_6313

The following information was requested on 5 December 2023:

LITIGATION, COSTS AND INTEREST THEREON

We have checked your FOI disclosure log and can confirm that there is no record of the following questions having previously been asked. We would be obliged to receive full and frank answers:

- 1. What fee arrangement do you have with DAC Beachcroft Solicitors who handle litigation on your behalf? (please provide copies of retainer documents redacted if necessary if this is preferable to providing a full answer here)*
- 2. Is such fee arrangement determined by virtue of the outcome of the litigation which DAC Beachcroft achieve on your behalf? If so, please specify how.*
- 3. Upon the conclusion of litigation, (when DAC Beachcroft Solicitors are handling the Claimant's claim for costs against you) are DAC Beachcroft paid a percentage of the saving which they achieve, by hourly rate, a fixed fee, or a combination of each? Please specify which and provide a summary of details.*
- 4. Are you liable for interest on costs of litigation or is this paid by your solicitors? If you pay interest on costs, please specify your interest on costs liability for the last recorded financial year.*

Our Response

In regards to Q1 – Q3 of your request for information we believe the following exemption available under Freedom of Information Act 2000 (FOIA) applies:

1. Section 43(2) (information where the disclosure would be likely to prejudice the commercial interests of any person)

The exemption s. 43(2) FOIA is 'qualified' meaning that it is subject to a public interest test. This means that even if it applies, NHSR must consider whether the public interest in disclosing the information outweighs the public interest in maintaining the exemption. We set out further detail in relation to the exemption we have applied below.

In regards to Q4 of your request for information:

Neither. Liability for interest on the claimant's legal costs rests with the legal defendant. We cannot report how much interest is paid because we do not record that separately when making a costs payment. We would need to manually interrogate individual claims files to extract this information. NHS Resolution receives thousands of claims each year. This task would exceed the appropriate limit set under the FOIA legislation. Please see below for a further explanation of the s.12 exemption available under the FOIA.

Exemptions

Section 12(1) FOIA (exceeds the appropriate limit)

Therefore, we estimate that the cost of complying with the request in its entirety would exceed the 'appropriate limit'. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit (known as the 'appropriate limit'). The 'appropriate limit' for NHS Resolution is £450. This equates to 18 hours of work at the rate of £25 per hour set out in the 'Fees Regulations'.

Section 43(2) FOIA (commercial interests)

The requested information contains details which if disclosed, disclosure would be likely to harm the commercial interests of NHSR. This is particularly the case in respect of the commercially sensitive information included in the Contract with DAC Beachcroft Solicitors, which if disclosed would prejudice NHSR's ability to operate in a commercial environment and procure similar services in the future.

Public Interest Test

The exemption in s. 43(2) of FOIA is subject to a public interest test, meaning that NHSR must balance the public interest in disclosing the information against the public interest in maintaining the exemptions.

In this instance, NHSR has carefully deliberated and taken into account factors including transparency and public accountability. It has balanced these against the possibility of harming NHSR's economic and commercial interests in procurement and tendering. Having carefully considered and balanced these arguments, NHSR has reached the conclusion that the public interest balances fall in favour of the exemption cited, and consequently the information sought have been withheld.

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to [Tinku Mitra](#), Deputy Director of Corporate and Information Governance, Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in

relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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