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Our ref: RFI 9049
11 July 2017

[Redacted]

REQUEST FOR INFORMATION: LEGAL COSTS INCURRED BY THE GOVERNMENT IN RELATION TO THE CLIENT EARTH AIR QUALITY PLAN LEGAL CHALLENGES

Thank you for your request for information, which we received on 10 May 2017, about total legal costs incurred by the Government in relation to the legal case brought by ClientEarth against Defra on the Air Quality Plan. We have handled your request under the Freedom of Information Act 2000 (FOIA).

We enclose details of the information which can be released.

Information regarding the costs to Defra of defending the cases brought by ClientEarth was provided in a response to a Parliamentary Question on 26 June 2017. This can be found at the following link:

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-06-26/1033/>

Total legal expenses incurred by the Government in relation to the legal case brought by ClientEarth against Defra which concluded in April 2015

The majority of costs for the first legal case brought by ClientEarth against Defra were published in 2015 in a response to a similar FOIA request under RFI 7483. This can be found at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/532400/RFI_7483_Air_quality_and_Portsmouth_City_Council.pdf

This previous request asked for costs relating to three specific citation numbers ([2015] UKSC 28, [2012] EWCA Civ 897 and [2011] EWHC 3623 (Admin)). However, there are costs which were outside the scope of that request but which fall within the scope of your current request. These concern the 2013 Supreme Court hearing covered by citation number [2013] UKSC 25 and the associated reference to the Court of Justice of the European Union (CJEU) (C-404/13). These additional costs amount to £44,796.



The previous response also referred to costs paid to ClientEarth under an agreed Protective Costs Order (PCO) (£40,000), although it noted that strictly speaking that information was not held at the date on which the previous request was made.

There are further costs paid to ClientEarth which did not fall within the scope of the previous request but which fall within the scope of your current request. These are the costs of the PM₁₀ part of the original Judicial Review claim by ClientEarth, which was later not pursued (£6,642) and the costs of clarifying the terms of the Supreme Court's PCO (£192).

Legal expenses incurred to date by the Government in relation to the second legal case brought by ClientEarth

The cost to Defra in defending the case brought by ClientEarth (CO/1508/2016) is £191,574.24.

The figures above are based on the information we have and accurate as far as reasonably possible. However, several factors need to be considered in respect of this total. The figures include work done by litigation lawyers at the Government Legal Department (GLD) and barrister fees (to the extent that this information was held at the time of your original request). However, the figures represent an indicative total and do not necessarily represent the costs Defra has paid because GLD provides litigation services to the Department under a pre-agreed block-fee arrangement. Where relevant the figures include VAT on barrister fees. The figures do not include time spent by Defra Legal Advisers (the Department's advisory lawyers), as we do not hold information on the time spent by individual lawyers on specific matters.

As regards case CO/1508/2016, the Court ordered that Defra must pay ClientEarth's legal costs up to a maximum of £35,000, which is not included in the total figure given above. The Court also subsequently ordered Defra to pay ClientEarth's reasonable costs incurred after 13 April 2017 in respect of the Government's recent application which was the subject of a hearing on 27 April, but information regarding these costs was not held at the time of your original request.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact the address below.

Yours sincerely,

[Redacted]

Information Rights Team

InformationRequests@defra.gsi.gov.uk

Annex

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Nick Teall, Head of Information Rights, Area 4A, Nobel House, 17 Smith Square, London, SW1P 3JR (email: InformationRequests@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure. The ICO can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF