



Foreign &
Commonwealth
Office

Legal Directorate
Foreign and Commonwealth Office
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12 May 2015

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0117-15

Thank you for your email of 4 February 2015 asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

Since 1999, what has been the total cost to the Government of legal action opposing Chagossians' right to return to the Chagos Islands and defending the legality of Orders-in-Council issued in 2004 which prevented unauthorised entry into the British Indian Ocean Territory?

Please include a breakdown of all costs associated with different legal actions, defences and appeals including (but not limited to) the High Court case in the year 2000, the 2006 High Court case which overturned the 2004 Orders-in-Council, the 2008 Court of Appeal case which upheld the 2006 High Court decision, the 2008 appeal to the House of Lords Judicial Committee and the European Court of Human Rights case which concluded in 2012 in favour of the UK Government.

To be clear, please also include the legal aid costs associated with the above cases and any other legal action the Government has taken on these issues.

Please adjust these figures for inflation.

I can confirm that the Foreign and Commonwealth Office does hold information detailing the total costs charged to the Foreign and Commonwealth Department by the Treasury Solicitors' Department in respect of legal services provided in defending legal actions related to the British Indian Ocean Territory. These costs include Counsels' fees and other disbursements. These costs do not include any FCO staff costs. The costs are the total costs of defending the claim, and are not broken down by each stage of the court process (e.g. High Court, Court of Appeal, Supreme Court). These are the costs as charged to the FCO; we do not hold information about the legal aid costs incurred in these claims. That information is held by the Legal Aid Authority.

Please find attached the information that the FCO can release to you. Some of the information has been withheld using Section 42 – legal professional privilege. Section 42 is a qualified exemption and subject to a public interest test. We have considered the arguments in favour of disclosing this information, that there is a public interest in favour of transparency in the use of public funds. We have also considered the public interest in favour of withholding this information. Legal professional privilege is an important principle that safeguards opened in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. We consider that the arguments favour withholding the information.

High Court cases (and onward appeals):

- R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs, (No 1) – £455,268.44
- Chagos Islanders v The Attorney General & Her Majesty's British Indian Ocean Territory Commissioner - £762,400.85
- R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs, (No 2) - £963,538.73
- R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs (No. 3) - £341,154.58

Supreme Court application:

- Application by Mr Bancourt to the Supreme Court to set aside the House of Lords judgment in Bancourt (No2) on the grounds of the alleged breach of the duty of candour by the FCO and TSol - £4,911.82

Tribunal claims (freedom of information):

- Chagos Refugee Group v Information Commissioner & FCO- £54,633.85

International cases:

- European Court of Human Rights: Chagos Islanders v UK case – £37,747.40

The Claimant in Bancourt (3) has applied for permission to appeal to the Supreme Court. This case and the application to set aside the House of Lords judgement in Bancourt (2) have yet to be determined. Apart from Bancourt (1), the FCO successfully defended the High Court and ECHR cases listed above. With respect to the Tribunal claim, the FCO was directed to disclose two further documents, but the Tribunal found in favour of the FCO on the significant points of principle.

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Yours sincerely,

Legal Directorate



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