



Ministry of Housing,
Communities &
Local Government

**Ministry of Housing, Communities and Local
Government**

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Lynn Wyeth

Date: **5 July 2021**

Dear Lynn Wyeth,

Internal review under the Freedom of Information Act 2000 - 10379757

Thank you for your request for an internal review which we received on 16 April 2021. I am sorry that you are dissatisfied with our attempts to handle your request under the Freedom of Information Act 2000.

I am the review officer appointed to undertake the internal review and I am writing to provide a response.

Background

On 15 February 2021 you requested the following information:

In last week's announcement in the Commons, Robert Jenrick said on more than one occasion that the average service charge for a flat was £50 a month (the same as the proposed maximum loan to be charged to leaseholders under 18m).

1) Could you please supply any advice or briefing or information that was provided to Mr Jenrick that gave him this figure, and the source of that figure. I have no need for the rest of any advice/briefing, just the part about average service charge please. As this information has now had a decision made on it and announced in the Commons, along with the strong public interest in this matter where up to 11m people could be affected by the cladding scandal, I believe that s35/36 will not apply, particularly the source of the figure.

2) Could you please provide any legal advice the Government has received regarding the making of leaseholders below 18m pay for a loan and those above 18m receiving public funding to remove cladding, plus any legal advice on why it should just apply to cladding and not any other of the fire risks that make homes unsellable

On 14 April 2021, the Department wrote to you confirming the reference made by the Secretary of State and withholding other information with reliance on section 42 FOIA (confidential communications with lawyers).

On 16 April 2021 you requested an internal review of the Department's decision saying that:

You state that 'In reference to your first request the Secretary of State was referring to publicly available information published by third parties on average weekly service charges.'

Regarding the price that was quoted, If you are advising that information is easily accessible elsewhere then s21 should have been cited and a link to where I could access that or advice as to where I can find that information. I believe that you have breached the FOI act in not citing the exemption used and not providing advice and assistance.

I still wish to see the sources for the amount that was quoted please.

With regards to s42 being used, as I already said in my original request, a decision has been made on it and announced in the Commons, and there is a strong public interest in this matter where up to 11m people could be affected by the cladding scandal. I believe that s42, despite normally being a strong exemption to use, should not apply in this case and taxpayers have the right to know why billions of pounds of public money are being spent to bail out some developers' building deathtraps and not others and why.

Appeals Officer's Response

I have reviewed the response and spoken with the relevant case officers involved in your original request. I make the following observations:

- i) The Department in its original response could have been clearer that it held no information in relation to this part of the request. I can confirm, however, that this is the case so the exemption at section 21 FOIA is not engaged.
- ii) Section 42 FOIA covers confidential communications between a client and lawyer, made for the main purpose of seeking or giving legal advice. In my view, for the information held within scope of this part of your request, the exemption is clearly engaged.

Information falling within this exemption must still be provided however unless it is not in the public interest to do so.

As the original response to you set out, there is always a degree of benefit in making information held by public authorities available as it increases public participation in decision making, and aids the transparency and accountability of government. This, in turn, may serve to increase public trust and confidence in good governance.

However, I am unable to determine any specific justification for disclosure of this particular information that would outweigh the public interest in protecting communications between lawyer and client. It is generally accepted that there is a strong public interest inherent in the maintaining of this exemption due to the importance of the principle behind legal professional privilege. Ensuring access to full, frank and confidential legal advice is fundamental to the administration of justice, which is very clearly in the public interest. Therefore in the absence of strong and specific public interest reasons to offset the inbuilt public interest in maintaining the exemption, I have decided, on balance, that it is not in the public interest to disclose this information at this time.

Conclusion

Having reviewed this case I have concluded that the Department responded to your request correctly and uphold the original decision.

If you are unhappy with the outcome of this internal review, you can ask the independent Information Commissioner to investigate. The Information Commissioner can be contacted at email address casexxxx@xxx.xxx.uk or use their online form at ico.org.uk/concerns or call them on 0303 123 1113.

Yours sincerely

MHCLG FOI Team