

16 July 2020

Dear Ms Swallow,

**RE: YOUR REQUEST FOI003564 UNDER THE FREEDOM OF INFORMATION ACT 2000**

Thank you for your request for information, which was received on 8 June 2020.

Please find our response below.

**Request details:**

1. In 2018 and separately in 2019 how many SEND Tribunal did SCC defend?
2. How many SEND Tribunals did SCC win that they defended?
3. At how many SEND Tribunals did SCC secure and use the services of a Barrister?
4. What was the total spend on Barrister services by SCC SEND department in 2018 to date?

**Service response:**

1. We have defined "defended" as when the Local Authority (LA) opposed appeals at the time of submitting LA response.

**2018**

- Total number of appeals = 218
- Number of defended appeals = 153

**2019**

- Total number of appeals = 269
- Number of defended appeals = 199

2. Please note: The majority of tribunal cases are resolved through a liaison between the parties; when both parties compromise on their original position. Two very common scenarios for appeals are when:

- i.) Sections B, F and I in a child or young person's Education, Health and Care Plan are appealed. Within this appeal, the Tribunal may have made a decision that the school of parental preference is suitable but a number of the amendments parents proposed in relation to sections B & F (which the LA disputed) are not agreed or, conversely, a number of the LA amendments are agreed.
- ii.) Where the Tribunal has agreed that the placement can meet need but parents agree to pay the transport costs (and this caveat is made clear in section I of the EHCP by naming the school and setting out what should happen in the event that parents renege on their agreement to transport), and for that reason alone, the parent gets their preferred placement.

Bearing in mind the above:

#### 2018

- Appeals upheld = 5
- Partially upheld = \*
- Dismissed = \*
- Struck out/parents withdrew their appeal without the LA changing its position = \*

#### 2019

- Appeals upheld = 10
- Partially upheld = 6
- Dismissed = 5
- Struck out/parents withdrew their appeal without the LA changing its position = 18

We apply Section 40(2) of the Freedom of Information Act 2000, 'Personal information'. This acts as an exemption notice to any answer that refers to data of *less than five but greater than zero*. This data is redacted and denoted by an asterisk (\*).

As a public authority, Surrey County Council must mitigate the risk of identification (or re-identification) of individuals in order to safeguard individuals' privacy by observing all of the data protection principles when processing personal data.

As the information requested is personal information, it is exempt under Section 40(2) by virtue of Section 40(3A)(a) of the Freedom of Information Act 2000 (as amended). Disclosure under the Freedom of Information Act is deemed to be to the public at large. This information cannot be disclosed because its disclosure to a member of the public would contravene one or more of the data protection principles relating to the processing of personal information. They are set out in Article 5(1) of the General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

We have followed the Information Commissioner's Office guidance around applying this particular section of the Act to your request:

<https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

<https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

<https://ico.org.uk/media/for-organisations/documents/2614719/neither-confirm-nor-deny-in-relation-to-personal-data-section-40-5-and-regulation-13-5-v20.pdf>

3. We apply Section 12(1) of the Freedom of Information Act 2000, 'Exemption where cost of compliance exceeds appropriate limit', to this question. This acts as a refusal notice.

This information is not held in a readily accessible format. It is estimated that the cost of locating, retrieving and collating the information would cost in excess of £450 (the set limit) and therefore exceeds the 'appropriate level' as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004.

Costs for staff time i.e., staff retrieving and collating information are set at £25 per hour and this task would require us to spend more than 18 hours of staff time on preparing the relevant information.

We estimate that it would take 352 hours to provide this information, at a cost of £8,800. This is calculated as follows:

2018

Number of records to be checked (153) x Number of hours required per record (1) x Staff costs per hour (£25) = £3,825

2019

Number of records to be checked (199) x Number of hours required per record (1) x Staff costs per hour (£25) = £4,975

You are able to make a payment so that this task can be undertaken. You may also modify your request to reduce the cost of this task. Please contact us if you wish to proceed with one of these options.

We have followed the Information Commissioner's Office guidance around applying this particular section of the Act to your request: [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf).

4. Please note, the retrieval of this information would be combined with the time and costs required to answer Question 3 and, therefore, exceeds the set limit of 18 hours / £450 costs. Please see the above explanation regarding the application of Section 12(1) of the Freedom of Information Act 2000 to your request.

We also apply Section 43(2) of the Freedom of Information Act 2000, 'Commercial interests', to Question 4.

Section 43 states:

*(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*

We confirm that the information is held, however, this acts as a qualified exemption and requires the consideration of a public interest test. In this case we have considered that the public interest favours non-disclosure. The commercially sensitive information to which your request refers, if released to the general public could jeopardise the commercial interests of Surrey County Council and third parties by providing an unfair advantage in any current or future commercial negotiations.

We have followed the Information Commissioner's Office guidance around applying this particular section of the Act to your request: <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>.

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We supply this information based on your original request. Please do not hesitate to contact us at the above address if you have any queries regarding the information enclosed. Remember to quote the reference number above in any future communications.

If you are unhappy with the handling of your request for information and wish to make a complaint or request a review of our decision, in the first instance you should contact the County Council, quoting your request number given above, at:

Freedom of Information Officer  
Surrey County Council  
Legal Democratic & Cultural Services  
County Hall  
Penhryn Road  
Kingston Upon Thames  
Surrey  
KT1 2DN  
[foi@surreycc.gov.uk](mailto:foi@surreycc.gov.uk)

If you are not satisfied by the County Council's response to your complaint, you have the right to apply to the Information Commissioner for a decision. The Information Commissioner will normally expect you to have exhausted our complaints procedure. The Information Commissioner can be contacted at:

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

Yours sincerely,

*Children's Information Governance*