

## **Freedom of Information Act 2000 (FOIA) Decision notice**

**Date:** 10 November 2022

**Public Authority:** Welsh Parliament/Senedd Cymru  
**Address:** Cardiff Bay  
Cardiff  
CF99 1SN

### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding specific advice provided by the Senedd Legal Service for redactions of a report on the impact of Covid 19. The Welsh Parliament cited section 42 of FOIA to withhold the requested information.
2. The Commissioner's decision is that The Welsh Parliament has correctly applied section 42 of FOIA and does not require the public authority to take any steps.

### **Request and response**

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3. On 1 March 2022, the complainant wrote to the public authority and requested information in the following terms:  

"I would be grateful if you could arrange to provide me with a copy of the "specific advice" in relation to redaction, provided by Senedd Legal Services. (Redactions - Subject: Report into the impact of Covid 19 crises and its management on Health and Social Care in England and Wales)."
4. The Welsh Parliament responded on 18 March 2022 and refused to provide the requested information stating:  

"The information captured by your request is covered by legal professional privilege. This means that it is exempt from disclosure in

accordance with section 42 of the Freedom of Information Act 2000 (FOIA).”

5. The Welsh Parliament upheld its original position at internal review.

### **Reasons for decision**

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6. The following analysis sets out why the Commissioner has concluded that the Welsh Parliament was entitled to rely on section 42 of FOIA in this particular case.
7. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidential communications between a lawyer and client for the purpose of seeking or giving legal advice.
8. In this case, the complainant has requested the specific legal advice given relating to a report on Covid 19. The Commissioner is satisfied from the wording of the request that the information falling within the scope of this request would constitute confidential legal advice provided by a qualified legal adviser to their client. This means that this information is subject to legal professional privilege, and the Commissioner is aware of no evidence suggesting that this privilege has been waived. Whilst the complainant believes that his information request is merely an administrative matter, the Commissioner considers it meets the criteria.
9. The Commissioner therefore considers that section 42(1) of the FOIA is engaged in relation to this information. The Commissioner will now go on to consider the public interest test.
10. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness 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.
11. In *Bellamy v Information Commissioner & the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006), the Tribunal explained the balance of factors to consider when assessing public interest test: “there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest.”

12. The Commissioner considers that the balance of public interest lies in withholding the information and protecting the Welsh Parliament's ability to obtain free, frank, and high-quality legal advice without the fear of disclosure. The Commissioner is not aware of any public interest arguments that are enough to outweigh or override the inbuilt public interest in the information remaining protected by legal professional privilege.
13. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, the Welsh Parliament has correctly applied section 42(1). The Commissioner requires no further action to be taken by the Welsh Parliament in relation to this request.

## Right of appeal

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14. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**