

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2022

Public Authority: Clavering Parish Council
Address: PO Box 13311
Chelmsford
CM1 9LH

Decision

1. The complainant requested information from Clavering Parish Council ("the Council") relating to legal advice sought by the Council and provided by a Barrister in relation to a dispute with a specific property.
2. The Commissioner's decision is that the Council is entitled to rely on section 42(1) (legal professional privilege) of the FOIA to withhold the requested information.

Request and response

3. The complainant made the following information request to the Council on 15 March 2022:

"Would you please provide me with a full copy of the Barristers Advice on the dispute with [property name and address redacted], which was presented to the Council meeting last night and then withdraw.

I ask for this document so as to be fully aware of the situation, risks and the Barrister's reasoning; when making any decision,

which may have legal implications for myself as an elected member of the Council.

I will be please to see confirmation from the Council's Solicitor (insurance company) that all Councillors will be personally covered for any legal consequences of actions taken in this dispute.

Please regard this as a Freedom of information request if necessary."

4. The Council refused to provide the requested information as it considered the information to be covered by legal professional privilege.

Reasons for decision

5. Whilst the Council has not stated which exemption it is relying on to refuse to provide the requested information, the Commissioner has assumed that as the Council considers the requested information to be covered by legal professional privilege, the Council is relying on section 42(1) (legal professional privilege) of the FOIA to refuse to provide the requested information.
6. Therefore, this reasoning covers whether the Council is entitled to rely on section 42(1) of the FOIA to refuse to provide the requested information.
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 confidentiality of communications between a lawyer and client.
8. In this case, the complainant has requested legal advice sought by the Council and provided by a Barrister in relation to a dispute with a specific property. The Commissioner is satisfied from the wording of the request that the information falling within the scope of this request would constitute 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. The exemption provided by section 42(1) of the FOIA is, therefore, engaged in relation to the requested information. The Commissioner will now go on to consider the public interest.

9. In balancing the opposing public interest factors under section 42(1), the Commissioner considers that it is necessary to take into account the in-built public interest in this exemption: that is, the public interest in the maintenance of legal professional privilege. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.
10. It is well established that where section 42(1) FOIA is engaged, the public interest in maintaining the exemption carries strong, in-built weight, such that very strong countervailing factors are required for disclosure to be appropriate. The Commissioner notes the decision in the *Cabinet Office v Information Commissioner and Gavin Aitchison* (GIA 4281 2012) where, at paragraph 58, Upper Tribunal Judge Williams said:

“...it is also, in my view, difficult to imagine anything other than the rarest case where legal professional privilege should be waived in favour of public disclosure without the consent of the two parties to it”.
11. The Commissioner considers that the balance of public interest lies in withholding the information and protecting the Council’s ability to obtain free, frank and high quality legal advice without the fear of premature 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.
12. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, the Council has correctly applied section 42(1). The Commissioner requires no further action to be taken by the Council in relation to this request.

Right of appeal

13. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

14. 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.
15. 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

Daniel Perry
Senior Case Officer
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Wycliffe House
Water Lane
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