

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

### **Decision notice**

**Date:** 12 October 2022

**Public Authority:** Swansea Council

**Address:** Civic Centre  
Oystermouth Road  
Swansea  
SA1 3SN

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

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1. The complainant has requested information relating to the history or records of a legal file.
2. The Commissioner's decision is that Swansea Council ("the Council") 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 11 May 2022, the complainant wrote to Swansea Council and requested information in the following terms:

"Archive Service – History/Records relating to Legal File Ref: FAW/DGC.206229 relating to [address redacted] – Freehold Reversion. I believe that the file was archived in early January, 2016. I thank you in anticipation of your assistance in this matter".

4. The Council refused to provide the information and relied on section 42 of FOIA as its basis for doing so.

## Reasons for decision

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5. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on section 42 of FOIA in this particular case.
6. 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.
7. In this case, the complainant has requested the history or records relating to a legal file. 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, with reference to our guidance<sup>1</sup>, the Commissioner considers it meets the criteria.
8. 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.
9. 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.
10. 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

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<sup>1</sup> [legal\\_professional\\_privilege\\_exemption\\_s42.pdf \(ico.org.uk\)](https://ico.org.uk/legislation/foia/exemptions/section-42)

privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest”.

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 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**

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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: 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)

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 .....**

**Esi Mensah  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**