

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2023

Public Authority: Bristol City Council
Address: The Old Council House
Corn Street
Bristol
BS1 1JG

Decision (including any steps ordered)

1. The complainant requested from Bristol City Council (the Council) information relating to the 5 July 2022 Silver Motion. The Council provided some information within scope of the request but withheld information under section 42(1) (legal professional privilege) of FOIA.
2. The Commissioner's decision is the Council is entitled to rely on section 42(1) of FOIA to withhold some of the information requested. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Background, request and response

3. The Council, on 5 July 2022 adopted the Silver Motion: "Trans Rights are Human Rights". It did so at the end of the full council meeting when motions from individual councillors are discussed and voted on. The Silver Motion was published with the full council agenda on 28 June 2022 (a week before the full council meeting). Three public statements were submitted opposing this motion and are published on the Council's website.
4. On 7 October 2022 the complainant wrote to the Council and requested information in the following terms:

"...all the documentation about the 5th July 2022 Silver Motion NB This includes the legal advice about the Motion.

...all the documentation created as a result of the challenge to the legality etc of the Motion from [name redacted]."

5. On 26 October 2022 the Council responded and confirmed it holds the information requested. However, the Council withheld the information under section 42(1) (legal professional privilege) of FOIA.
6. On 27 October 2022 the complainant asked the Council for an internal review, he outlined his considerations and added some supplementary reference materials to the Council.
7. On 15 December 2022 the Council provided its review response. Following further searches, which the Council conducted in order to clarify whether the information held is material entirely covered by legal professional privilege (LPP), it disclosed information to the complainant (two email chains) which the Council believed was not exempt under section 42(1) of FOIA. However, the Council withheld the remaining information deemed to be in scope of the request, under this exemption, in respect to legal advice.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 42(1) of FOIA to refuse to provide the requested information.

Section 42 – Legal professional privilege

9. Section 42(1) of FOIA provides that information is exempt from disclosure if it is protected by LPP and this claim to legal professional privilege could be maintained in legal proceedings. LPP protects the confidentiality of communications between a lawyer and client.
10. In this case, the complainant has requested information relating to Silver Motion, including the legal advice about the Motion. The Commissioner is satisfied from the wording of the request that the information falling within scope of this request, would constitute legal advice provided by a qualified legal adviser to their client.
11. This means the information is subject to LPP, and the Commissioner has no evidence suggesting that this privilege has been waived.

12. Having considered the Council's explanation and viewed the withheld information, the Commissioner is satisfied the information covers confidential communications between the Council and its advisers, created for the purpose of seeking and giving legal advice regarding the Silver Motion. He accepts that the legal advisers have given advice in a legal context in respect of the passing of the Silver Motion.
13. The exemption provided by section 42(1) of FOIA is therefore engaged in relation to the requested information. The Commissioner will now go on to consider the public interest test.

Public interest test

14. In balancing the opposing public interest factors under section 42(1), the Commissioner considers it is necessary to take into account the in-built public interest in this exemption: that is, the public interest in the maintenance of LPP. 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 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 therefore erodes the rule of law and the individual rights it guarantees.
15. It is well established that where section 42(1) FOIA is engaged, the public interest in maintaining the exemption carries strong, inbuilt 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”.
16. 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 LPP, and therefore 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's conclusion

17. The Commissioner has concluded that the public interest in maintaining this exemption outweighs the public interest in disclosure. Therefore, the Council is entitled to rely on section 42(1) of FOIA to withhold the requested information.

Right of appeal

18. 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

19. 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.
20. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF