

12 September 2019

Dear

**Request for Information – ATISN 13367**

I refer to your information request received on 23 August.

Your request asks for the specific Legal advice provided to Cafcass Cymru when responding to your earlier correspondence. Whilst I can confirm that Welsh Government holds information of this description, I have decided that it is exempt from disclosure under section 42 (Legal professional privilege) of the Freedom of Information Act 2000 (FOIA). The reasons for applying this exemption are set out below.

Section 42(1) (Legal Professional privilege)

This states:

*Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the “dominant” (main) purpose of litigation. The information in question was advice provided by the Welsh Government's legal services divisions and we believe that LPP attaches to this information.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI [EA/2005/0023]* in which the tribunal, on the subject of LPP said:

"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 interest....it is important that public authorities be allowed to conduct a

free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...’.

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege. Moreover, disclosure of legal advice has a significant potential to prejudice the governments’ ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.

If you are dissatisfied with the handling of your request, you can ask for an internal review within 40 working days of the date of this response. Please remember to quote the ATISN reference number above.

Requests for an internal review should be addressed to:

Nigel Brown  
Chief Executive  
Cafcass Cymru  
Sarn Mynach  
Llandudno Junction  
Conwy  
LL31 9RZ

You also have the right to complain to the Information Commissioner. Normally, however, you should pursue the matter through our internal procedure before you



complain to the Information Commissioner. The Information Commissioner can be contacted at:

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

Yours sincerely

**Rydym yn croesawu gohebiaeth Gymraeg. Cewch ateb Cymraeg i bob gohebiaeth Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.**

**We welcome correspondence in Welsh. Correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not involve any delay.**

