

Appendix D

Section 42 – Legal professional privilege

Section 42 of the Freedom of Information Act provides that:

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.

The GRWG minutes contain text revealing confidential communications with a lawyer which were made for the dominant purpose of seeking / providing legal advice.

As Section 42 is a qualified exemption, we are required to carry out a public interest test to determine whether the public interest lies in maintaining the exemption or disclosing the information.

Factors in favour of disclosure

- FOIA principle of transparency
- Aid the public in understanding the Commission's considerations in relation to this matter.

Factors in favour of maintaining the exemption

- The need for the commission staff to receive clear and unguarded advice from their lawyers.
- Substantial public interest in maintaining the confidentiality of communications between lawyer and client to ensure the client can speak freely and frankly with their adviser in order to obtain appropriate legal advice.

On balance, we do not consider that the public interest in favour of disclosure is stronger than the substantial public interest in maintaining the exemption. Consequently we have determined that the legally privileged information should not be disclosed.