



Department of
Justice
An Roinn Dlí agus Cirt
Máinnystrie O tha Laa
www.justice-ni.gov.uk

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21 November 2022

REFERENCE: FOI\22\57

Dear Sir,

Thank you for your correspondence dated 20th October 2022. The Department has considered your correspondence and identified the following sections as seeking recorded information in relation to the minister's consideration of extending the period of appointment of an IMB member. Therefore the Department will respond to these in accordance with its obligations under the Freedom of Information Act 2000:

To that end can I request that we be furnished with the timelines of submission and the subsequent response to the proposals as put forward to the Minister by the secretariat.

To that end can I request that you supply the Executive Council through either Patsy or myself with the paperwork sent to the Minister and the subsequent reply.

The Freedom of Information Act 2000 gives you two rights of access when you write to us asking for information. You have the right to know whether we hold the information that you are looking for, and you have the right to have the information given to you. These rights may only be overridden if the information you are looking for is covered by an exemption in the Act.

Some of the information you have requested is covered by the following section of the Freedom of Information Act 2000:

Section 40(2) Absolute Exemption

The Data Protection Act 2018 prohibits the release of personal data and information which relates to third parties which could, if released, identify the third party to whom it relates. Disclosure of the names and contact details contained within the attached document would contravene the first and second principles of the Data Protection Act in that the data would be processed unfairly and in a manner incompatible with the original purpose. Further, none of the conditions in Article 6 of General Data Protection Regulation are met to authorise lawful disclosure. There is an expectation that names of officials would not be released publically in connection with their work to protect their personal right to privacy.

Section 42 (legal professional privilege).

The exemption provisions of section 42(1) confers a qualified exemption to our duty under section 1(1)(b) of the Act – to release the information requested. Information covered by qualified exemptions can only be withheld where the public interest falls in favour of applying the exemptions. The Information Commissioner has stated that there is a strong public interest in maintaining the convention of Legal Professional Privilege (LPP). LPP will only be overridden in the most exceptional of circumstances. Indeed, in the case of *Bellamy v The Information Commissioner and the DTI (Appeal Number EA/2005/0023)* the Information Tribunal has noted at paragraph 35:

‘As can be seen from the citation of the legal authorities regarding legal professional privilege, there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest.....Nonetheless 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 cut case...’

Considerations in favour of release of legal advice include the general desire for openness and transparency in government where possible. Transparency in government increases public interest in the political process and encourages more people to become actively involved in politics and general policy development work. Considerations against release include the Department and Minister’s ability to conduct their functions, with the benefit of full and frank legal advice. The giving and receiving of confidential legal advice is central to

the process of good governance, and erosion of this principle is likely to severely prejudice the giving of legal advice in the future. It is likely that legal advice given in one context will be helpful or relevant to subsequent issues. This means that in assessing the public interest in maintaining the LPP exemption it is necessary not only to consider the circumstances in which legal interests *relating to the current case* could be prejudiced but also to bear in mind that the public interest in protecting the confidential relationship between lawyer and client is a long term public interest *extending into the future* which could be damaged by individual disclosures.

The DOJ has decided that, on balance, the public interest in withholding some of the information detailed above outweighs those considerations favouring the release of that information.

I am attaching a copy of the paperwork requested with exempted information redacted. Information outside of the scope of your request has also been redacted. The paperwork was provided to the Minister on 6th October and she responded on the 7th October saying;

If you would like to increase the maximum tenure of IMB members from nine to 15 years -

"having reflected on the pros and cons of this, I remain of the view that 15 years is too long a term for a voluntary public appointment in a role as demanding as this. My settled view with respect to public appointments is that we should avoid extending appointments rather than advertising where possible and only deviate from that by exception and for the minimum time possible."

If you are unhappy with the result of your request for information you may request an internal review within two calendar months of the date of this letter. If you request an internal review please do so in writing stating the reasons to the address above.

If following an internal review you were to remain dissatisfied you may make a complaint to the Information Commissioner and ask the Commissioner to investigate whether the DOJ has complied with the terms of the FOIA. You can write to the Information Commissioner at:

Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

The Commissioner will not investigate a complaint unless an internal review procedure has been carried out.

Further details on the role of the Information Commissioner and the handling of appeals can be found at: www.informationcommissioner.gov.uk

Yours sincerely

Records & Information Manager