

The Sustainability Committee report into 'Access to Inland Water'

15 November 2010

Dear

Request for Information.

I refer to your request received on 28 October in which you asked,

The Sustainability Committee produced a report into 'Access to Inland Water' in which they stated that on the basis of received legal advice, there was no general public right of navigation on non tidal water in England and Wales. This statement of position appears in sections 13-28 of the report available at <http://www.assemblywales.org/cr-ld8089-e.pdf>

I would like obtain a copy of the legal advice the committee received and on which those statements were based, particularly that concerning statements 14 and 22.

This information should be public as it concerns published legislation and judgements in legal cases, so there would be no reason to withhold it.

I can confirm that the information you have requested is held by the National Assembly for Wales. However, I am of the opinion that this information, (i.e. communication between lawyers and the Sustainability Committee for the purpose of providing legal advice), is subject to legal professional privilege and as such is exempt under the Freedom of Information Act Section 42(1).

This exemption is subject to a public interest test, and in our view, the public interest in maintaining this exemption outweighs the public interest in disclosing it. Our rationale as to this decision is outlined below.

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

There is clearly a public interest in knowing the view of the law on which the Committee based its recommendations, so that the public can tell whether that view of the law was right or wrong.

It is our opinion that the view of the law on which the Sustainability Committee based its reported recommendations is fully detailed in the report *'Inquiry into Access to Inland Water'*.

The relevant paragraphs of the report which refer to the legal position on which the recommendations were based are 13-28, 38-41, 79-82, 91-93 and 111-112. In particular, paragraphs 13-28, titled 'The Legal Position in Wales,' summarise the legal position considered by the Committee in relation to access to inland water in Wales.

Since the report sets out fully the view of the law on which the Committee's recommendations are based, we are of the opinion that the public interest referred to above is satisfied by the terms of the report itself and there is therefore no public interest in disclosing the privileged document setting out the advice on which that view is founded.

For the avoidance of doubt we are of course happy to confirm that the report accurately reflects the advice given.

Your request has been considered according to the principles set out in the Code of Practice on Public Access to Information. The code is published on our website at <http://www.assemblywales.org/abthome/abt-foi/abt-foi-cop-pub.htm> If you have any questions regarding this response please contact me.

If you believe that I have not applied the Code correctly or have not followed the relevant laws, you may make a formal complaint to the Chief Executive and Clerk at the National Assembly for Wales, Cardiff Bay. Details of the Assembly's complaints principles are set out in the Code of Practice on Complaints available on the Internet at <http://www.assemblywales.org/conhome/con-complaint.htm> , please advise me if you wish to receive a printed copy.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

Yours sincerely

Kevin Willoughby
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