

Private Member Bills on control of dogs

01 May 2013

Request for Information.

Thank you for your request received on 17 April in which you asked,

For the period January 1, 2012 and April 17, 2013, please disclose all legal advice on legislative competence given on outline of proposed Private Member Bills on control of dogs.

I confirm that the Assembly Commission does hold information of the kind covered by your request. The Presiding Officer holds a ballot from time to time, under Assembly Standing Order 26.87, in which Members submit proposals for Bills. The successful Member can then seek the Assembly's support to take their proposed Bill forward. The Commission publishes a list of all proposals for Bills submitted by Assembly Members in these ballots. A proposal relating to the control of dogs was submitted, during the period covered by your request, by Julie Morgan AM

http://www.assemblywales.org/bus-home/bus-legislation/bill_ballots/bill-043.htm. The proposal was later withdrawn (you may be aware that the Welsh Government has now published a draft Bill on control of dogs, for consultation). Outline legal advice on legislative competence for Mrs Morgan's proposal was given by Commission lawyers.

The Freedom of Information Act includes exemptions that can be applied by organisations in responding to requests. On this occasion, we have decided not to provide the information requested in accordance with those exemptions.

Our Director of Legal Services considers the information to be covered by the principle of legal advice privilege. This means that an exemption from disclosure - the exemption for legal professional privilege in section 42 of the *Freedom of Information Act 2000* - applies to the information you have requested.

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Section 42 is a qualified exemption. This means that it is subject to a public interest test: the information requested must be disclosed unless the public interest in maintaining the legal professional privilege exemption outweighs the public interest in disclosure. Where the two forms of public interest are equal, the information should be disclosed.

- Moreover, the Assembly's Code of Practice on Public Access to Information states "we will only rely upon the exemption if disclosing the information would cause or be likely to cause substantial harm to the purpose which the exemption aims to protect. Even if disclosure would cause or be likely to cause such substantial harm, we will not rely upon the exemption unless that harm outweighs the public interest in disclosure of the information".

We have carefully weighed up the two public interests in this case and considered the substantial harm test set out in the previous paragraph. Our conclusion is that the general public interest in maintaining legal professional privilege is greater than the specific public interest in disclosure in this case. We also conclude that it would cause substantial harm to the principle of legal professional privilege to release the advice. Therefore, we are refusing your request. We explain how we reached this conclusion, below.

The public interest protected by section 42 is weighty, because of the importance of the principle behind legal professional privilege. That principle is that every person should be able to have complete openness in all communications with their legal advisers. The courts have held, over and over again, that there is a significant public interest in this ability of every person to communicate freely with lawyers to obtain legal advice, without fear of routine disclosure.

In the particular context of proposed Member legislation in the Assembly, preserving the principle means that Members of every political persuasion can ask for and receive impartial legal advice on their ideas, and develop those ideas. It is in fact in the public interest that they should be able to develop their ideas confidentially, in discussion with their lawyers, before they make those ideas public.

Releasing legal advice given to Members would both substantially harm their ability to carry out this development of ideas in confidence, and cause

substantial harm to the general principle of protection for open discussions between lawyers and those they advise, by setting a precedent.

On the other hand, we cannot see any significant public interest in favour of disclosure in this particular case. First, the advice given relates only to the precise proposal submitted. It could not simply be applied to any proposed Bill relating to the control of dogs. It is therefore very limited in its application.

Secondly, the Bill is not proceeding at present; indeed, the proposal has been withdrawn from the ballot. Therefore the legal advice given is not affecting anything or anyone, at present.

Thirdly, if a Bill along the lines proposed by Mrs Morgan proceeds in future, the Presiding Officer will make public her view as to whether the Bill is within the Assembly's competence, at the time that the Bill is introduced, under s. 110 of the *Government of Wales Act 2006*. Representations on competence could also then be made to the Committee scrutinising the Bill, as has happened recently in relation to the Recovery of Medical Costs for Asbestos-Related Diseases Bill. The Attorney General and the Counsel General will also have the opportunity to raise any doubts over competence with the Supreme Court.

We acknowledge, of course, that there is a public interest in transparency for its own sake, and we recognise too the Assembly's own commitment to maximise openness wherever possible. We consider that the Assembly's legislative process would fully meet that interest, and that commitment, should a Bill along the lines proposed proceed in future.

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/about_us-commission_assembly_administration/abt-foi/abt-foi-cop-pub.htm

If you have any questions regarding this response please contact me. If you feel you have cause for complaint, please follow the guidance at the end of this letter.

Yours sincerely

Buddug Saer
Programme Officer, National Assembly for Wales

Cause for concern or complaint with your FOI response?

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
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