

6 February 2024

Dear

ATISN 20066 Information Request Regarding the Establishment and Membership Makeup of the Agricultural Advisory Panel for Wales

Thank you for your request which I received on 9 January 2024.

You asked for:

1. The Legislation behind the make-up of the Agricultural Advisory Panel for Wales;
2. Ministerial Legal Advice received on the position of membership.

Our response

A link to the information is located below.

https://www.legislation.gov.uk/wsi/2016/255/pdfs/wsi_20160255_mi.pdf

I refer you to Paragraph 7(2)(a) and 7(2)(b) which sets out the terms of appointment and length of duration members may serve.

I have decided that some of the information is exempt from disclosure under section 42 of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemptions is set out in full at Annex A to this letter.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,

Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex A

Application of exemptions/exceptions

I have decided to withhold the following information:

- Legal advice between Welsh Government Officials and Ministers regarding the position of membership of the Agricultural Advisory Panel for Wales

This Annex sets out the reasons for the engagement of section 42 of the Freedom of Information Act.

Engagement of section 42 Legal Professional Privilege of the Freedom of Information Act.

This exemption states:

- 1) 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.

To that end, we believe the information in question should be properly withheld under Section 42(1) of the Freedom of Information Act.