



Isle of Man
Government

Reiltys Ellan Vannin

Department of Health and Social Care

Rheynn Slaynt as Kiarail y Theay

Mr Sam Turton
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Our ref: 2951619

17 April 2023

Dear Mr Turton

In response to your request for internal review of FOI 2951619 received 3 April 2023 in which you raised the following points:

I believe that the exemptions applied to my request should not extend to full refusal. While legal privilege can be seen as a genuine reason, I believe that the decision taken and the communications with Mr Cannan do not represent policy formulation and even if they did, the public interest test, in my belief, supersedes this as releasing the information is in the wider public interest of openness and transparency

Our response:

The internal review is still ongoing, though the Department is in a position to disclose the following in part response to your request for internal review as of today's date.

A. Recap of bases for FoI request and initial response

FoI number 2951619

Request to DHSC

"I seek publication of all internal and external communications which led to appeals being heard in the case of Dr Rosalind Ranson v DHSC in 2022.

In particular, I seek the publication of emails to and from Chief Minister Alfred Cannan relating to the decision to launch an appeal."

Reply 17 March 2023

Response Qualified exemption: s. 34 and 40 FoI Act

- S. 34 Formulation of Policy
- S. 40 Legal Professional Privilege

Request to Cabinet Office

"Please disclose all and any communications (emails, messages, meeting notes and/or phone calls) involving the Chief Minister and/or the Cabinet Office with any officers within DHSC between 19 September 2022 and 5 October 2022 regarding the DHSC's second appeal against the orders made by the EET in the Ranson v DHSC case. DHSC's second appeal was subsequently heard in the High Court on 6 October 2022, and dismissed. Note: CM and Cabinet office are not party to the Ranson v DHSC and related court proceedings (the appellant was DHSC acting through its then Minister). Accordingly legal privilege would not normally apply to communications to/from DHSC with third parties except in very limited circumstances".

Reply 4 April 2023

Response Qualified exemption: s. 40 FoI Act (LPP)

B. Context for conjoined reply

Cabinet Office and the DHSC have each been asked to conduct an internal review by the Requestor(s) relevant to their separate refusal decisions.

Under s. 6 of the Government Departments Act 1987, the Chief Minister may require a Department and a Department shall provide supply of information, rendering of assistance and provision of access to documents.

A formal review of the application of FoI exemptions continues in DHSC and Cabinet Office. However, DHSC and Cabinet Office each being Government Departments have provided this conjoined early Response to the common elements of each of the Requests (and in the case of the DHSC providing further context for the decision making and governance around pursuit of the appeal relating to the Legal Professional Privilege issue¹).

Nothing in this FoI Response is intended to waive any legal privilege as between DHSC and its advisors or any advice provided to Council of Ministers or referred to in the DHSC paper to Council of Ministers.

The responding bodies have each considered that that the qualified exemptions in both section 34 (1)(b) (formulation of policy) and section 35 (conduct of public business) could have applied to those parts of the Requests not subject to Legal Professional Privilege (s. 40). However each responding body has determined that there is a public interest in making early disclosure to the extent provided below.

C. Information to be supplied

The information supplied below is based on the available and retrieved papers available to officers as at Monday 17 April 2023 and continuation of the formal FoI internal review process as to what can be released taking account of the proper application of qualified exemptions to disclosure under the FoI Act 2015.

¹ <https://www.judgments.im/content/Judgment%20111022.pdf>

Conjoined narrative response of Chief Minister, Cabinet Office and DHSC

Appeal 2 (relating to the application of Legal Professional Privilege) was lodged in the High Court on 4 August 2022 by the DHSC via the advocates then instructed by DHSC, namely the Attorney General's Chambers.

On 10 August 2022, Messrs Callin Wild advocates took over conduct of all proceedings before the Court and Tribunal, including Appeal 2.

The immediate timing context for the communications referred to below was that 16:00 on Wednesday 28 September 2022 was the Court deadline for filing the DHSC legal argument for the appeal hearing, which was due to be heard on the morning of Thursday 6 October 2022.

DHSC supplied a Paper ("**the DHSC Paper**") at 17:41 on Tuesday 27 September 2022 to the Council of Ministers intended for confidential discussion in Council of Ministers at its usual sitting on the morning of Thursday 29 September 2022.

As per usual practice, the DHSC Paper was sent to officers stationed within Cabinet Office. Those Cabinet Office officers provide the secretariat function to the Council of Ministers.

The DHSC Paper contained the background to the appeal and contained privileged legal advice seeking direction from the Council of Ministers on how to proceed with the appeal.

Owing to the belated submission of the DHSC Paper and the Court deadline for filing the legal argument, the DHSC Paper could not be discussed by Council of Ministers in full at its meeting on Thursday 29 September 2022.

In order to provide assistance to the DHSC, the Chief Minister consulted with the Chief Secretary and the Minister for the Home Affairs and Justice (the Deputy Chief Minister). In this regard and in the context of the FoI request made of Cabinet Office it should be noted:-

- the Minister for the Cabinet Office was not involved in those discussions.
- the Chief Secretary is the Accounting Officer of Cabinet Office and as well as having ultimate responsibility for the Secretariat to Council of Ministers, also attends the Thursday morning sittings of Council of Ministers.

The Chief Minister responded to the Executive Assistant to the DHSC Interim Chief Executive Officer via the Interim Chief Secretary's Office at 15:17 on Wednesday 28 September 2022. The email and subsequent response (sent at 15:35) once the Executive Assistant had spoken to the Minister for Health and Social Care is included in this reply.

Also included in this reply is an email from the Minister for Health and Social Care to the Executive Assistant to the Interim Chief Executive Officer sent at 15:25 on Wednesday 28 September 2022 regarding the appeal.

There was no direction from Council of Ministers to DHSC under section 6 of the Government Departments Act 1987 relevant to this course. The Chief Minister does not

have a personal power to mandatorily direct any Department to pursue a particular course as to the exercise of Departmental functions.

DHSC officers provided an instruction to Callin Wild at 15:27 on Wednesday 28 September 2022 to meet the Court deadline by filing a skeleton argument and legal authorities.

The Appeal proceeded to hearing before the Court on Thursday 6 October 2022.

This is a partial response to your request for an internal review and we aim to complete the review and respond to you fully by 3 May 2023. If you are not satisfied with the result of the review, you then have the right to appeal to the Information Commissioner for a decision on;

1. Whether we have responded to your request for information in accordance with Part 2 of the Freedom of Information Act 2015; or
2. Whether we are justified in refusing to give you the information requested.

In response to an application for review, the Information Commissioner may, at any time, attempt to resolve a matter by negotiation, conciliation, mediation or another form of alternative dispute resolution and will have regard to any outcome of this in making any subsequent decision.

More detailed information on your right to a review can be found on the Information Commissioner's website at www.inforights.im.

Should you have any queries concerning this letter, please do not hesitate to contact me.

Further information about freedom of information requests can be found at www.gov.im/foi.

Yours sincerely

Rebecca Evans
Corporate Services Manager/Data Protection Officer