



# EAST CAMBRIDGESHIRE DISTRICT COUNCIL

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Further to your information request FOI/EIR 23/24-054, please find your question and our response below.

## **Request:**

The Council took independent legal advice relating to the Breach of Condition Notice re Condition 1 of 08/00230/VAR and Condition 9 of 09/00564/FUL and it was established that these were unenforceable.

Could I please have access to the data regarding this decision under the Freedom of Information Act.

## **Response:**

As the advice we took regarding the Breach of Condition was through an independent legal adviser, we cannot release the requested information, as this is protected under 'Legal Professional Privilege'. In accordance with the Freedom of Information Act 2000, this letter acts as a Refusal Notice; as we:

- a) Consider the following exemption of FOI apply; and
- b) Claim exemption under sections of the Act:

### **Section 42 – Legal Professional Privilege**

**42 (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.**

- c) State why the exemption applies:

**Section 42 provides an exemption under the FOI Act for information which is subject to Legal Professional Privilege.**

**ICO Guidance explains that there are two types of privilege (Litigation Privilege and Advice Privilege) within the concept of Legal Professional Privilege. We believe that the requested information falls under Advice Privilege.**

- **Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant (main) purpose of seeking or giving legal advice.**

As the Section 42 exemption is qualified, we are obliged to outline the harm in disclosure and explain why we consider that the public interest in maintaining the exemption outweighs the public interest in disclosure.

### Public interest considerations favouring disclosure:

There is a general public interest in authorities being accountable for the quality of their decision making, and ensuring that decisions have been made on the basis of sound legal advice is part of that accountability. It could also be seen that there is a public interest in some cases in knowing whether or not legal advice has been followed. Whilst we appreciate the benefits in transparency and that disclosure could improve public knowledge and debate on planning enforcement cases, the public interest in preserving the course of justice is paramount.

### Public interest considerations favouring withholding the information:

Section 42 reflects a strong public interest in the Council being able to communicate freely regarding legal proceedings, as well as provide and receive advice in confidence. The Council requires high quality and comprehensive legal advice for the effective conduct of their business, and that advice needs to be given in context. The legal adviser needs to be able to present the full picture to both internal departments and external legal advisers. Without being able to do this, the Council's decision making would be reduced for the following reasons:

- It would not be fully informed and this would be contrary to the public interest;
- To disclose information provided in a legal capacity to a third party could breach the confidentiality status of privileged communications with the internal legal team; and
- It may also affect confidential communications between the internal legal team and third parties when seeking evidence for the purpose of legal advice.

Disclosure of legal advice provided in confidence also has a high potential to prejudice the Council's ability to defend its legal interests. Disclosure of the requested information would undermine the Council's ability to take similar action in the future. We have therefore reached the view that, on balance, the public interest is better served by withholding this information.

This concludes your request FOI/EIR 23/24-054

If information has been refused please treat this as a Refusal Notice for the purposes of the Act.

If you disagree with our decision or are otherwise unhappy with how we have dealt with your request in the first instance you may approach [foi@eastcambs.gov.uk](mailto:foi@eastcambs.gov.uk) and request a review. A request for review must be made in no more than 40 working days from the date of this email.

Should you remain dissatisfied with the outcome you have a right under s50 of the Freedom of Information Act to appeal against the decision by contacting the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF.