



**IN THE FIRST-TIER TRIBUNAL**

**Case No. EA/2013/0259**

**GENERAL REGULATORY CHAMBER**

**INFORMATION RIGHTS**

**Appellant:** Ramesh Ramsahoye  
**Respondent:** Information Commissioner  
**Second Respondent:** Welsh Assembly Government

**Before**

Melanie Carter  
(Judge)

and

Alison Lowton  
Melanie Howard

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal decided to dismiss the appeal.

**Reasons**

1. The Appellant had been in lengthy correspondence with the Welsh Assembly Government and other public authorities in Wales concerning his teaching qualifications. By a letter dated 27 November 2012, as part of the on-going correspondence the Appellant asked six questions concerning the definition of his

professional status for teaching according to the Welsh Department for Education and Skills. In a further letter dated 3 December 2012, the Appellant requested information regarding legal advice in respect of questions around the definition of his professional teaching status as follows:

*“Such delay as has already occurred is in part due, according to Ms Vidal, to the need for her to obtain “detailed legal advice”... Under the provisions of the Data Protection Act and/or Freedom of Information Act I hereby request a complete copy of that advice and all associated information, including: internal emails and those to external agencies/persons, all electronic communications, notes made by the staff (including the Minister), minutes or other notes from meetings concerning this advice, records of conversations on this matter whether conducted in person or by telephone etc.”*

2. On 10 January 2013 the public authority wrote to the Appellant, refusing to provide the information by virtue of the exemption at section 42(1) FOIA on the basis that the withheld information was subject to legal professional privilege. The Appellant made a complaint to the Commissioner on 18 March 2013 claiming that the public authority had not complied with the requirements of FOIA both in relation to the six questions and the information said to be subject to legal professional privilege. During the course of the Commissioner’s investigation, the Welsh Assembly Government released further information relating to the request as the Commissioner did not consider it constituted legally privileged information. This information was administrative in nature and not covered by section 42.
3. The Appellant had set out in his grounds of appeal allegations that the answers provided to his six questions were not true or are incorrect. This was however beyond the jurisdiction of the Tribunal which was solely concerned with the proper application of FOIA. The Tribunal was, in any event, of the clear view that albeit the Commissioner had treated the six questions as requests for information subject to FOIA, this had been incorrect. There was no obligation under FOIA for a public authority to answer questions as to the law or to create information in response to questions. FOIA created a right to information that was held by the public authority at the relevant date. The six questions clearly called for answers

to legal queries not for particular information held by the authority. As it happened the Welsh Assembly Government, helpfully it seemed, had set out to answer the questions. The Commissioner had erred in treating these questions as requests for information under FOIA.

4. With regard to the information withheld under the exemption for legal professional privilege, the Tribunal agreed with the Commissioner's conclusions that the exemption at section 42 was not only engaged, but then that the public interest balancing test did not, in this case, favour disclosure. First, contrary to the Appellant's submission, the Commissioner had been correct in concluding that the advice limb of legal professional privilege applied. The advice was provided by a qualified lawyer in the in-house legal department to an internal client. The internal distribution was limited and the Welsh Assembly claimed that it had not been shared outside the government. The withheld information clearly consisted of legal advice provided to the Welsh Assembly Government and there was insufficient evidence before the Tribunal (the Appellant could only point to the internal review letter which was a letter to himself) to substantiate what was in effect a claim that by reason of this the Welsh Government had waived the privilege.
  
5. As is well established, there is a strong in-built public interest inherent in maintaining the legal professional privilege exemption (see *Bellamy v Information Commissioner and the DTI* (EA/2005/0023)). The leading authority is that of the High Court in *Department of Business Enterprise and Regulatory Reform v IC & O'Brien* [2009] EWHC 164 (QB) which states at [53]:

*“The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight. Accordingly, the proper approach for the Tribunal was to acknowledge and give effect to the significant weight to be afforded to the exemption in any event; ascertain whether there were particular or further factors in the instant case which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) were of equal weight at the very least.”*

6. In addition to the in-built public interest in maintaining the exemption, the Tribunal took into account that the information included within the legal advice was relatively recent and therefore live in the sense that the public authority would be likely to be still relying upon its import. The Appellant argued that there was a public interest in disclosure, but failed, in the Tribunal's view to substantiate that there was much public interest beyond his own personal albeit understandable concern at the situation. FOIA however was not concerned with the private interests of individuals but rather the overarching public interests in disclosure. In this case, there would be some public interest in rendering the Welsh Assembly more accountable and in the general interest of transparency of the workings of public authorities. There did not, however, appear to be any compelling or exceptional reason why disclosure should be made and certainly insufficient to raise this to a level whereby the strong in-built weight to be given to the importance of legal professional privilege should be displaced.
7. The Tribunal noted that much of the Appellant's remaining submissions related to the substantive complaint to the Welsh public authorities concerning his professional teaching status. The Tribunal could not make any decision or judgement as to these matters, as they were outside its regulatory remit. The grounds of appeal further alleged a breach of s.77 FOIA. Such an allegation cannot be determined by way of a Decision Notice and therefore again, falls outside the jurisdiction of this Tribunal.

## **Conclusion**

8. The appeal should be dismissed and other than in relation to the finding that the six questions were within the scope of FOIA, the Decision Notice upheld.
9. The Tribunal's decision was unanimous.

Melanie Carter  
Tribunal Judge  
11<sup>th</sup> August 2014