REFERENCE NUMBER: IM85046I

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2015 (“the Act”)

Thank you for your online application dated 20 April 2017 requesting the following information:

“This freedom of Information request specifically seeks to obtain the legal advice provided to the Cabinet Office and/or the Electoral Registration Officer prior to 1 April 2015 which confirms their powers or duties to remove electors from the Register of Electors during the annual canvas undertaken under Section 5(3) of the Registration of Electors Act 2006. In addition, any communications between Cabinet Office staff on this matter; and the Attorney Generals Chamber advice on this matter after 1 April 2015 on this matter would be welcomed.”

Response to your request

i. Legal advice provided prior to 1 April 2015

While our aim is to provide information whenever possible, in this instance the Cabinet Office does not hold or cannot, after taking reasonable steps to do so, find the information that you have requested. The legal advice provided to the Cabinet Office was provided orally and therefore as it is not held by the Cabinet Office in a recorded form, it does not amount to being “information” for the purposes of the Act.

ii. Communications between Cabinet Office staff and the Attorney General’s Chambers post 1 April 2015

The Cabinet Office is refusing to disclose this information on the basis of the following exemptions:

a. Section 34(1)(b)(iii) – the information relates to the provision of legal advice or any request for such advice; and

b. Section 40 – legal professional privilege.

Section 34(1)(b)(iii) - the information relates to the provision of legal advice or any request for such advice

The purpose of this exemption is explained at paragraph 121 of the UK Information Commissioner’s guidance, in the following terms:

“The underlying purpose of this confidentiality is to protect fully informed decision making by allowing government to seek legal advice in private, without fear of any adverse inferences being
drawn from either the content of the advice or the fact that it was sought. It ensures that government is neither discouraged from seeking advice in appropriate cases, nor pressured to seek advice in inappropriate cases.”

Whilst the UK Freedom of Information Act 2000 does not apply to the Isle of Man, the relevant exemption is drafted in such similar terms that UK guidance can be followed in this area.

The full guidance document can be found by clicking on the following link:


The application of this exemption does not imply that there are any communications between the Attorney General’s Chambers and the Cabinet Office.

As this exemption is a qualified exemption, it is subject to the public interest test. The public interest must be something that is of serious concern and benefit to the public at large.

Factors in favour of disclosing the information include:

- To promote transparency of decision making in Government and the reasoning behind any decisions which are taken.
- To scrutinise the actions of Government and be able to hold Government to account for its decision making.
- Giving confidence that Government seeks legal advice when tasked with important decisions that affect people’s rights.

Factors in favour of maintaining the exemption include:

- The underlying purpose of this exemption is to protect the confidentiality of discussions and to protect the decision making process. In this case, the Electoral Registration Officer has the right to decide whether or not to seek legal advice without fear of adverse inferences being drawn as to the reasoning for doing so or not doing so.
- Disclosure may deter legal advisers from providing robust or impartial advice to Government if the principle of confidentiality between the parties can be set aside in anything less than the most serious cases.
- Disclosure would have an adverse effect on the course of justice through a weakening of the basis of confidentiality that underpins the relationship with a legal adviser.

**Section 40 – Legal Professional Privilege**

Section 40 of the Act states:

“Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.”

The relevant section of the Government website states the following in relation to the role of the Attorney General’s Chambers
“HM Attorney General is the legal adviser to the Crown in the Isle of Man and the Government of the Isle of Man. He is also responsible for the prosecution of offences in the Court of General Gaol Delivery and for the drafting of Government legislation.

The Attorney General’s Chambers deal with civil and criminal matters for the Government of the Isle of Man. It also provides legal advice to Government Departments and Statutory Boards.”

Legal advice privilege covers communications between lawyers and their clients where legal advice is given. Therefore, any advice provided to the Electoral Registration Officer from the Attorney General’s Chamber engages this exemption.

Section 40 is a qualified exemption and therefore it is subject to the public interest test. As above, the public interest must be something that is of serious concern and benefit to the public at large.

Factors in favour of disclosing the information include:

- Disclosure would confirm whether the Electoral Registration Officer acted in accordance with legislation in the removal of electors;
- Disclosure would potentially maintain public confidence in the transparency and accountability underpinning the operation of the Island’s democratic process;
- Disclosure would explain the reasoning to those persons affected by being removed from the electoral register in 2015.

Factors in favour of maintaining the exemption are:

- It is important that the Electoral Registration Officer is able to have frank discussions with the legal officers in the Attorney General’s Chambers regarding statutory functions;
- Where legal advice is sought, public officials, such as the Electoral Registration Officer, must be able to make decisions in a fully formed legal context. Without the provision of comprehensive legal advice, the Electoral Registration Officer may be compromised in decision making, as that person would not be fully informed;
- Legal advisers must be able to present the full picture, which will include arguments in support of their final conclusions and arguments that may be made against these. It is the nature of legal advice that it will set out the arguments for and against a particular view, weighing up relative merits and highlighting any perceived weakness in position. The public need to have confidence in the integrity of the electoral registration process. There is a risk that disclosure of advice, which may be misconstrued, may undermine this.
- It is noted that whilst this may be of interest to affected individuals this does not make it of wider public interest and importance.
- When faced with a legal challenge, or a potential legal challenge, it is important for a public authority to be able to defend its position properly and fairly. Should a public authority be required to disclose its legal advice, any opponent would potentially be placed at an advantage by not having to disclose its own position or legal advice beforehand.

In assessing the weight to be attributed to each aspect of these arguments the Cabinet Office has considered both section 34 and section 40 together. Considerations include the fact that there is an inherent public interest in maintaining confidentiality of communications between a legal adviser
and client which can only be outweighed by equally strong public interest arguments in favour of disclosure, which do not exist for the following reasons:

- The request concerns a relatively recent occurrence.
- The number of persons affected by the action does not outweigh the strength of the inherent public interest in preserving the confidentiality of legal advice or the decision of Government as to whether or not to seek such advice.
- Should legal advice be subject to routine or even occasional disclosure without compelling reasons, this could affect the free and frank nature of legal exchanges and deter the public authority from seeking legal advice where it would be in the public interest to do so.
- There have since been 9 subsequent revisions of the electoral register since the removals; at each revision those affected by the decision to remove them from the register, had the opportunity to be registered again, if entitled.
- The Attorney General’s Chambers may become reluctant to provide legal advice to Departments, Boards and Offices of Isle of Man Government and this will have serious implication for the Good Government of the Isle of Man. There is also the potential to undermine the fiduciary relationship between lawyer and client.
- There is no information already in the public domain which should compel the release of information/communications between the Cabinet Office and the Attorney General’s Chambers.

In taking these considerations into account the Cabinet Office has determined that the factors in favour of maintaining the exemption outweigh the factors in favour of disclosing the information.

Should you find it of use, there is a great volume of information already in the public domain on this issue, including answers given to parliamentary questions on the matter. A link to Hansard, the official report of parliamentary sittings, on the Tynwald website is included below.


**Your right to request a review**

If you are unhappy with this response to your Freedom of Information request, you may ask us to carry out an internal review of the response, by completing a complaint form and submitting it electronically or by delivery/post to the FOI Co-ordinator, Cabinet Office, Government Office, Douglas, Isle of Man, IM1 3PN. An electronic version of our complaint form can be found by going to our website [https://www.gov.im/about-the-government/freedom-of-information/freedom-of-information-review-request-january-1-2017/](https://www.gov.im/about-the-government/freedom-of-information/freedom-of-information-review-request-january-1-2017/), a paper copy can be requested by contacting the Cabinet Office direct.

Your review request should explain why you are dissatisfied with this response, and should be made as soon as practicable. We will respond as soon as the review has been concluded.

If you are not satisfied with the result of the review, you then have the right to apply for a review of decisions by the Information Commissioner, for a decision on;

1) Whether we have responded to your request for information in accordance with Part 2 of the Act; 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 rights to review is on the Information Commissioner’s website at: https://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.
REFERENCE NUMBER: IM85046I     INTERNAL REVIEW: IM96481I

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2015 ("the Act")

We write with reference to your request dated 25 July 2017 for an internal review to be conducted of the response provided to your Freedom of Information request reference number IM85046i.

The internal review request outlined your objections and supplied background, for ease of reference this started with:

"The Commissioners have considered your response to their Freedom of Information request and after seeking legal advice have decided to request an internal review of this response. The Commissioners provide the following information in support of this request...."

An internal review of the response to your request has now been completed by an independent officer who was not involved with the original request. The findings of the review are:

1. The independent officer was satisfied that all the information held by the Cabinet Office regarding this matter had been retrieved and collated following a reasonable search as defined in Paragraph 1.4 of the Freedom of Information Code of Practice (the "Code"). The Act does not allow any request to extend to information that is not held by the public authority; in this case information held by the Attorney General Chambers (AGC) as they are their own public authority as identified in schedule 1 of the Act.

2. On reviewing the correspondence and associated documents held, the independent officer was satisfied that the exemptions applied, that is section 34(1)(b)(iii) – the information relates to the provision of legal advice or any request for such advice and section 40 – legal professional privilege, had been done so correctly and that the information relating to request IM85046I had been withheld in full.

3. In conclusion, the independent officer was satisfied that the response provided adequate reasons for the information not being provided. Also that a full explanation for the application of each qualified exemption, which included carrying out the relevant public interest tests, and assessing the weighting attributed to these factors, was supplied in line with part 3 of the Code.
The independent reviewer noted the provision of background information and further issues raised within this internal review request. However please note that only the original Freedom of Information request and its response can be reviewed, as defined in paragraph 9.1 of the Code.

“The aim of a review is to allow an Authority to take a fresh look at its response to an information request, to confirm the decision, with or without modifications or if appropriate to substitute a different decision. The review procedure should be fair and impartial and allow decision makers to look at the request afresh.”

If you are dissatisfied with the outcome of this review, under s42(1) of the Act you have the right to apply to the Isle of Man Information Commissioner for a review of a) our response, or b) any decisions and/or justification we have used if there was a refusal to supply Information. You can contact the Commissioner at:

Isle of Man Information Commissioner
PO Box 69
Douglas
Isle of Man
IM99 1EQ
Telephone: 01624 693260
Email: ask@inforights.im
Website: www.inforights.im

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the High Court on a point of law only.