



Department
of Energy &
Climate Change

Department of Energy & Climate Change

3 Whitehall Place,
London SW1A 2AW
T: 0207 979 7777
E: foi@decc.gsi.gov.uk
www.decc.gov.uk

22 March 2013

Ref: 13/0140

Dear Madam,

RE: Request for information under the Freedom of Information Act

Thank you for your email of 28 January 2013 where you requested a copy of the scoping study carried out by the Ministry of Defence and Department of Energy and Climate Change into the possible amalgamation of the MoD Police and Civil Nuclear Constabulary. Most of the information you have requested has been provided.

However some information has been withheld as it falls within the scope of section 42 of the Freedom of Information Act (legal professional privilege). This states in section 42(1) that ... *"information is exempt 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") is a rule of litigation that protects in general terms confidential communications between lawyers and clients. The purpose of LPP has been established by the British courts in recognition of the fact that there is an important public interest in persons (including public authorities) being able to consult their legal advisers in confidence.

The Department recognises that there is a public interest in the disclosure of information as this creates transparency and increases trust between the government and its citizens and it makes public authorities accountable for the quality of their decision making. However we consider that, in this case, there is a strong public interest in withholding the legal advice which has been provided as part of this scoping study.

Legal advisers need to be able to present the full picture to their clients. If legal advisers were aware that their advice might be disclosed it is highly likely that the legal advice provided would not be as comprehensive or frank as it otherwise might be. This is contrary to the public interest as government departments need high quality comprehensive legal advice for the effective conduct of their business. Without such advice the quality of departmental decision making would be significantly reduced.

There is also a risk that lawyers and clients will avoid making a permanent record of the advice that is sought or given or make only a partial record if they consider that there is a risk of disclosure. This is also contrary to the public interest as proper administration requires that the

provision of legal advice is fully recorded in writing and that the process of decision making is described accurately and fully.

Further it is likely that legal advice given in one context will be helpful or relevant to subsequent issues. This involves bearing in mind that the public interest in protecting the confidential relationship between lawyer and client is a long term public interest which could be damaged by individual disclosures in specific cases.

Given the above considerations our view is that the public interest firmly lies in withholding the legal advice given as part of the scoping study. We recognise there is a public interest in favour of disclosure and believe that this public interest has been fulfilled by providing you with the bulk of the material requested.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to: Information Rights Unit, Department for Business, Innovation & Skills, Victoria 3, 5th Floor, 1 Victoria Street, London, SW1H 0ET.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely,

Nuclear Decommissioning and Security Directorate
Department of Energy and Climate Change