



4 April 2013

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0263-13

Thank you for your email of 7 March 2013, asking the following questions:

1 What advice has Her Majesty's Government taken from EU institutions about the possibility or likelihood of powers being returned from EU level to national level within existing EU legal constraints?

2 What advice has Her Majesty's Government taken from legal authorities about the processes available for repatriating powers from EU level to national level?

You then added "I would first like to clarify that I am only seeking information relating to the current government (i.e. after 6 May 2010). I would also like to clarify that my interest is in the general legal aspect of repatriating power from the EU, and not something highly specific, like the Justice and Home Affairs 2012-2014 reforms checklist."

I am writing to confirm that we have now completed the search for the information which you requested.

The Foreign and Commonwealth Office (FCO) does not hold information relevant to your first question. I can confirm that the FCO does hold some information relevant to your second question. To put this in context, we hold a limited amount of information arising in the context of the uses of procedures under the EU Treaties including the possibility of a reduction in Union competence.

However, after careful consideration of this information and the public interest test, I wish to advise you that the information you requested is being withheld under section 42 (1) of the Freedom of Information Act (FOIA).

Section 42 (1) of the FOIA stipulates that information in respect of which a claim to legal professional privilege (LPP) could be maintained in legal proceedings is information exempt from publication.

Section 42 (1) of the Act recognises the validity of withholding information that is subject to LPP, which exists in order to encourage clients to be frank and open with their legal adviser,

secure in the knowledge that those communications will not be disclosed without their consent. It is important that the government is able to seek legal advice so that it can make its decisions in the correct legal context. The legal adviser must be in possession of all material facts in order to provide sound advice. The government must, therefore, feel confident that it can disclose all relevant facts to its legal adviser. It must be able to do so without fearing that this information will be disclosed to the public. In turn the legal adviser will consider the issues and the arguments and weigh up their relative merit.

Transparency of decision making and knowing that decisions are taken in the correct legal context are two reasons why it might be argued that information subject to section 42 (1) should be disclosed. However, the process of providing legal advice relies for its effectiveness on each side being open and candid with the other. Such candour is ensured by the operation of LPP. For these reasons, I consider that the public interest in maintaining LPP under section 42.(1) outweighs the arguments in favour of disclosure.

If you would like a review of our decision, please write to: Foreign and Commonwealth Office, Information Rights Team, Information Management Department, Room K4.10-13, King Charles Street, London, SW1A 2AH. Alternatively, you can e-mail the Information Rights Team at: dp-foi.img@fco.gov.uk. Please note you must request a review within 40 working days from the date of this letter.

If you are not content with the outcome of your complaint, you may then apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

Future of Europe team



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