

8 February 2010

REF: FOI 55-2010

Mr R W Atkinson
Chairperson, Bettws Newydd Opposition Group
Old Mill
Upper Bridge Street
Newport
Pembrokeshire SA42 0PL

Dear Mr Atkinson

Bettws Newydd, Newport, Pembrokeshire

I refer to your letter dated 12 January 2010 and its formal request to provide the Bettws Newydd Opposition Group with a copy of Counsel's Advice to the Authority on this issue. As you will recall I was able to discuss this matter with you at the conclusion of the January Development Management Committee meeting.

The Authority's response to your request is as follows, utilising the four stage process in accordance with the Act.

- 1 The Authority confirms it does hold information of the description specified in your request: i.e. Counsel's Advice, as supplied to the Authority at the end of August 2009.
- 2 In view of the acknowledgement in 1 above, we next give consideration to whether any statutory exemption applies. For your assistance the statutory definitions of "Exempt Information" are set out in Part II of the Freedom of Information Act 2000. In this case the statutory exemption set out in Section 42: "Legal Professional Privilege" clearly applies.
- 3 However that is not the end of the matter. The Authority must next determine whether the relevant exemption is "absolute". In this case it is not. Accordingly the Authority must move to the next stage and
- 4 Determine whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information. This statutory ground builds on the common law's long recognition of the importance in the wider public interest of maintaining confidentiality regarding the seeking and giving of legal



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*Croesawn ohebiaeth
yn Gymraeg a Saesneg*

*We welcome correspondence
in English and Welsh*

advice. This enables an assessment in the round of both the strengths and weaknesses (including possible alternative interpretations) of a public authority's case to be set out in writing without fear of prejudice to the public authority or advantage to another party.

Indeed Counsel has been consulted on the point and he emphasises that particularly in the circumstances of this case where the enforcement process has not been concluded, and proceedings of some sort (whether by way of appeal or otherwise) are likely in the future, it would clearly be potentially prejudicial to the Authority, and contrary to the public interest, for his Advice to become public. The Authority agrees with this view.

I hope this response is helpful to you in explaining the Authority's position.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David A Prescott', with a long horizontal flourish extending to the right.

David A Prescott
Solicitor to the Authority