

Reference: IR813

Date issued: 22 February 2022

Magor with Undy Community Council Draft Public Interest Report

I am writing in response to your request for information dated 25 January 2022 in which you requested the unredacted comments made by Councillors in relation to the Magor with Undy Community Council consideration document (sometimes referred to as a draft public interest report).

I have considered the information falling within the scope of your request and consider that the following exemptions to disclosure under the Freedom of Information Act 2000 apply and should be maintained.

The exemption in section 33(2) of the Freedom of Information Act 2000 (audit functions) applies where disclosure of information would, or would be likely to prejudice audit functions. My view is that releasing the full comments submitted to Audit Wales would be likely have an adverse impact on the ability of auditors to undertake audit work. Such release of comments on a draft report would have a chilling effect on future audit processes where it is necessary for the auditor to seek frank comments from relevant persons. I have applied the public interest test and consider that the balance lies in maintaining the exemption, on the basis that arguments in favour of disclosure, such as transparency and furthering public participation, do not outweigh the factors mentioned above in favour of applying the exemption to disclosure.

Section 44(1)(a) of the Freedom of Information Act 2000 (prohibitions on disclosure) provides that information is exempt if its disclosure (otherwise than under the Freedom of Information Act) by the public authority holding it is prohibited by or under any enactment. Section 54(1) of the Public Audit (Wales) Act 2004 sets out a 'restriction on disclosure of information' – thereby prohibiting disclosure of information relating to another person or body which is obtained in the course of an audit, except under the conditions laid out in subsections (2) (2ZA) or (2ZC). None of those are met in this case, so disclosure is prohibited and would be an offence. The section 44(1)(a) FOIA exemption therefore applies. As it is an absolute exemption, application of the public interest test is not required.

If you are dissatisfied with the handling of your request, you can request an internal review. Requests for internal reviews should be addressed to Martin Peters, Head of Law and Ethics, by email to martin.peters@audit.wales or by post to Audit Wales, 24 Cathedral Road, Cardiff, CF11 9LJ.

I must also refer you to section 50 of the Freedom of Information Act under which you may apply to the Information Commissioner for a decision on whether or not your request has been dealt with in accordance with the Act. The Information Commissioner's contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
email : casework@ico.gsi.gov.uk
Tel: 01625 545745
Fax: 01625 524510

You should note, however, that the Information Commissioner will not ordinarily investigate a complaint until the internal review process has been exhausted. Further guidance may be found on the Information Commissioner's website:
<https://ico.org.uk/>

If you have any queries, please do not hesitate to contact me.

Yours sincerely,
Information Officer