

## Annex E

<b>PUBLIC INTEREST TEST</b>			
Request Ref:	DoF/2024-0277		
Request summary:	Request for all papers relating to Minister's correspondence case COR-1277-2024. I should like to receive a copy of the advice provided to the Minister in the submission and any supporting papers relating to the response		
Information details:	Exemption applied	Disclosure (Please complete both columns to show all factors have been considered)	Non-disclosure
Paragraph 5, 6 & 7	S42 of the FOI Act	<ul style="list-style-type: none"> <li>To show compliance with the FOI Act by disclosing information held by the Department as a Public Authority.</li> <li>There is a general public interest in the accountability, openness and transparency of government, and to promote public understanding.</li> <li>Public authorities should be accountable for the quality of their decision making and, specifically for Civil Service Pensions, that those decisions are in accordance with and underpinned by pension scheme rules and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>There is an "in-built weight" afforded to the Legal Professional Privilege (LPP) exemption.</li> <li>It is recognised that the concept of LPP reflects the strong public interest in protecting the confidentiality of communications between lawyers and their clients.</li> <li>Such confidentiality promotes respect for the rule of law by encouraging clients to seek legal advice and allowing for full and frank exchanges between clients and their lawyers.</li> <li>It is important that any advice given is fully informed and reasoned. Were the legal advice released, it could restrict the ability of legal advisers to give full and frank advice.</li> <li>Decisions by public authorities should be made in a fully informed legal context.</li> <li>Without recourse to such advice, a public authority's decision making may be compromised because it will not be fully informed.</li> <li>Any guidance contained is policy in development and has not yet been finalised, so may not be in fact, accurate or reflected in the final version.</li> </ul>

			<ul style="list-style-type: none"><li>• The subject matter is live and ongoing and there is a high probability that it could be subject to litigation or legislative changes.</li><li>• This is a contentious, live and ongoing issue, which could impact a large volume of people and be of considerable cost to the public purse.</li><li>• Any disclosure would severely prejudice any decision making or intended actions. There is a strong public interest in safeguarding the exchange of information and advice between legal advisers and their client. Maintaining the confidentiality of communications between lawyers and the department and their thought processes is vital for the effective conduct of the department.</li><li>• The timing of this FOI request being submitted during the decision-making process and that any decision, when made, could be the subject of legal proceedings in which the department, would be prejudiced by having to disclose its legal advice.</li></ul>
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**PUBLIC INTEREST DECISION:** After weighing up the competing public interest considerations, we consider it is reasonable in all the circumstances that the information held should be withheld from disclosure by virtue of s42 of the Freedom of Information Act and that the public interest, in this particular instance, lies in favour of withholding the information on the basis of s42.

Signed: Jonathan Butler

Date: 12/08/2024