

Report to	North Wales Fire and Rescue Authority
Date	15 July 2024
Lead Officer	Gareth Owens, Clerk
Contact Officer	Gareth Owens, Clerk (01745 535286)
Subject	Appointment of the Proper Officer for s.36 Freedom of Information Act 2000



Purpose of Report

1. To appoint the Chief Fire Officer and Clerk as the proper officer, known as the "qualified person", able to apply the exemption under section 36 Freedom of Information Act 2000 ("FOIA")

Executive Summary

2. The FOIA requires information held by public authorities to be made available on request. Some categories of information (e.g. commercially sensitive or information relating to the prevention or detection of crime) are subject to exemptions and can be withheld. One such exemption under section 36, information which might prejudice the effective conduct of public affairs, can only be exercised by the "qualified person". In England those officers who can act as the "qualified person" are designated by statutory instrument but in Wales, public authorities must designate the "qualified person" themselves.

Recommendations

3. It is recommended that Members:
 - i) designate the Chief Fire Officer and Clerk as the qualified persons for the purpose of applying the exemption in section 36 Freedom of Information Act 2000.

Observations from the Executive Panel/Audit Committee

4. This paper has not previously been considered by the Audit Committee or Executive Panel.

Background

5. The FOIA requires public authorities to provide, on written request, any information within their possession provided it is not exempt. There are many categories of exemption and they include information which is commercially sensitive or information relating to the prevention or detection of crime. All of the exemptions, bar one, can be delegated in the usual way. The exemption under section 36, prejudice to effective conduct of public affairs, is unusual in that it may only be applied by the “qualified person”.

Information

6. The FOIA itself specifies in relation to arrange of public bodies who is designated as the “qualified person”. In England, a statutory instrument defines the qualified person as the Chief Executive/Chief Fire Officer and Monitoring Officer. No such statutory instrument exists in Wales and so the Authority must designate its own “qualified person”.
7. The exemption may be applied where
“in the reasonable opinion of a qualified person, disclosure of the information under this Act—
(a)...
(b)would, or would be likely to, inhibit—
 (i)the free and frank provision of advice, or
 (ii)the free and frank exchange of views for the purposes of deliberation, or
(c)would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”
8. Detailed guidance has been issued by the Information Commissioners’ Office on the application of the exemption but broadly speaking it requires a judgement on whether revealing information would be likely to disrupt how advice is given to councillors or the way in which the authority functions. In other words, would officers be able to give and would councillors be able receive full and proper advice if there is the possibility that the advice will at some point be published? Whilst this is more commonly an issue for constituent authorities there are occasions where councillors want to be able to ask questions and seek advice, for example on policy formation, in a “safe space”.
9. Clearly, the Fire Authority is very open and transparent in the way that it works. The exemption has been and will be applied extremely rarely, if at all; however, the designation is important as a contingency. By limiting the number of qualified persons the Authority can have the assurance that it will be judiciously applied.

IMPLICATIONS

Wellbeing Objectives	Considered not relevant
Budget for 2024/25	The designation of qualified persons will have no impact on the budget
Legal	The Authority would have to exercise the function itself if it is not delegated.
Staffing	Considered not relevant
Equalities/Human Rights/ Welsh Language	The report has been produced in bilingual format
Risks	If the section 36 exemption cannot be applied then all records of advice given to councillors would potentially be subject to disclosure under the FOIA.