

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2025

Public Authority: Post Office
Address: 100 Wood Street
London
EC2V 7ER

Decision (including any steps ordered)

1. The complainant has requested information relating to a report. The Post Office withheld the information, citing section 42(1) (legal professional privilege).
2. The Commissioner's decision is that the withheld information engages section 42(1) and the public interest lies in disclosure.
3. The Commissioner requires the Post Office to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 May 2025, the complainant wrote to the Post Office and requested information in the following terms:

"I am requesting that the Post Office remove a redaction applied to document which has been released by UKGI under FOI 1220141 (link below). An email of Tom Cooper of 21 June 2020 (Annex B) reads:

'Although not a definitive account - and it may well be we will never get one because many of the Board meetings consisted of verbal briefings - the report supports the idea [REDACTION] There is a list in the report. This behaviour seems to have pre-dated Tim Parker's appointment as Chairman.'

According to UKGI's response, received today, the Post Office is upholding this redaction on the grounds of its Legal Professional Privilege despite the fact that the body of the document is not protected by LPP and the underlying material which I am requesting to see makes reference to 'an idea' which cannot in itself be protected by LPP. I am not asking for disclosure of the report to which this email refers (which may well be protected by LPP), I am seeking disclosure of this particular sentence.

[2025 FOI E Shaikh 8 \(1\).pdf](#)"

6. The Post Office responded on 5 June 2025. It confirmed holding the information but withheld it under section 42(1).
7. The complainant requested an internal review on 30 June 2025. They expressed concern that:

"The redacted material is not a direct quote from what I accept is a privileged report, it is a third party's reference to an idea contained within that report. An idea which is formulated independently of a legally privileged document cannot, in and of itself, be subject to legal privilege."

8. The Post Office provided its internal review outcome on 25 September 2025, upholding its previous position.

Background information

9. This FOI request followed a previous request¹ the complainant had made to UK Government Investments Limited, which asked for discussions between it and the Post Office regarding the Swift review and the Post Office's board meeting of 28 July 2020.
10. The Swift review² is a 2016 report commissioned by the Post Office on its Horizon IT system, conducted by barrister Jonathan Swift. The review was commissioned because of pressure from the government and a BBC Panorama programme.
11. The Swift review found that there were potential problems with the Horizon IT system and it criticised the way in which the Post Office had pressured its postmasters to plead guilty to alleged offences. Despite its findings, the Swift review wasn't shared with the Post Office board or the government³ but has since been published.

Reasons for decision

Section 42(1) – legal professional privilege

12. Under section 42(1) of FOIA, information is exempt from disclosure if it attracts legal professional privilege (LPP).
13. The purpose of legal professional privilege is to protect an individual's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that a person needs to lay all the facts before their advisor so that the weaknesses and strengths of their position can be properly assessed. Essentially, LPP evolved to make sure communications between a lawyer and their client remain confidential.
14. There are two types of LPP – advice privilege and litigation privilege. The Post Office has confirmed it's relying upon legal advice privilege in this case.
15. Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant (main) purpose of seeking or giving

¹ [UKGI's 2020 Discussions Regarding the Swift Review - a Freedom of Information request to UK Government Investments Limited - WhatDoTheyKnow](#)

² [Chairmans Review-Redacted.pdf](#)

³ [Ex-Post Office chair denies hiding key Horizon report - BBC News](#)

legal advice. The legal adviser must have given advice in a legal context; for instance, it could be about legal rights, liabilities, obligations or remedies.⁴

16. Section 42 talks about 'communications' that attract LPP. 'Communications' means a document that conveys information and it can take any form.
17. The email referenced in the request is from Tom Cooper and the Post Office has explained:

"The withheld information was written in an email by a UK Government Investments ("UKGI") representative, who also served as a Post Office non-Executive Director. This email was sent to colleagues at UKGI and to civil servants at Post Office's Shareholder, the Department for Business, Energy & Industrial Strategy (now the Department for Business and Trade ("DBT")) and reflects the substance of a report produced for Post Office by its external legal advisers, Herbert Smith Freehills LLP."
18. The report referred to, by Herbert Smith Freehills LLP, isn't to be confused with the Swift review.
19. The Commissioner acknowledges the complainant's concern that the withheld information isn't the report produced for the Post Office by its legal advisers. It's a sentence in an email that's been sent, internally, between Post Office shareholders.
20. However, returning to the quite broad interpretation of 'communications' for the purposes of section 42(1), the covered information doesn't have to come directly from the legal adviser to the client, though that is the most common scenario. This was confirmed in [USP Strategies Plc & Anor v London General Holdings Ltd & Ors \[2004\] EWHC 373 \(Ch\) \(01 March 2004\)](#).
21. The exemption is about protecting the substance of any said legal advice. Even though the complainant isn't requesting a copy of the report itself (though the Commissioner notes they have gone onto do so in another request) as the Post Office has explained, the email reflects the substance of a report produced by its legal advisers and the email conveys that information.
22. The Post Office has stressed that, in writing this email, Tom Cooper isn't expressing his opinion. He is replicating a summary of the report,

⁴ [Legal professional privilege \(section 42\) | ICO](#)

prepared by Herbert Smith Freehill's LPP. As it says in the wider email it disclosed, the purpose of the report was to look at the information, about the problems with the Horizon IT system, that was historically shared with the Post office board and the Department for Business Energy and Industrial Strategy.

23. The Commissioner has seen the withheld information and the report to which it relates. He's satisfied it represents the legal advice in question.
24. Information can't remain privileged if that privilege has been lost. In an FOI context, LPP will only have been lost if there has been a previous disclosure to the world at large and the information can therefore no longer be considered confidential.⁵
25. The complainant argues that 'any legal professional privilege which might have protected the HSF report to which Cooper referred, was forfeited when details of its existence and substance were disclosed by him in his email of June 2020.'
26. Whilst information can remain privileged even when it's been revealed in limited circumstances, for example, during court proceedings, the Post Office has confirmed this is not the case here. To date, the report or its findings haven't even been disclosed during the Post Office Horizon IT (POHIT) Inquiry or to any third party.
27. The Post Office maintains that the withheld information itself hasn't been disclosed into the public domain and so legal advice privilege applies. The existence of the report might now be in the public domain but the Post Office is adamant that the report, and therefore the summary redacted from the email in question, remains privileged.
28. Section 42 is a class based exemption. This means that information only needs to fall within the category of legally privileged information to engage the exemption. There's no requirement for the disclosure of this information to cause prejudice or impact any legal proceedings.
29. Taking into account his analysis above, the Commissioner is satisfied the withheld information engages the exemption. Since section 42(1) is a qualified exemption, the Commissioner will now go onto consider the public interest test.

⁵ [Legal professional privilege \(section 42\) | ICO](#)

The public interest test

Arguments in favour of disclosure

30. The Post Office has recognised its:

“commitment to transparency and in enabling the public to better understand how Post Office works. We also consider that the public interest is increased given the Horizon IT scandal and the public scrutiny that has followed, particularly through the POHIT Inquiry.”

31. The Commissioner agrees. There’s an undeniable public interest in the Horizon IT inquiry and this, to a certain extent, extends to the legal advice contained within the report.

Arguments in favour of maintaining the exemption

32. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP. It’s a fundamental part of the legal system to safeguard openness in all communications between client and lawyer. This ensures access to the fullest and frankest of legal advice, which in turn is fundamental to the administration of justice.

33. Essentially, protecting the fundamental concept of LPP is so important that strong circumstances are needed to override it.

The balance of the public interest

34. The Commissioner considers this to be a finely balanced decision. On the one hand, the POHIT Inquiry is ongoing. This inquiry is the main source of scrutiny and the Post Office should be able to participate in this inquiry fairly, with access to privileged legal advice.

35. Disclosure as part of the inquiry isn’t disclosure into the public domain. However, the Commissioner recognises that there is intense media scrutiny of the inquiry and summaries of events and key findings of the inquiry usually find their way into the public domain.

36. On the other hand, the email that contains the withheld information is five years old. It’s not the report being requested, though this means the draft report by the Post Office’s legal representatives is also at least five years old. It’s not recent information, though the Post Office’s need for confidential legal advice most certainly remains current.

37. However, it would be remiss of the Commissioner to ignore just how many individuals were affected by the Horizon IT scandal which is often referred to as one of Britain’s biggest miscarriages of justice. It may

have resulted in 13 suicides.⁶ With this comes the need for transparency, including the legal advice the Post Office received.

38. The Commissioner is particularly mindful that, in the past, this legal advice has previously gone against the principles of transparency.⁷
39. It's difficult for the Commissioner to replicate his entire analysis here because much of it depends on the substance of the withheld information itself. This is privileged information and to discuss it would deny the Post Office it's right to appeal the Commissioner's decision.
40. Section 42(1) isn't an absolute exemption and shouldn't be elevated to such status. In [Crawford v Information Commissioner & Lincolnshire County Council EA/2011/0145](#), the Tribunal stated that circumstances must be 'strong', rather than 'exceptional' in order to override the inherent public interest in protecting LPP.
41. Without undermining the Post Office's ability to appeal this decision, the Commissioner considers the circumstances strong enough in this instance and orders the Post Office to disclose the redacted sentence.

Other matters

42. According to the Commissioner's guidance, an internal review should be carried out within twenty working days of being requested. This can be extended to forty days if the request is particularly complex or voluminous. The Post Office exceeded this 40 day maximum deadline and this has been recorded for monitoring purposes.

⁶ [Post Office scandal may have led to more than 13 suicides, official inquiry finds | The Independent](#)

⁷ [Ex-Post Office chair denies hiding key Horizon report - BBC News](#)

Right of appeal

43. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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