

Witness Name: Dan Farthing

Statement No.: WITN4081001

Exhibits: WITN4081002 – WITN4081032

Dated: 28th April 2021

INFECTED BLOOD INQUIRY

EXHIBIT WITN4081014

Our ref: Fol/18/01973

Dan Farthing-Sykes

[dan@](mailto:dan@GRO-C) **GRO-C**

16 October 2018

Dear Mr Farthing-Sykes,

Response to request for review of original response

You wrote to us on 5 September 2018 asking for a review of the response you received to your Freedom of Information (FOI) Request for all information pertaining to the warning letters issued by the Public Inquiry into contaminated blood and blood products conducted by Lord Penrose.

Scottish Government has now undertaken a review of the response. The review process was undertaken by an official who had no involvement in the original decision; the official considered both the content and process of the original response.

I note that you believe the decision to withhold publication will lead to a duplication of effort and a waste of publicly funded resources. I can advise you that the letters and related documents you have requested will be transferred to the UK Inquiry, avoiding this duplication. This is because the UK Inquiry is a statutory inquiry and therefore has powers under section 21 of the Inquiries Act to require National Records of Scotland (NRS) to supply this information. It will then be for the Inquiry to determine what to do with that information, although we would expect the Inquiry team only to share it with core participants if there is an obligation to keep it in confidence. This differs significantly from Freedom of Information legislation as, where information is released under an FOI request, it is in the public domain and can be freely used by anyone.

With regard to your request, the reviewer has concluded that the original decision should be confirmed and the letters and related documents should be withheld in their entirety under exemptions stated in section 37(1)(b)(i) and (1)(b)(ii) of the Freedom of Information (Scotland) Act 2002 (FOISA).

As noted in the original response, these exemptions apply as these documents were lodged with a person conducting an inquiry or arbitration, for the purposes of that inquiry or arbitration. These exemptions still apply after the inquiry or arbitration has

ended for a period of 15 years and are absolute. This means that they are not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Moreover, some of the material should be withheld under exemptions stated in section 38(1)(b) of FOISA (personal information) because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption. Where material does not contain personal information – documents attached to emails for example – it is already in the public domain via the Penrose Inquiry website where you can access a list of key documents including the guidance note in relation to warning letters (<http://www.penroseinquiry.org.uk/key-documents-and-guidance/>) as well as the final published report (<http://www.penroseinquiry.org.uk/finalreport/>)

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within six months of receiving this letter. Information on how to make an appeal, along with an application form, is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx> You can also contact the Commissioner at:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

E-mail: enquiries@itspublicknowledge.info
Telephone: 01334 464610

Should you then wish to appeal against the Commissioner's decision, there is a right of appeal to the Court of Session on a point of law only.

Yours sincerely,

Bruno B W Longmore
Head of Archive Depositor Liaison