

Progress Report 25th October 2006 – 3rd January 2007.

1. FOI Requests, released in line with but not under FOI.

The documents returned by external solicitors were released in line with FOI in November 2006. A request for an internal review of the original decision to withhold documents has been requested by a member of 'Haemophilia Action UK'. This member made fifteen requests under FOI in 2006.

Nineteen out of the nearly 600 documents have been withheld; 11 under Section 43 (Commercial), two under Section 40 (personal data), five under Section 35 (frank and open discussion to develop policy) and one under Section 34 (Submission to Royal Commission on the NHS). In addition Section 40(2) has been used to redact all names in the documents as they are over 15 years old.

A meeting with DH FOI unit who will manage the review is planned for the 4th January 2007. It is considered that the documents withheld under Section 43 (commercial) should be released. The continuing review of documents has identified that most information is already in the public domain i.e. evaluation of test kits for HTLV III antibodies and withdrawal of Armour heat-treated Factor VIII product. Those documents withheld under Section 40 (personal data) should continue to be withheld. The advice of FOI unit will be sought on those withheld under Section 34 and 35, the emphasis from the project manager will be that as many documents as possible should be released. DCA and SOL are particularly concerned that no precedent should be set by releasing documents that are in three of the exempt categories under FOI; policy formulation, free and frank discussion or legal advice.

2. Review of Documents

The remaining 11 'Wellington House' files have been reviewed which would have completed the review of 'Wellington House' files from 1970 to 1985. However, additional documents that require review were identified in December 2006 and are relevant to the review, these have been placed in 8 registered files. These documents were located during a search of filing cabinets and were either loose, in box files or lever arch files. Two data cartridges were also found, marked HIV Litigation 1989 – 1991. We do not have the technology to read these cartridges in house and ISD have arranged for the content to be accessed. The cartridges should go to the external company w/c 2nd January, the time required will not be known until the external company has had the opportunity to view the cartridges and there is not guarantee that any data will be recoverable. No further documents have been located.

The scope of the project was documents covering the period 1970 – 1985. Some documents fall outside the scope, being post 1985, but were in the original 47 lever arch files at Wellington House. For completeness these documents will be scanned for reference to NANBH and included in the review. These documents are in 7 registered files.

INTERVIEW
REVIEW
(PDR)

INFORM
PRIVATE
OFFICE
Judy Bulmer

who does PDR
+ by 11th Jan
withheld

Scot. Doc review
Aizhal files
Wellington - 2005
Nelson
Wellington 86 - ✓
Non-Disclosure - SOL ✓
Example of content (8)
INCORPORATE X

11
+ 8 additions
+ 7 post 86

IN TOUCH
HTLV AIDS
DH correspondence

Comments
- DCA ready
1x 1 on 1 at

Eight lever arch files held at Wellington House hold documents where the subject of non-disclosure during the HIV/Hepatitis C litigation. SOL has advised that it sounds as if these documents were withheld on the grounds of public interest immunity. SOL have arranged for a junior barrister to review the documents to identify any that may prove contentious if released in view of the earlier litigation. The documents do contain comment that might be mildly embarrassing, more in hindsight than in the context of the time. Examples are:

- Abbott Laboratories lobbying the Department to revise their evaluation of HTLV III antibody test kits (the Department did not recommend their product).
- Internal minute on cost implications of AIDS 'Of course the maintenance of the life of a haemophiliac is itself expensive, and I am very much afraid that those who are already doomed will generate savings which more than cover the cost of testing blood donations'.
- Comment on CBLA's ability to control the cost of the BPL redevelopment.
- Internal Minute where the view of MS(H) was cited 'he has strong views on spending money on the blood test for HTLV III. He felt that to spend around £2m was not cost effective when there were so few AIDS cases and that the money could be better spent elsewhere'. The minute went on to comment that 'we (officials) will need to play a strong devils advocate role'.
- Minute from Kenneth Clarke to CMO on AIDS testing. (January 1985). 'Before we panic further, it is presumably the case that the ending of the collection of blood from homosexuals greatly reduces the risk from blood collected in this country? Also, as only haemophiliacs have died and they may have had Factor VIII from American blood, is it the case that we have not had one AIDS fatality from blood donated in this country yet? Do we need this and heat treatment of the blood?'

The Board should note that DCA and other Government Departments are actively resisting the release of documents relating to policy formulation, free and frank discussion and legal advice under FOI as it sets a precedence.

3. Scottish Documents

The SE was asked if they held any documents of English origin but this information is not held separately, all documents had however been reviewed. The Scottish review was scanned for reference to NANBH and the Scottish Executive has provided the five files identified as relevant. A review of these files, and those originally released by Scotland, contain no information that contradicts the current DH position regarding negligence. This review has not yet been incorporated in the draft report.

4. Quality Assurance

no my aspect

Hugh Nicholas review of a sample of the documents referenced in the draft report has been delayed due to pressure of other work. It is anticipated that the review will commence w/c 8th January 2006.

5. Storage of Documents and Future FOI requests.

All documents previously held in lever arch files have been transferred to registered files. The inventories and review have been amended to reflect their revised titles.

An inventory of the documents 'returned by solicitors' will be held in the Commons Library. This will identify the document name, document type and date. The review undertaken by Counsel will not be released as it constitutes legal advice. DCA and SOL are particularly concerned that no precedent should be set by releasing legal advice under FOI request.

*Review -
NOT INTENT
TO RELEASE
REVIEW.*

The inventory of documents also contain a short review. This review was produced for internal use and it is not the intent to release this review, only the inventory.

The 'documents returned by solicitors' and 'Self-Sufficiency references' released in line with, but not under, FOI have been copied to respond to future FOI requests. This represents 20% of the documents available.

The remaining documents are being photocopied should a decision be taken to release them either in line with FOI or as part of 'business as usual'. Any such work is outside of the current project.

6. Communications

*Chased
were none*

Northern Ireland and the Welsh Assembly were asked if they had undertaken any reviews. They were also asked to check for any papers relating to the Advisory Committee on the Virological Safety of Blood. The two organisations will be chased for a response.

7. Additional Activities this Period

Reported above, the additional documents located at Wellington House have been inventoried and placed in registered files. These will be reviewed.

CMO Brief

A briefing was prepared for, and a meeting held with, CMO on the subject of a public inquiry in preparation for his subsequent meeting with MS(PH) and MS(R). The meeting between CMO and MS(PH) and MS(R) has been postponed and a revised date not yet made.

8. Report

A third draft of the report has been produced taking account of comment, primarily from William Connon, on the second draft and expanding on the content.

Since this third draft the last eleven of the 'Wellington House' files have been reviewed and need to be incorporated in the report. The eight files, located in December, need to be reviewed and incorporated. In addition eight 'post 1985' files and twenty-eight files from DRO Nelson need to be scanned for content related to NANBH and any identified incorporated.

covered in review

9. Impact on Timeline

The scanning of the DRO Nelson documents is behind schedule. The scanning of the additional relevant documents, post 1985, previously excluded has not yet started. The newly identified documents relating to the 1970 - 1985 period need to be reviewed for inclusion in the report. The impact of data, if any, from the data cartridges cannot yet be assessed. Due to pressure of work, the support arranged from an IP3 grade has been minimal. This post is now vacant and unlikely to be filled and up to speed in the immediate future.

covered in new Nelson complete

Temp in post - v. useful

There is a high risk that the report will not be ready to send to Ministers at the end of January, the plan proposed is to produce a fourth, and final, draft by the end of January, this will be tight given the number of files remaining. It is suggested that the delivery date communicated outside Health Protection be changed to February whilst we continue to work to a fourth and final draft for the end of January.

10. Next Meeting

The next meeting of the Project Board is to be arranged, dates will be canvassed for the end of January.

1st wk Feb

Linda Page
Project Manager
3rd January 2007