

## HIV HAEMOPHILIAC AND HEPATITIS C LITIGATION

### Identification of documents which present potential FOI, DPA or privilege issues

#### Note from Leigh-Ann Mulcahy to Anne Mihailovic:

This document was compiled by George Spalton and accompanies the lever arch file of sensitive documents (which have been extracted from the 2 boxes of files and put into a single separate file for ease of reference). I have marked with an asterix below the documents which I consider may be of sensitivity in relation to their contents. I don't think any of them give rise to any real concerns over liability and "sensitivity" is more based on the potential for criticism or embarrassment. However, please note that there is no exemption from disclosure on the basis that it may cause embarrassment to ministers or officials. The public interest test will need to be applied even where it may be possible to withhold documents under s.35 FOIA. We simply flag up where it may be possible to withhold the documents on the basis of an exemption so that these documents can be specifically considered. The asterisked documents themselves are flagged with a yellow post-it sticker.

I note however that there are other documents which may not be sensitive because of their contents but rather the class to which they belong e.g. ministerial submissions; drafts of submissions; correspondence between officials and Ministers. This was the reason for the PII certificate signed in relation to the AIDS/Hep C Litigation which appears at the front of this file. Careful consideration should be given to the precedent that may be set across Government as a whole by the voluntary disclosure of such documents. The reasons which are given in the PII certificate would still have some force even today and would be relevant on a claim for an FOIA exemption. I suggest that advice is taken on this issue before the documents are disclosed.

**I enclose the Information Commissioner's Guidance on s.35 and s.42 for your assistance.**

**Volume 68**

24 \*

- Ministerial submission (final draft) dated 20 December 1979. Discusses proposals for the BPL.
- Mentions that current policy (namely reliance on overseas products) "*conflicts with a WHO resolution to which the UK was party, that all countries should be self-sufficient in blood and blood products. It also increases greatly the risk of transmitting hepatitis*".
- Mentions (and attaches) Medicines Division inspectors' report on BPL which concluded that if it '*were a commercial factory its present condition would lead to a recommendation for its closure*' and adds that if this report was leaked it '*could prove embarrassing to Ministers.*' The report states that "*the present facility is totally unacceptable. The alternative is to cease manufacture of this product as the operation as currently undertaken is microbiologically hazardous.*"
- Possibly withhold on s.35 FOIA basis.

33

- Minute. Criticisms of the submission from the BPL about the cost of upgrading the laboratory.
- Possibly withhold on s.35 FOIA basis.

44 \*

- Letter to Minister. Commercial interests mentioned and source is individual expert. Refers to "*the plasma fractionation laboratories need a more professional management.*"
- Possibly withhold on s.35 FOIA basis.

54

- Submissions on management proposals for the Central Blood Laboratories.
- Possibly withhold on s.35 FOIA basis.

#### **Volume 69**

60

- Personal details of candidates to chair sub-committee.
- Also:
  - o Appendix 1 – safety issues at the Elstree plant.
  - o Appendix 2 – management issues.
- Possibly withhold on s.35 FOIA basis and potential DPA issues with CVs and names. Possibly resolve by redacting names and CVs?

62

- Submission addressing concerns over what '*may emerge by way of a further scandal at Edgware*'.
- Possibly withhold on s.35 FOIA basis.

64\*

- Submission concerning Hepatitis B vaccine; and cost/benefit implications; mentions groups of people who might require the vaccination (including patients receiving regular treatment with blood or blood products). The covering minute is sensitive in that it relates to the discussion of the high cost of the vaccine and the fact that it is not thought that it has a strong claim for scarce NHS resources. Also that the agreement with the manufacturer should limit the quantity and distribution of the vaccine to contain the cost and ensure it is only used for high priority groups.
- There is a "Draft Covering Minute" although the submission appears final.
- Possibly withhold on s.35 FOIA basis.

66 and 67\*

- Potentially sensitive material relating to withholding information about the Hepatitis B Vaccine. In document 66 "*it did not seem prudent to expose the cost issue*"
- Possibly withhold on s.35 FOIA basis.

107\*

- Note stating that the Minister does not feel that it is cost effective to spend £2 million on blood tests for AIDS when '*there were so few AIDS cases*'.
- Possibly withhold on s.35 FOIA basis.

110

- Briefing to Minister relating to three cases of blood being given by donors who were found to have AIDS.

- Possibly withhold on s.35 FOIA basis.

## Volume 70

119

- Proposed changes to ministerial submission. Argues in favour of pragmatic approach confining AIDS to the '*known 'high risk' groups*' and suggests editing the submission to contain some frank statements about the risks of contracting AIDS
- This relates to the drafting of a submission.
- Possibly withhold on s.35 FOIA basis.

124\*, 125a\* and 126\*

- Minister (Kenneth Clarke) questions the need for heat treatment of blood as well as policy ending collection of blood from homosexuals. Asks whether the all the fatalities were caused by American donated blood.
- 125a and 126 respond to the above memo.
- The press announcement is in draft form.
- Possibly withhold on s.35 FOIA basis.

134\*

- Ministerial submission made by letter by the CMO to John Patten. Concerns problems with introducing a partially evaluated test for HTLV3 immediately, including '*ethical problems in refusing to tell donors (who are volunteers in this country) the result of a test carried out on their blood if they wish to have*

*it.....Ministers should recognise, however, that support for a different view is likely to appear in the medical press...and that considerable public pressure would develop if in the meantime a case of AIDS develops in a recipient of UK blood. Such a case or cases is likely to occur sooner or later due to infection one or more years ago prior to our warnings to people at risk not to donate blood.'*

- Possibly withhold on s.35 FOIA basis.

142

- Details of rejection of one proposed method for testing for AIDS. Mentions a criticism by company which designed the test, that the *'UK could have had their test in place months ago and we have dallied to allow the preferred UK manufacturer to catch up.'*
- Possibly withhold on s.35 FOIA basis. Note that company information may also be commercial in confidence (s.41 FOIA).

148, 150, 153\* and 155

- Briefing to Minister and correspondence in response to issues arising out of document 142
- Note that Briefing to Minister and lines to take respond to criticism of delay in starting routine screening HTLV3
- Possibly withhold on s.35 FOI basis.

152 and 162

- SoS Wales to SoS Health re AIDS and advocating use of unreliable testing on the basis that it is better than *'no testing at all'*.
- Possibly withhold on s.35 and s. 36 FOI bases.



154

- SoS Health to SoS Wales. Draft reply to 152.
- Possibly withhold on s.35 and s. 36 FOI bases – Collective responsibility issues.

#### **Volume 71**

36 and 37

- Notes on issues relating to short term expenditure on the BPL. Mentions that minister wishes to keep short term expenditure to a '*bare minimum*'.
- Possibly withhold on s.35 FOI basis.

#### **Volume 72**

56

- Notes relating to who should be informed about improvements to BPL. Comments that wider publicity should not be sought as '*could not with a good conscience recommend that we should try to get too much credit for the BPL.*'
- Possibly withhold on s.35 FOI basis.

77

- Discusses concerns about the rising costs estimates for the BPL. Comments that '*I hesitate to suggest that BPL are trying to pull a fast one*' but nonetheless Dr. Lane needs to explain the costs.
- Possibly withhold on s.35 FOI basis.

## **Volume 75**

173

- Discussion of who could undertake a review of technology for the development of a British plasma-derived vaccine against Hepatitis B. Discusses several individuals and mentions the problem of finding someone who is strong enough to stand up to Prof Zuckerman. Documents mention the doubts about the technique Prof Zuckerman was developing.
- Possibly withhold on s.35 FOI basis and also s.36 – disclosure of this material could encourage individuals not to advise the Government.

174 and 175

- Mentions concerns about the way the research into a Hepatitis B vaccine has been carried out and states *'I wonder if you are wholly satisfied with the arrangements for our supervision of this project and the conduct of the parties.'*
- Possibly withhold on s.35 FOI basis.

188

- *'Major questions'* about efforts at financial planning for BPL.
- Possibly withhold on s.35 FOI basis.

## **Volume 76**

219



- Note on lack of staff (possibly in Department of Health) *'rock-bottom staff morale and uncertainty about the future, losing highly skilled staff to private industry and other Government Departments'*.
- Possibly withhold on s.35 FOI basis.

251

- Concerns extra costs faced by the regions in dealing with AIDS and includes a letter from a Newcastle based immunologist bemoaning the lack of funding for *'infrastructure for the investigation, follow up, treatment and most of all counselling and education of all "at risk" groups.'* Adds that the Health Authorities, DHSS and Government have *'consistently understated the size and significance'* of the *'HTLV III problem'*. Cites the example of an infected individual who continued to give blood because the leaflets explaining who should not give blood were not clear enough.
- Possibly withhold on s.35 and s. 36 FOI bases.

#### **Volume 77**

38

- Minutes of a Central Blood Laboratories Meeting. Discussion of amount of heat-treated Factor 8 product available, whether BPL needed a licence, and how to distribute the limited amount available. Mentions *'communication problems'* at CBLA and DHSS.
- Possibly withhold on s.35 FOI basis.

#### **Volume 78**

7

- Safety issues in developing BPL.
- Possibly withhold on s. 35 basis and consider redacting names/CVs.

16

- PS(H)'s comments re distribution of AIDS leaflet. Suggests that publicity should be kept 'low key'. Contrast Lord Glenarthur's view that *'we may be at the tip of the iceberg with AIDS and find ourselves in trouble in 18 months' time unless we are really positive in our approach – even if it does embarrass a few 'gay' people.'*
- Possibly withhold on s.35 FOI basis.

26

- Briefing note for MS (H) recommending that he should adopt a 'tough line' with CBLA regarding overspend and that they should be *'sent away to find their own salvation'*.
- Possibly withhold on s.35 FOI basis.

35

- Mentions policy and commercial issues being taken into account.
- Possibly withhold on s.35 FOI basis.

## Volume 79

10

- Memo commenting that there are concerns about the '*handling*' of the BPL project and it will require careful monitoring if '*those responsible for handling it (namely the Joint Management Committee and its Policy Steering Group for the development) are to avoid trouble and overspending*'. Also contains concerns re certain individuals' ability to manage the project.
- Possibly withhold on s.35 and also, given the way certain names are mentioned, s. 36 FOI bases.

21

- Memo commenting on figures which suggest that Britain's haemophiliac population could be '*very seriously affected*' by number of sero-positive donors.
- Possibly withhold on s.35 FOIA basis.

24

- A personal note, which mentions research work carried out by the writer's brother-in-law.
- Possibly withhold on s.35 and s. 36 FOIA bases.

31\*

- Memo: Abbott Industries being upset about press reports that a test developed by Wellcome had been chosen. "*They felt that the UK had been tardy in introducing their test to the BTS.*"
- Possibly withhold on s.35 FOIA basis. May also be commercial in confidence (s.41 FOIA)

32

- Discusses CBLA's cost saving proposals and suggests that they are '*over-optimistic*'.
- Possibly withhold on s.35 FOI basis.

35 and 36

- Comments that is '*nervous about Ministers getting to close to the commercial aspects of AIDS*' after invitation to lunch from a PR company. Material attached.
- Possibly withhold on s.35 FOIA basis.

#### **Volume 84**

1223 and 1225

- Correspondence between civil servant and director of NBTS following a meeting. Contains criticism of certain individuals.
- Possibly withhold on s.35 or s. 36 FOIA bases.

#### **Volume 85**

1296\*

- Reports on legal advice following consultation with Solicitor's Division. States that "*it would not be unreasonable to postpone the acquisition of such [product] licenses [for the BPL] by the Secretary of State*" – this might be taken out of context to mean a desire to delay to the development of the new BPL plant.
- Possibly withhold on s.35 FOIA basis and s. 42 given that it concerns legal advice.

## **Volume 86**

3074

- Comparison of the different commercial test providers.
- Possibly withhold on s.35 FOI basis and because of comments on commercial parties.

3087

- Minutes of a committee meeting and comments on commercial parties.
- Possibly withhold on s.35 FOIA basis and because of comments on commercial parties.

## **Volume 88**

2700

- UK Haemophilia Centre Directors' Hepatitis Working Party. 1984/1985 Report. Comments that a report from Sheffield has shown that previous findings of *'relatively benign sequelae after acute non-A, non-B hepatitis may have significantly underestimated the risk of serious chronic liver disease.'*
- Possibly withhold on s.35 or s. 36 FOI bases.

2734\*

- Letter from haemophiliac patient expressing concern at the news that he was being treated with products which had potentially come from abroad.
- Possibly withhold on s.36 FOI basis and DPA basis given that it is from an individual, written in confidence. Must be anonymised if disclosed.

## Volume 89

2828\*

- Letter from DHSS responding to document 2734 of Volume 88.
- Possibly withhold on s.36 FOI basis and DPA basis given that it is to an individual patient, in response to a letter written in confidence. Must be anonymised if disclosed.

2864

- DHSS note: contains criticism of individual doctor's research figures.
- Possibly withhold on s.35 or s. 36 FOI bases.

2900 and (?) 2913

- DHSS note and letter in response to concern from a member of the public about the lack of communication to haemophiliacs at Middlesex Hospital and also concern about the failure to provide medical practitioners with clear advice about preventing the spread of AIDS.
- Possibly withhold on s.35 or s. 36 FOI bases.

2917

- Letter from University of Glasgow. Contains comments about discontent among Haemophilia Directors about Safe-Sex booklet. Comments that Haemophilia Society is receiving '*very poor information*' and asks if anyone has '*started legal proceedings*'.
- Possibly withhold on s.35 or s. 36 FOI bases.

2921 and 2931

- Letter from DHSS to the Haemophilia Society criticising their 'Advice on Safer Sex' publication and (2931) the Haemophilia Society's response.
- Possibly withhold on s.35 or s. 36 FOIA bases.

## **Volume 90**

1777

- Minutes of meeting to '*discuss the implementation of the recommendations of the Trends Working Party Report*'. This document was produced in September 1979 and mentions problems in the transfusion service. Given the time-scale it could be said that these problems weren't addressed early enough. It is stated that there was a "*failure to meet NHS requirements for blood*". The document is potentially sensitive although unlikely to sound in liability based on my understanding of the issues raised by the litigation.
- Could possibly withhold on s. 35 or s.36 FOIA basis.

## **Volume 92**

Not numbered – first document in volume

- Part of the disclosure from litigation in 1990.

Not numbered – second document in volume

- Treasury Solicitor – fax with the disclosure list mentioned above.

These are subject to legal professional privilege and exempt under s.42 FOIA. So far as there contents are concerned, there does not appear to be any reason not to disclose these, but this should be double checked given the close connection with the original litigation.