

Draft

DE\_288056

Ed Webber

## FREEDOM OF INFORMATION ACT: REQUEST FOR INFORMATION

Thank you for your email of xxx to the Department of Health requesting, under the Freedom of Information (FOI) Act, "*advice from the Chief Medical Officer given to the Secretary of State for Health in August 1990 regarding the litigation over the infection of haemophiliacs with HIV through contaminated blood products*". I am sorry it has taken so long to provide you with a response but we needed to consult widely on this case as it raised a number of tricky issues.

I am writing to confirm that the Department holds this information, which is dated 20 July 1990. However, after careful consideration we have concluded that the information requested should be withheld under the exemptions at section 36 (2) (b) (i) and (ii). These exemptions apply if disclosure of the information would inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation.

As you may know these, are qualified exemptions and attract the public interest test to determine whether the balance of the public interest lies in favour of disclosure or non-disclosure. Our conclusion is that the balance of public interest favoured non-disclosure for the following reasons: **DN Need to beef up this section with more reasons if possible, especially if the third point here is being taken out.**

- The role of the Chief Medical Officer (CMO). This is a unique role within Government. Ministers rely on independent and expert advice from the CMO on a wide range of matters. The value of the CMO's unique role and the frankness of his/her advice could be diminished if there were a risk that the advice would not remain confidential. . It is in the public interest of good governance that Ministers are able to receive uninhibited advice of this nature so that fully informed decisions can be taken. **DN TO LAWYERS – Can we really use this argument? Surely it would apply to any advice from CMO? Are we really saying that it could never be in the public interest to release advice from the CMO?**

- The Information Commissioner's Office has recognised in previous cases that where advice is given in the context of litigation, a particular weight is given to the public interest in withholding the information. This is owing to the public's interest in ensuring a fair judicial process where all parties, including private individuals and public interest groups, are able to debate their case in litigation internally and in confidence.

**DN HOW ABOUT THIS ARGUMENT TAKEN FROM HOWARD'S**

**EMAIL:** There is also a public interest in ensuring that where papers of previous administrations are concerned the views of former ministers are taken fully into account before reaching a decision on disclosure. The public interest here is in being able to ensure orderly transitions between administrations protecting the non-political position of the civil service. In this case the former minister has expressed the view that releasing the document requested on its own would give an incomplete perspective on the discussion that was taking place at the time.

**DN HOW ABOUT ALSO SAYING:**

Finally, we do not consider that the document contains any information that is new and not already in the public domain.

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**- DN I UNDERSTAND THAT THIS POINT HAS TO BE DELETED**

We have considered the judgment of Mr Justice Rougier, who in August 1990, determined that it is not in the public interest to disclose policy-forming documents relating to this issue.

Furthermore, I would like to emphasise the fact that we have already made available thousands of documents, in line with the FOI Act, covering 1970-1985 when most of the contamination took place. However, in this particular case we consider that the balance of the public interest favours non-disclosure for the exceptional reasons outlined above.

I hope this reply is clear. If you are unhappy with the way the Department of Health has handled your request you may ask for an internal review. You should write to the Section Head of the Freedom of Information group at the Department of Health, quoting the reference number above:

Freedom of Information Unit  
Department of Health  
Room 334b  
Skipton House  
80 London Road  
SE1 6LH

Email: [FreedomofInformation@dh.gsi.gov.uk](mailto:FreedomofInformation@dh.gsi.gov.uk)

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow

Cheshire  
SK9 5AF

Yours sincerely,