

Rt Hon Kenneth Clarke QC MP  
House of Commons  
London  
SW1A 0AA

19 March 2009

Dear Mr Clarke

**Freedom of information request**

I wrote to you last year (correspondence attached) asking your view on releasing under the FOI Act advice given to you in July 1990 by the then Chief Medical Officer about litigation regarding the infection of haemophiliacs with HIV through contaminated blood products. I am sorry to have to trouble you again on this issue, but the applicant has formally requested an internal review of this decision.

As you know, the Department decided, after consulting you, that the information should be withheld under the exemptions at section 36(2)(b)(i) and (ii). Information to which these exemptions apply is exempt information if disclosure of the information under the Act would inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation.

We now have to undertake a full review of our original decision. As I am sure you are aware, the Act is designed to change the default position within public authorities from offering information on the basis of the 'need to know' to providing it in response to a legally enshrined 'right to know'. In the case of section 36(2)(b)(i) and (ii), the information can be withheld only where the public interest in upholding the exemption outweighs the public interest in disclosure.

You will no doubt be aware of the recent publication by Lord Archer of his inquiry into the NHS supply of contaminated blood and blood products. Given the level of interest in this inquiry shown by parliament, campaign groups and the media, I would appreciate your current views on disclosure of the CMO's advice to you as Secretary of State. I would be particularly interested in whether you feel the arguments about the balance of the public interest in this case that you expressed in your letter of 3<sup>rd</sup> June still stand. You will want to bear in mind that if we do not concede the request it is highly likely that the applicant will appeal to the Information Commissioner.

If you still feel that we should continue to withhold the document – and if we decide to do so - I assume you would have no objection to our referring to having consulted you and summarising your views when we respond to the

applicant? We would need to be able to give the reason for our decision and it seems to me that your view as the former Secretary of State for Health concerned would be very relevant.

A response by 30 March if at all possible would be greatly appreciated.

Yours sincerely,

**Liz Woodeson**  
**Director**  
**Health Protection**