

**"Re: FW: Draft letter to Ken Clarke"**

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William Connon/PD-
PMD/DOH/GB

06/05/2008 07:41

ToZubeda Seedat/PH6/DOH/GB GRO-C
 cckathryn.fairhurst GRO-C Pauline
 Agboke/ISD4/DOH/GB GRO-C William
 Scott/OIS/DOH GRO-C Steve Wells/ISD4/DOH/GB GRO-C
 Patrick Hennessy/POLICY/DOH/GB GRO-C
 karen.arnold1 GRO-C
 tamlyn.edmonds GRO-C "Williams, Rhys (FOI
 Clearing House)" <Rhys.Williams GRO-C
 Elizabeth Woodeson/CQEG/DOH/GB GRO-C Ailsa
 Wight/PH6/DOH/GB GRO-C

bcc

SubjectRe: FW: Draft letter to Ken
 Clarke8547ED2F616F46CE8025743D00533965



RESTRICTED - Policy

Zubeda,

Just so that the DH position is quite clear, I have always supported the release of this document. Whilst I was initially against withholding this document the majority view differed, and I reluctantly agreed that the submission to CMO could go ahead, and that I would consider the views of CMO and the AG before we asked MS(PH) and made any

final decision. CMO's decision confirms my view that we should release the document. Mr Clarke's reaction is entirely understandable but does not change my view that we should disclose this memo.

I completely agree with CMO's view on the availability of CMO advice generally and can see no reason for withholding this particular document. Furthermore, I feel quite strongly that the potential impact of the Scottish Public Inquiry, not to mention Lord Archer's Inquiry, compounds the need to release this document. If the document is withheld, there is a strong possibility that Mr Webber (or someone else) will inform the Scottish Inquiry about DH refusal to release the document and the chair of the inquiry could then write to our SofS requesting sight of this memo. Whilst there may be no legal obligation on SofS to release information, to the Scottish Inquiry, it would potentially cause embarrassment. Withholding the document also runs counter to overall Government policy with regard to the Archer Inquiry of releasing as much information as possible. Whilst the document does contain advice which is highly sensitive, that advice is already in the public domain and given the circumstances prevailing at the time, it does not contain anything which contradicts or questions Government actions, therefore I feel that withholding it simply creates the perception that it does.

There is also a possibility that another copy of this same document could conceivably come to light via another route as a result of the Scottish Inquiry (the cc list is quite lengthy and I do not know all the people listed, or their positions). I do accept that the probability of this is not great, but nevertheless there is a risk.

Finally, I don't think that we should write to Mr Clarke, outlining the provisions of FOIA, and inviting his further thoughts in the light of them, as he is highly unlikely to change his general objections and this simply delays the case even further. I personally, would not include the fourth para on page two regarding the Opposition's reputation, as it appears superfluous to me.

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GRO-C

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02/05/2008 16:08

To <kathryn.fairhurst@doh.gov.uk>

GRO-C

cc <Steve.Wells@doh.gov.uk>

GRO-C

<William.Connon@doh.gov.uk>

GRO-C

Subject FW: Draft letter to Ken Clarke

Kathryn,

As discussed, Ken Clarke has responded (see first attachment). You'll see that he disagrees with the proposal to release the documents and copied GO'D into that response.

I'm not in favour of disclosing the full memo and would prefer to see the first sentences of both the first and final paras redacted, at least (see second attachment). My primary concern specific to the information (my main concern is the correct handling of the Convention for Papers of Previous Admins) is the impetus such a document would give present campaigns though DWP lawyers advised that it will not have impact existing legal proceedings. Further, while Donald Acheson's support of compensation is already public knowledge, the tone of his support isn't.

DH initially agreed but the CMO advocated quite strongly in favour of disclosure, adding that disclosure would never inhibit the CMO's advice. This has correctly been a significant factor in DH's thinking and non-disclosure would probably be difficult to sustain in the long-term without the support of a key player. However, this is not at appeal and it would be incorrect to assert that Sir LD is speaking on behalf of future CMOs.

DH has proposed a draft reply (3rd attachment). I've drafted one change (tracked) but the rest is accurate, particularly with regard to Mr Clarke's assertion that advice to Ministers from officials is expressly exempt from the provisions of FOIA. Cabinet Office will wish to consider how much weight should be correctly attached to Mr Clarke's objection and where that fits with the terms of agreement between Charlie Falconer and Michael Howard. With regard to the bigger FOIA picture, I'd support attaching significant weight to those views.

Perhaps best way forward is for the letter to explain the provisions of FOIA and with those in mind, invite his views again?

I've copied interest parties at DH.

Rhys

Rhys Williams

Central Clearing House | Ministry of Justice | GRO-C

-----Original Message-----

From: Zubeda.Seeda GRO-C [mailto:Zubeda.Seeda GRO-C]

Sent: 01 May 2008 11:35

To: Pauline.Agboke GRO-C William.Scott GRO-C

Steve.Wells GRO-C Patrick.Hennessy GRO-C

karen.arnold GRO-C Williams, Rhys (FOI Clearing House);

tamlyn.edmonds GRO-C joel.McMillan GRO-C

Cc: William.Connor GRO-C

Subject: Draft letter to Ken Clarke

Please find enclosed a draft reply to Kenneth Clarke. I would be grateful if you could please let me have your comments asap.

Rhys - Thanks for letting me know that this case may involve interest at higher levels at the Cabinet Office (CO). Grateful if you could let me know if colleagues at CO have any comment on this case.

Thanks

Zubeda

Zubeda Seedat
Blood Policy Team

GRO-C

(See attached file: Reply to Ken Clarke.doc)

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