

**"Advice on a FOI Case: HIV Litigation"**

Document Type:	Formal
File Title:	GHP - Blood Policy - Blood : General - Freedom of Information (FOI) Cases - General
File Reference:	GHP/005/001/021/001
Protective Marking:	No Marking
Filed by:	Zubeda Seedat/PH6/DOH/GB on 07/12/2006 at 13:08
Created by:	Zubeda Seedat on 02/03/2005 at 11:25

**Named Security Prior To Moving To Archive:**

Who can edit?	Nobody
Who has edited?	Zubeda Seedat/PH6/DOH/GB
Who can read?	All readers of the document database

**Modification History Prior To Moving To Archive:**

Modified Date and Time	Details
17/03/2009 14:11	Refiled from GHP/005/001/021
18/08/2009 15:05	Modified registered file

**Zubeda Seedat**

02/03/2005 11:25

Ronald.Powell@

GRO-C

Giddy/POLICY/DOH/GB@DOH

Case: HIV Litigation

To:

cc: Marcus

bcc:

Subject: Advice on a FOI

Ron,

I am dealing with a a Freedom of Information case which refers back to papers requested during the HIV litigation in 1990. The correspondent is requesting documents which DH said were subject to a Public Interest Immunity claim. This was subject to a Court of Appeal Hearing in Sept 1990. I see from the files that you were involved with providing legal advice. I hope you are able to help.

I have had a search for the documents requested, and have put together a background note on the events that took place (attached). I would be very grateful for your advice on some of the DNs. It would also be helpful to have a steer on how we should respond. I am sorry to trouble you, particularly as this relates to events that took place over 14 years ago.

This case is already overdue as I have been awaiting your return from leave. It would be helpful to have a response as soon as possible.

Many thanks

Zubeda  
Blood Policy Team



TO 6013666 Mackie HIV lit papers FOI.doc

## **Freedom of Information Case 209: DH Correspondence Ref: TO6013666**

### **BACKGROUND NOTE**

#### **HIV Litigation**

1. In 1989, around 770 haemophilia patients who were infected with HIV through contaminated blood products, and 190 of their partners and close relatives took legal action against the Department, Welsh Office, the Medicines Licensing Authority and Committee on Safety of Medicines to claim compensation for damages, alleging negligence. The Government denied liability.

#### **Disclosure of documents**

2. During the HIV litigation, the DH made available a very large number of documents for inspection by the plaintiff's lawyers. Other documents, that were wanted by the plaintiff's lawyers were withheld. These papers related to the inner workings of Government and were subject to a Public Interest Immunity (PII) claim by the Department.

3. Initially the High Court ruled against disclosure of the majority of the documents. However, on appeal on 20 September 1990, the Court of Appeal Judge ruled that certain documents should be disclosed. There is a paper on file dated 10 October 1990 which says "that the judge is now inspecting the documents to see which meet the criteria for disclosure".

4. We would need to conduct a further search of the files to establish the outcome of the inspection of these documents. However, a further search would take us to the 3.5 days limit that we have.

5. At the same time DH were considering proposals for a settlement. A settlement was reached and details were announced on 11 December 1990.

#### **Request from Mr [GRO-A]**

6. Mr [GRO-A] is requesting copies of documents which DH had claimed PII, which were the subject of the Court of Appeal Hearing on 20 September. We believe that Mr [GRO-A] would like access to these papers as part of an on-going campaign calling into a public inquiry into why so many patients were infected with HIV and Hepatitis C through contaminated blood and blood products.

#### **Search for papers requested under FOI**

7. We have two cabinets of papers (about 60 folders) which we understand were sent to our solicitors at the time of the litigation. However, it is not clear which of these papers (if any) would have been made available to the plaintiff's lawyers during discovery.

8. We have also looked at a number of registered files to locate the papers. We have found a minute dated 6 September 1990 which refers to documents identified under the PII claim and which were sent to Sol. There is also a list of documents marked "PII claim category 2" (vol 17). In addition, we have consulted with Sol Division. However, we have been unable to establish what happened to these documents.

9. It is also our understanding, having spoken to the previous head of the blood team that that an earlier search for some papers (about self sufficiency into blood products) from the 70's/early 80's could not be found. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have been destroyed in error at some time in the mid 1990's.

Blood Policy Team  
March 2005

Draft

Mr **GRO-A**  
**GRO-A**

Dear Mr **GRO-A**

Thank you for your e-mail of 29 January to Melanie Johnson requesting documents which were subject to a Court of Appeal Hearing on 20 September 1990 in relation to the HIV litigation. I have been asked to reply.

I am writing to advise you that following an extensive search of our records, we do not appear to have retained the documentation. Given that the litigation was settled nearly 15 years ago, it would appear that the documents have been destroyed.

You also refer to the review of internal papers commissioned in 2002 about the issue of self sufficiency in blood products. I regret that it has not yet been finalised due to other pressures. In view of the time which has passed, since the report was commissioned, officials have been asked to ensure that it is now completed as a priority. We will of course, let you know when the report has been completed.

If you are unhappy with the decisions made in relation to your request from this Department you may ask for an internal review. You should contact the FOI Unit, 360c Skipton House, 80 London Road, London, SE1 6LH if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If you have any queries about this letter, please contact me.