

Our ref: IR474399

Dear Ms Nurse

Thank you for your email of 26 January asking for an internal review of this Department's handling of your Freedom of Information (FOI) requests DE 471293 and subsequently.

### **Chronology**

You wrote to the Department on 8 January as follows:  
Freedom of Information request - Who has been commissioned to review the blanket smoking ban, its effects on the economy, particularly the pub trade, how much did it cost, and when will the report be ready for public inspection.

Public Health Minister Gillian Merron had this to say in answer to a parliamentary question regarding the economic impact of the blanket smoking ban. "We have given a commitment to review the impact of the smokefree law three years after its implementation on 1 July 2007. The review will take place in the latter part of 2010. In preparation for the review, the Department has commissioned a number of research reports. Once these reports have been completed and peer reviewed they will be published and will be given full consideration as part of the review."

Who has been commissioned to provide these "research reports", when will they be completed, how much public money was used to pay for these reports, who will "Peer review" these reports and When will these reports be available for inspection and consultation by the public.

Yours faithfully,

Pat Nurse

We responded on 20 January 2010

Dear Mr/Ms Nurse

Thank you for your email of 8 January to the Department of Health requesting, under the Freedom of Information Act 2000 (FOIA), details of organisations which have been commissioned by the Department to prepare research reports to review the impact of the smokefree law. Your letter has been passed to me for reply.

I can confirm that the Department has commissioned academic research as part of the Department's monitoring of the smokefree law in England. This is because there is a commitment to review the impact of the smokefree law in England three years

after its implementation on 1 July 2007 . Consistent with this commitment, we expect that the review will take place in the latter part of the year.

The following academic research has been commissioned as part of the Department's monitoring of the smokefree law, and will be considered (subject to peer review and publication) as part of the review. It will cover aspects of the impact including on the economy, the hospitality trade, health as well as other aspects. The review will not be limited to consideration of these reports alone. It is anticipated that there will be a wide range of independent evidence and data published and available at the time of the review.

### **List of research commissioned by the Department**

*Impact of smokefree legislation in England on individuals and communities: qualitative longitudinal study.*

Cost: £460,000

Status: complete

*Bar Workers' Health and Environmental Tobacco Smoke Exposure (BHETSE)*

Cost: £220,000

Status: complete

*Evaluating the impacts of smokefree legislation using secondary data*

Cost: £220,000

Status: Ongoing

*Smokefree - feasibility study - secondary analysis of data relating to the hospitality sector*

Cost: £47,000

Status: Ongoing

### **Peer review**

In line with the Department's Research Governance Framework for Health and Social care, studies are open to expert scrutiny through peer review. In general, proposals and final outputs will be peer reviewed either by the Department or journals receiving final articles.

### **Publication**

The contracts issued puts the onus on research teams to publish their work, and we expect that these papers will be available in due course.

You replied on 20 January:

Dear Department of Health,

Please clarify WHO the academics are that have carried out this research, what remit - or points of reference - they had to work in, and whether these reports are available for public inspection and where this can be done.

Yours faithfully,

Pat Nurse

We responded on 26 January

Dear Mr/Ms Nurse

Thank you for your further email of 20 January to the Department of Health requesting, under the Freedom of Information Act 2000 (FOIA), details of organisations which have been commissioned by the Department to prepare research reports to review the impact of the smokefree law. Your email has been passed to me for reply.

The Department does hold information relating to your request. I can confirm that the Department has commissioned academic research as part of the Department's monitoring of the smokefree law in England . This is because there is a commitment to review the impact of the smokefree law in England three years after its implementation on 1 July 2007 . Consistent with this commitment, we expect that the review will take place in the latter part of the year.

The following academic research has been commissioned as part of the Department's monitoring of the smokefree law, and will be considered (subject to peer review and publication) as part of the review. The review will not be limited to consideration of these reports alone. It is anticipated that there will be a wide range of independent evidence and data published and available at the time of the review.

### **List of research commissioned by the Department**

1. Impact of smokefree legislation in England on individuals and communities: a qualitative longitudinal study.

Cost: £460,000

Status: complete

Contractor: Public Health Research Consortium, University of York .

Principal researcher: Prof Steve Platt, University of Edinburgh

Publication pending: Katrina Hargreaves, Amanda Amos, Gill Highet, Claudia Martin, Stephen Platt, Deborah Ritchie, Martin White (submitted). The social context of change in tobacco consumption following the introduction of 'smokefree' England legislation: a qualitative, longitudinal study.

2. Bar Workers' Health and Environmental Tobacco Smoke Exposure (BHETSE)

Cost: £220,000

Status: complete

Contractor: University of Aberdeen .

Principal investigators: Prof Jon Ayres, University of Birmingham and Dr Sean Semple, University of Aberdeen .

Article in press: Sean Semple, Martie van Tongeren, Karen Galea, Laura Maccalman, Ivan Gee, Odette Parry, Audrey Naji and Jon Ayres. UK smokefree legislation: changes in PM2.5 concentrations in Scotland , England and Wales . *Annals of Occupational Hygiene*.

### 3. Evaluating the impacts of smokefree legislation using secondary data

Cost: £220,000

Status: Ongoing

Contractor: University of Bath .

Lead researcher: Dr Anna Gilmore

Publication: a series of articles will be produced as the analyses are completed. The first of these is in press: - Sims M., Tomkins S., Judge K., Taylor G., Jarvis M.J., Gilmore A. Trends in and predictors of secondhand smoke exposure indexed by cotinine in children in England from 1996-2006. *Addiction*

### 4. Smokefree - feasibility study - secondary analysis of data relating to the hospitality sector

Cost: £47,000

Status: Ongoing

Contractor: University of Aberdeen .

Principal researcher: Prof Anne Ludbrook.

Publication: no outputs to date.

## **Publication**

As outlined above, some of the research into smokefree legislation in England is about to be published, and the Department expects that all of the research teams will publish results in the future.

For the research that has not yet been published, the Department is withholding this information under section 22 of the FOIA, which enables public bodies to refuse requests for information intended for future publication.

Section 22 is a qualified exemption, and we are required to assess, as objectively as possible, whether the balance of public interest favours disclosing or withholding the information.

In general, there is a strong public interest in information being made as freely available as possible. However, we also recognise a strong public interest in allowing sufficient time for the Department to properly consider the results of the academic research before it is placed in the public domain. Findings from studies are subject to external peer review as a check on scientific quality. We do not think it is in the public interest to release the report and recommendations before the external peer review has fully considered them.

Placing them in the public domain before completion runs the risk of misinterpretation which could potentially be misleading. For this reason, we have concluded that the public interest in withholding the information outweighs that in its release. The

Department takes the view that any public interest in the disclosure of this information will be satisfied by the publication of the report, and the Department's review of the legislation in the near future.

Dear Department of Health,

I am appalled that the public is not permitted to see reports that it has paid more than a million pounds for during a recession.

I assume the public must wait until you have cherry picked these reports to suit your own political agenda as your govt did in Iraq.  
Despicable!

What, exactly, do you have to hide on this issue if it really is about health and not social engineering and control?

With this in mind, I am asking for an internal review and for the dept to consider the public's right to this information. It would also dismiss any fears of a cover up should you be open in allowing the public to analyse the information before your dept edits it.

Yours faithfully,

Pat Nurse

### **Internal Review**

We considered the handling of your requests through each successive stage. We concluded that your initial request was answered accurately and in full, each of your questions having been addressed.

Turning to your response to our reply of 20 January, and our reply to this, we considered firstly whether your supplementary questions had been fully addressed. We concluded that while our obligations in respect of the information asked had been discharged, links to or contact details of the organisations committed to publishing the respective studies might have been helpful, but that this information was indeed provided in our email of 26 January.

However, turning to our reference to material not yet published, we did identify a deficiency in our application of S22(1) of the FOIA. S22(1) applies, in this case, specifically to information held by DH at the time of your request, with a view to publication either by DH or by another body, at a future date. It would not apply to material held by another body such as a university, created in fulfilment of a contract with DH, for publication by that other body. All the research detailed in this response fell into this second category, and we should, correctly, have advised you that we did not, ourselves, hold this information, and referred you directly to the universities in question. I should, however, mention in this context, that universities, being FOIA public authorities, would in their turn have the right to rely on S22 if asked to release

research not yet published, but scheduled for publication. We apologise for any confusion this error may have created.

So that we might provide the clearest possible response to these issues, we asked the policy officials with oversight of these research projects the following supplementary questions, and have given their responses below for your convenience.

1. Do you have any proposed timescale for publication by the universities in question, or any projections for publication of those in course?

*No. The Intellectual Property Rights belong to the contractor and it is up to them to arrange for publication. Our expectation - and it is written into the contract the Department's Policy Research Programme has with them - is that they should publish within a year of the completion of the study. This approach ensures academic freedom and means we are "open in allowing the public to analyse the information" in the way Ms Nurse considers we should.*

2. Will the peer reviews be published (possibly in anonymised form?)

*No, because peer reviews are commissioned by the journals the contractors approach with a view to publication. DH has no hand in this. The point is that there is a process to be gone through before the results Ms Nurse want to see become publicly available. Its whole purpose is to ensure the quality of the research being published*

This internal review is now complete, and its findings have been communicated to policy officials and colleagues in the FOI team, in order to inform and encourage good practice. If you are not content with the outcome of the FOI aspects 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

I hope that this information is helpful.

Colin McDonald  
FOI Casework Manager