



Department of Health

Freedom of Information Team
Department of Health
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Glenn Wilkinson
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24 March 2017

Dear Mr Wilkinson

Freedom of Information Request Reference FOI 1075866

Thank you for your request dated 24 February 2017 in which you asked the Department of Health (DH):

"Freedom of Information request - Contaminated Blood

In July 2016 the Department of Health [DH] concluded a review into the issue of contaminated NHS blood products. The DH published four documents which were published on the 13th July 2016, these documents were titled:

- 1. Infected blood: government response to consultation on reform of financial and other support*
- 2. Infected blood: reform of financial and other support in England - payment for bereaved partners/spouses*
- 3. Equality Analysis*
- 4. Impact Assessment*

In reaching their conclusions I would like to see any and all information used by the DH, Government Experts, Doctors, Specialists, Researchers, Civil Servants regardless of the department's they serve, Ministers regardless of the department they serve, Members of Parliament, the Treasury, the Prime Minister, communications with Government legal representatives and any other relevant material.

I would also like to see any updated information provided by any of the above since the publication of the review."

Your request has been handled under the Freedom of Information Act (FOIA).

DH holds the information requested, but it is being withheld under s35(1)(a) of the FOIA (the formulation or development of Government policy). We are withholding this information because the Government's policy on infected blood is still under development, and decisions have not been made yet.

We are required to assess as objectively as possible whether the balance of public interest favours disclosing or withholding information under s35 of the Act. DH recognises a general public interest in promoting openness in the way in which public authorities manage major current events. However, the purpose of the exemption at s35 is to protect the internal deliberative process as it relates to policy making. In other words, the exemption is intended to ensure that the possibility of public exposure does not deter from full, candid and proper deliberation of policy formulation and development, including the exploration of all options, the keeping of detailed records and the taking of difficult decisions. Premature disclosure of information protected under section 35 could prejudice good working relationships, the neutrality of civil servants and, ultimately, the quality of Government.

Specifically in relation to communications with Government legal representatives, I can confirm that the DH does hold the information you request. However, we have concluded that it should be withheld under section 42(1) of the FOIA, which relates to information in respect of which a claim to legal professional privilege (LPP) could be upheld. S42 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.

While we recognise a general public interest in the availability of information about the disposal of public estate, we also take into account the very strong public interest in upholding the principle of LPP. This is because we recognise, and the courts recognise, that a client must be sure that what they tell their lawyer in confidence will never be revealed without consent; an assumption which has important and far-reaching bearing on the legal system and the administration of justice.

We also take into account that once LPP has been established in legal proceedings, as is the case here, the litigation right to withhold the privileged material during the proceedings is inviolable, unless and until it is waived by the party entitled to it. There is no balancing act to be performed by the court and the privilege cannot be overruled because of the relevance of the material to the proceedings in question.

The courts have recognised that any exception to the general rule that LPP is absolute would undermine the client's confidence in the confidentiality of his communications with his lawyer and hence the purpose of the privilege as a whole. The public interest in the avoidance of this consequence is self-evident, and we have concluded that it outweighs substantially any public interest there might be in this particular information's release.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the address at the top of this letter, or the email address at the end of this letter.

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner (ICO) who may decide to investigate your concerns. Generally, the ICO cannot make a decision unless you have already appealed our original response, and received our internal review response. The ICO will not usually investigate concerns where there has been an undue delay in bringing it to their attention. You should raise your concerns with them within three months of your last meaningful contact with us.

The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House

Water Lane
Wilmslow
Cheshire
SK9 5AF

<https://ico.org.uk/concerns/>

Yours sincerely,

Dorothy Crowe

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