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Lucy Adams
BBC Scotland
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12 May 2017

Dear Ms Adams

REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)

Thank you for your request dated 22 March 2017 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

You asked for all minutes, correspondence, briefing papers and emails in relation to and including references to:

1. The possibility of giving women from Northern Ireland access to abortions in Scotland's health service free of charge;
2. Patrick Harvie's question in relation to this topic in November;
3. Patrick Harvie's request for an update on this subject;
4. Progress on exploring this possibility with health boards;
5. The responses of health boards on said subject.

Response to your request

I enclose a copy of some of the information you requested.

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because an exemption(s) under section(s) section 29(1)(a) (policy formulation), section 30(b)(i) (substantial inhibition of free and frank provision of advice), 30(b)(ii) (substantial inhibition of free and frank exchange of views for the purposes of deliberation) or section 38(1)(b) (personal information) of FOISA applies to that information. The reasons why that exemption(s) applies are explained in the Annex to this letter.

General response to members of the public

We received a number of letters and emails from members of the public on this issue. Each correspondent received our response that:

'The Scottish Government believes all women in Scotland should have access to safe and legal abortion services, within the limits that are currently set down in law, should they require it, and that abortion care should be part of standard healthcare provisions, free from stigma.

It is for the people of Ireland and Northern Ireland, and their elected representatives, to make decisions about the provision of healthcare in their jurisdictions.'

We can also confirm that the Minister for Public Health and Sport met with Patrick Harvie on 8 December 2016 to discuss this issue.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to:

Andrew Scott, Director of Population Health Improvement:

Postal address: Scottish Government, St Andrews House, Regent Road, Edinburgh. EH2 3DG.

E-mail address: directorofpopulationhealthimprovement@gov.scot

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Yours sincerely

Sarah Dillon
Policy Officer
Scottish Government

REASONS FOR NOT PROVIDING INFORMATION

1. Section 29(1)(a) – formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation of the Scottish Government's policy on the provision of abortions by NHS Scotland to women from Northern Ireland.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications.

2. Section 30(b)(i) – free and frank provision of advice and Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(i) (free and frank provision of advice) and section 30(b)(ii) (free and frank exchange of views for the purposes of deliberation) of FOISA applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and the exchange of views. This exemption recognises the need for officials to have a private space within which to deliberate an issue and provide free and frank advice to Ministers and other officials before the Scottish Government reaches a settled public view. Disclosing the content of the exchange of views and free and frank advice on the provision of abortions by NHS Scotland to women from Northern Ireland will substantially inhibit the provision of such advice in the future, particularly because decisions have not yet been taken, and these discussions relate to a sensitive issue.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can exchange views on an issue and provide full and frank advice to Ministers and other officials, as part of the process of exploring and refining the Government's policy position on the provision of abortions by NHS Scotland to women from Northern Ireland.

3. Section 38(1)(b) – personal data of a third party

This exemption relates to how we treat individuals' personal data, as covered by the Data Protection (Scotland) Act 1998. This means that some personal information such as some individuals' names, personal e-mail addresses, private telephone numbers etcetera, are redacted in order to comply with this Act. Given the subject matter we have also redacted the

name and contact details for junior staff in this instance. It should not materially affect the actual content of the e-mails, correspondence etc requested.