



Department of Health

19/07/2016

FOI-1040141

Dear Dr Thornton,

Thank you for your request of 26th June 2016 under the Freedom of Information Act (2000). Your exact request was:

"I refer to the leaflet distributed to all households by the Vote Leave campaign in respect of the recent referendum which portrayed that £350m per week paid to the EU might otherwise be diverted to the National Health Service. In making this claim the copyrighted NHS logo was incorporated into that message in the leaflet. The same message and graphic was used on the side of the much televised campaign bus as shown at this link:

<http://m.voanews.com/a/spy-chiefs-britain-exit-from-eu-would-be-damaging/3327184.html>

In an email dated 21 June 2016 from a member of staff at the NHS Brand and Identity Helpline, I was provided with confirmation that the use of the logo was unauthorised for this purpose in the following terms;

"The letters 'NHS' and the NHS logo are registered UK trade marks. As such, they should only be used by NHS organisations, or on services and information where the NHS has involvement."

"The organisation you refer to is not authorised to use the NHS trademark, or an adaptation of it. The Department of Health is in contact with Vote Leave about misuse of the NHS brand."

"The NHS Identity (letters and logo) generates high levels of trust and reassurance among patients and the public. Therefore, please be reassured we take unauthorised use, or adaptation of the NHS trademark, very seriously."

"NHS Brand and Identity Helpline

nhs.identity@dh.gsi.gov.uk

Tel: 020 7972 5250

www.nhsidentity.nhs.uk "

Under the provisions of the Freedom of Information Act, please provide the information held by the DH in respect of the use of the NHS logo in this material. This information will be located within copies of communications between DH and Vote Leave, along with records of meetings and telephone calls.

Please also provide copies of any related communication between the DH and any other public body including the Advertising Standards Agency or the Electoral Commission."

I can confirm that the Department holds information relevant to your request.

However, we consider that some of this information is exempt under Section 43 of the Freedom of Information Act (FOIA), which exempts from the general duty to release information which would, or would be likely to, prejudice the commercial interests of any entity, including the public authority holding the information.

Section 43 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release. We recognise a general public interest in the EU Referendum and Government interaction with the associated campaign groups. However, we also consider that the disclosure of the requested information would be prejudicial to the commercial interests of the Department and the NHS, which in itself is, in our view, contrary to the public interest. Therefore, we consider that the public interest in withholding the requested information outweighs the public interest in disclosing it.

Additionally, we consider that some information of the requested is exempt from release under Section 41 of the Freedom of Information Act, under which a public authority is not obliged to disclose information provided in confidence.

Finally, we consider that the remainder of the information requested is exempt from release under Section 42 of the Freedom of Information Act (legal professional privilege (LPP)). Section 42 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

To explain, LPP covers confidential communications between lawyers and clients, along with certain other information that is created for the purposes of litigation, or for the purposes of obtaining legal advice or assistance in relation to rights and obligations.

The Department recognises that there is a general public interest that is served in making information available to promote greater transparency and accountability in the Department's decision-making process. However, the Department considers that there is also a compelling public interest in upholding the established principle of confidentiality in communications between lawyers and their clients, and therefore upholding the principle of LPP.

The principle of LPP is well established. The requirement for high quality, comprehensive legal advice which is provided without fear of disclosure, and which assesses both the strengths and weakness of a proposed decision or policy, or defence of a legal claim, is essential for the effective conduct of the Department's business.

This advice needs to be offered with a full appreciation of all the relevant facts, and on the basis that it will remain confidential between the parties. It is in the public interest that decisions taken by the Department are informed by, or based on, legal advice, as necessary.

Furthermore, it is the Department's view that waiving LPP would impede that decision-making process, which would be contrary to the public interest and also contrary to a very settled practice which is recognised by the Courts and the Information Tribunal.

Through disclosure, there is a risk that in the future, clients and lawyers may avoid making a permanent record of advice that is sought or given, or may make only a partial record where there is the prospect that any resulting legal advice may be disclosed. This would be most certainly be contrary to the public interest, as it would diminish the quality of record keeping with adverse consequences on the decision-making process as a whole.

Therefore, taking all these factors into account, we have concluded that the public interest in withholding this information substantially outweighs any public interest that there might be in releasing the information you seek.

If you have any queries about this email, please contact me. Please remember to quote the reference number above in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Head of the Freedom of Information Team
Department of Health
Room G18
Richmond House
79 Whitehall
London
SW1A 2NS

Email: freedomofinformation@dh.gsi.gov.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (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:

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

Yours sincerely,

Alison Tingle

Freedom of Information Officer
Department of Health

freedomofinformation@dh.gsi.gov.uk