

22/08/2011

DE00000635197

Dear Mr Clover,

Thank you for your request of 29 July 2011 under the Freedom of Information Act (2000). Your exact request was:

*"The below document is a statement from the SoS announcing Departmental policy, alongside the Treasury, on PFI.
This involved a fair degree of negotiation.
I would like to see all correspondence and documentation relating to this process between the Treasury and DH please.
This would include, but not be limited to, agendas, minutes, presentations and other papers sent between the relevant teams."*

I can confirm that the Department of Health holds some information falling within the scope of your request. The relevant information held by this Department are:

- Minutes between officials in the Treasury and Department of Health
- Official letters between Treasury and Department of Health Ministers

We consider that Section 35 of the Freedom of Information Act applies to this information. The purpose of the exemption at section 35 of the Act is to protect the internal deliberative process as it relates to policy making.

In particular, the following provisions of the FOI Act are particularly relevant to this information:

- The formulation and development of government policy (S.35(1)(a))
- Communications between Ministers (S.35(1)(b))

Section 35 is a qualified exemption and requires careful consideration of the public interest test. We recognise that disclosure in this case would promote transparency of governance, and could result in the public being better informed about this subject and thus be better placed to engage in debate on the issues associated with it. However, we also consider that the exemption at Section 35 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.

On balance, we consider that for some information held by the Department, the public interest favours disclosure. This is especially the case in terms of the final decisions which were reached by the Department of Health and Treasury as evidenced in an exchange of Ministerial letters which can be found in Attachment (A) (letter from the Department of Health on 30 June

2011) and Attachment (B) (letter received from Treasury dated 12 July 2011). The letter of 30 June 2011 from the Minister of State for Health to the Chief Secretary to the Treasury seeks the Treasury's support for the continued use of Deeds of Safeguard in NHS PFI-schemes, and the arrangements under which they should be issued. The letter of 12 July 2011 from the Chief Secretary to the Treasury to the Minister of State for Health gives the Treasury's support and indicates some related future workstreams.

However, we consider that the public interest does not favour disclosure on other information held by the Department, in particular, the records of minutes between officials, for the reasons described earlier in the response.

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 317
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,

Jamie Scott

Freedom of Information Officer
Department of Health

freedomofinformation@dh.gsi.gov.uk