

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 August 2007

Public Authority: Legal Services Commission
Address: 88 Gray's Inn Road
London
WC1X 8TX

Summary

On the 01 January 2005 the complainant requested, a copy of two reports which were "ordered and received: (a) from Dr [name redacted] at the Royal Free Hospital, (b) From Professor [name redacted]/Unigenetics Ltd, at the Coombe Women's Hospital, Dublin." The complainant also asked for additional information relating to the funding by the Legal Aid Board ("LAB") and the Legal Services Commission ("LSC") of the MMR litigation. LSC refused the request under section 44 of the Freedom of Information Act 2000 ("the Act"), citing section 20 of the Access to Justice Act 1999 and section 38 of the Legal Aid Act 1988. The Commissioner does not uphold the complaint in this case as he is satisfied that these statutory bars engage the exemption at section 44 of the Freedom of Information Act 2000. However the Commissioner finds that LSC did not comply with those duties set out in section 17(1) or 17 (7) of the Act when they issued their refusal notice to the complainant.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ("the Act"). This Notice sets out his decision.

The Request

2. On the 01 January 2005 the complainant requested, a copy of two reports which were "ordered and received: (a) from Dr [name redacted] at the Royal Free Hospital, (b) From Professor [name redacted] /Unigenetics Ltd, at the Coombe Women's Hospital, Dublin" ("the reports"). On that same day the complainant also expanded on this request by asking for additional items on the same theme. These relate to information on the project /study submitted to the Legal Aid Board

("LAB") as well information on the MR/MMR litigation supplied to the Legal Services Commission ("LSC"). The Commissioner has treated all these components as one request for the purposes of this complaint. The detail of the request is set out at Annex A in this decision notice.

The Investigation

Chronology

- 3 On the 01 January 2005 the complainant made a request by email for information from the LSC as outlined at paragraph 2 above ("the withheld information")
- 4 On the 28th January 2005, the Information Compliance Manager at LSC responded to the complainant stating that LSC were relying on an absolute exemption set out at section 44 of the Act, and the relevant statutory prohibitions cited included section 20 of the Access to Justice Act 1999 ("AJA") and section 38 of the Legal Aid Act 1988 ("LAA") to withhold this information.
- 5 On the 17 February 2005 the complainant emailed the Legal Director of LSC to make representations on LSC's refusal to disclose the withheld information. The complainant set out his grounds for appeal of this decision to refuse his requests.
- 6 On the 16 March 2005 an internal review of LSC's refusal of the complainant's requests upheld LSC's reliance on section 44 of the Act, and again cited section 38 of the LAA and section 20 of the AJA as the reason for refusing the complainant's requests.
- 7 On the 28 April 2005 the Information Commissioner's Office ("the Commissioner") acknowledged receipt of the complaint.
- 8 The Commissioner contacted the complainant to explain that his case had been in the ICO backlog but was now assigned to a case-officer. The Commissioner also contacted LSC on the 28 November 2006 beginning an investigation of this complaint. In his letter to LSC the Commissioner set out the basis of the complaint as well as asking a series of questions about LSC's application of the exemption at section 44 of the Act. The Commissioner asked for a copy of the withheld information and drew to the attention of LSC their duty under section 17 (7) of the Act in this correspondence.
- 9 LSC were unable to respond to the Commissioner within the 20 day time limit set out for response to his letter of the 28 November 2006. LSC requested an extension of time to provide a response and apologised for the delay. On the 01 February 2007 LSC emailed the Commissioner their response, followed by hard copy.
- 10 Having received this response, the Commissioner again asked LSC to provide a copy of the withheld information. This had previously been asked for by the Commissioner in his letter of the 28th November 2006. The Commissioner

reminded LSC at this point of his powers and ability as regards serving an information notice.

- 11 LSC responded to the Commissioner by email to apologise for the delay in sending the withheld information. It was not until 22 March 2007, that LSC provided a copy of some of the withheld information to the Commissioner and provided an explanation as to the contents of this information.
- 12 The Commissioner perused this information and considered further the statutory bar under section 38 of the LAA and section 20 of the AJA. At this stage, the Commissioner formed the initial view that these bars to disclosure would apply to any information furnished to LSC (formerly Legal Aid Board). The Commissioner then telephoned the complainant in order to try to facilitate an informal resolution of this case. The Commissioner's staff put to the complainant that it was likely having reviewed the responses of LSC that the withheld information was exempt. Following that telephone conversation the Commissioner concluded that the complainant had agreed to withdraw his case and informed LSC accordingly. Subsequently the complainant disputed this fact and the Commissioner proceeded to conclude his investigation and issue a decision notice in this case.
- 13 In order to conclude his investigations the Commissioner made further enquiries of LSC. The focus of these enquiries was to ascertain the extent of the information that was 'held' by LSC. As a result of these further enquiries, on the 25 June 2007 and again on the 20 July 2007, LSC confirmed to the Commissioner that information was held by them in relation to the complainant's request.
- 14 During the investigation the Commissioner was informed by LSC of a further set of requests made by the complainant to LSC on the same theme of the MMR litigation. This decision notice does not deal with any of those further requests.

15 **Background to the request.**

Legal Aid and the Legal Services Commission.

Until the passing of the AJA in 1999, responsibility for legal aid lay with the Legal Aid Board (LAB). The Legal Services Commission (LSC) was established by that legislation and its primary function is the regulation of funding for legal services in England and Wales.

The 'MMR Litigation'

- 16 Since 1992 LSC has provided funding for litigation which relates to the controversy concerning the MMR vaccine. MMR is a triple vaccine against measles, mumps and rubella. Concerns were raised about MMR and its connection to autism in the mid 1990s and following the publication of research in the Lancet in 1998¹ there has been much public speculation following from the research findings. The publicity surrounding the paper centred on a purported link

¹ Wakefield et al, 1998, the Lancet, 351, 637-41

between inflammable bowel disease (IBD) and autism. Following the paper's publication and the ensuing media coverage there followed a drop in children's vaccination rates.² Some parents opted to give their children single jabs or to avoid the vaccination altogether. In the wake of this publicity, many parents of autistic children commenced proceedings against the drug companies manufacturing the MMR vaccines (the "MMR litigation").

Procedural Matters raised in this investigation.

17 Section 17

The Commissioner considered whether the refusal noticed issued by LSC complied with section 17 of the Act. Section 17 of the Act requires written notice to be given to the requestor when a public authority refuses to disclose the requested information. In response to the complainant's request of the 01 January 2005, LSC issued a refusal notice on the 28 January 2005 which stated inter alia :-

" As you will appreciate, section 38 Legal Aid Act (LAA) and section 20 Access to Justice Act 1999 (AJA) prohibits the disclosure of information provided to the LSC in connection with a case. Any breach of sections 38 or 20 can be deemed a criminal offence. The only exception to sections 38 or 20 applicable in this instance is if the acting solicitors consent to the disclosure. We have approached the acting solicitor and asked for their consent, which they have refused to give for the reasons that are explained below."

"In the light of the statutory prohibition placed on the LSC under section 38 LAA and section 20 AJA, we cannot provide you with the information you have sought and the absolute exemption under section 44 Freedom of Information Act 2000 applies in this instance."

18 Section 17 (1)

Section 17 (1) states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

(a) states the fact,

(b) specifies the exemption in question, and

(c) states (if it would otherwise be apparent) why the exemption applies.

Section 17(1) of the Act requires a public authority to give a requestor for information, a notice which states, whether in relation to any such request, it is to any extent relying on a claim that it is exempt from the duties outlined in section 1(1) of the Act . These duties are as follows:-

² See 'Postnote' 'Vaccines and Public Health' June 2004, Number 219, Parliamentary Office of Science and Technology

- (i) the duty to confirm or deny whether it holds information of the description specified in the request , and
- (ii) the duty to communicate that information.

19 The Commissioner having viewed the refusal notice considered issued on the 28 January 2005, considered that LSC had by implication indicated to the complainant that they held the information requested by him. In correspondence with the Commissioner LSC state they had approached the acting solicitor in this case and asked for his consent to disclose same. However, the Commissioner considers that LSC have not complied with the duty at 17(1) (a) of the Act as they have not expressly either confirmed or denied whether they hold the information as per 1(1) (a) of the Act. The Commissioner notes that LSC failed to issue a notice which includes a statement that they do not have to confirm or deny that fact. Further LSC have also failed to state in the refusal notice whether they seek to rely on section 44(2) to exempt it from the duty to confirm or deny whether it holds the information. The refusal notice simply states that LSC are relying on section 44 without specifying the relevant subsection. Section 44 (2) states:

“44(2) The duty to confirm or deny does not arise of the confirmation or denial that would have to be given to comply with section 1(1) (a) would (apart from this Act) fall within any of the paragraphs (a) to (c) of subsection (1).

20 However, the Commissioner considers that to have supplied the complainant with an explanation of what information they did hold at the time of the request may have breached the statutory prohibition on disclosure as set out at section 38 of the LAA and section 20 of the AJA. It is the Commissioner's view that to have confirmed what information was held would be tantamount to describing that information 'furnished' to LSC for those purposes and functions prescribed by the LAA and the AJA respectively, or in the case of an individual seeking or receiving services funded by LSC. Whilst LSC were exempt from the section 1(1) (a) duty, they ought to have issued a statement to that effect in order to meet the requirements of section 17.

21 **Section 17 (7)**

A notice issued under section 17 must also contain certain particulars as regards a requestor's right to appeal to the Commissioner. Section 17 (7) states:

*17 (7) “ A notice under subsection (1) (3) or (5) must –
(a) contain particulars of any procedure provided by the public authority for dealing with complainants about the handling of requests for information or state that the authority does not provide such a procedure; and
(b) contain particulars of the right conferred by section 50”*

During his investigation, the Commissioner drew to the attention of LSC that their refusal notice issued on the 28 January 2005 to the complainant, did not contain the rights conferred under section 17 (7) of the Act in relation to any internal review procedure offered by the public authority as well as the right of appeal to

the Commissioner. In light of this the Commissioner has provided guidance for LSC on refusal notices when dealing with future requests.

22 Section 44

In refusing the complainants request LSC applied section 44 of the Act. Section 44 creates an absolute exemption so as to ensure that information whose disclosure is subject to a prohibition on disclosure, will be exempt. Section 44 (1) provides that information is exempt if its disclosure (otherwise than under the Act) by the public authority holding it (a) is prohibited by or under any enactment; (b) is incompatible with any Community obligation; or (c) would constitute or be punishable as a contempt of court. By virtue of section 44 (2), the duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with the duty would (apart from the Act) fall within any of the paragraphs of section 44 (1).

23 LSC relied on section 38 of the LAA and section 20 of the AJA 1999 as imposing such a prohibition on disclosure. As these provisions ensure that no information furnished for the purposes of the Acts to the LAB or to the LSC or any other person or body of persons upon whom functions are imposed shall be disclosed. Section 38 of the LAA and section 20 of the AJA are set out at annex B of this decision notice. The Commissioner notes that section 38 of the LAA and section 20 of the AJA provide a general restriction on the disclosure of information that is furnished to the LSC (in the case of section 20 of the AJA and the former LAB in the case of section 38 of the LAA) However, in certain circumstances, disclosure is permitted under the respective Acts. These circumstances or 'gateways'³ are outlined at section 38 (1)–(3) of the LAA and section 20 (2)-(4) of the AJA, contained in Annex B hereto.

24 Some of the withheld information was originally provided to support an application(s) for legal aid to the former LAB (LSC's statutory predecessor). The Commissioner has considered the transitional provisions which relate to information held by LAB and is satisfied that these provisions operate to transfer the property rights and liabilities of the LAB to LSC including information held.⁴ The Commissioner has concluded therefore that LSC was obliged to extend the coverage of the complainant's request to information formerly held by LAB.

Do sections 38 of the LAA and section 20 of the AJA prohibit disclosure in this case?

25 The Commissioner noted that the complainant's request comprises two separate components. The first part of his request relates to two research reports relating to the effects of the MR/MMR vaccine as identified at paragraph 2 of this decision notice. The second part of that request comprises a number of questions concerning the detail and content of those reports as well as other information relating to the conduct of the research carried out as part of the MMR litigation.

³ For an explanation of 'gateways' see Information tribunal decision of Malcolm James Dey v Information Commissioner (Appeal No EA/2006/0057) para 4

⁴ See Part 11 of Schedule 14 of the AJA which makes transitional provisions for the replacement of the Legal Aid Board by LSC. It provides that, on the 01 April 2000, LSC took over all the property, rights and liabilities of the LAB.

- LSC also confirmed that it held a large number of files provided to LSC by or on behalf of those individuals seeking legal aid to pursue the issues around the MMR vaccine.
- 26 The Commissioner considers that the key to the application of the statutory bars in this case is the meaning of the word '*furnished*'. That is because it appears in both section 38(1) of the LAA and section 20 (1) of the AJA. However it is not defined in either piece of legislation. The Commissioner is aware there is also little case-law on the statutory interpretation of the meaning of the word furnish⁵ The Commissioner has noted the Oxford English Dictionary defines 'furnish' as meaning 'to be a source of something'. The Commissioner has considered the ordinary natural meaning of the word 'furnish' in the context of the relevant provisions of the LAA and the AJA. He considers 'furnish' in this context to cover information which is provided, supplied or rendered from its source for the purposes of the respective legislative provisions in the LAA and AJA.
- 27 The Commissioner has concluded that in the context of the relevant provisions of the LAA and the AJA relied on by LSC, the word 'furnished' will cover all information provided to the LSC by or on behalf of those individuals who are seeking or who are receiving services funded by the LSC or the former LAB. The information will be provided to LSC for the purposes of its adjudication on a legal aid application and for the purposes of litigation arising from that. The Commissioner has considered the aim of the statutory bar in this case which is to protect the source of the information. In light of this the Commissioner considers that information which is generated by the LSC itself as a result of its deliberations on an application for funding is not covered by the statutory bar. The Commissioner has had sight of a sample the information withheld from the complainant in this case. Having considered representations from LSC on the application of section 38 and section 20 of the AJA the withheld information, he is satisfied that, given the nature of this information, it was furnished to LSC and LAB for the purposes outlined in s.38 (1) of the LAA and section 20(1) of the AJA. It is clear from the contents of the LSC sample of information caught by the request that this was not created by LSC but was provided to LSC by or on behalf of individuals who are seeking or receiving legal aid from LSC in connection with the MMR litigation. Whilst the Commissioner did not view all of the withheld information in this case he is satisfied upon reviewing those representations from LSC, that the complainant has requested information which would have been furnished to LSC for those purposes as outlined in section 38 (1) of the LAA and section 20 (1) the AJA.
- 28 LSC has confirmed to the Commissioner that some of the withheld information was composed for the purposes of justifying the necessary extensions to the individual's legal aid certificates. The Commissioner, having considered representations made by LSC, is satisfied that information requested within the second strand of the request, (relating to the detail contained within the reports as well as that part of the request relating to the research conducted for the purposes of the MMR litigation) was also furnished for the purposes of the

⁵ Furnish "Furnish A return" (Value Added Tax (General) Regulations 1985 (SI 1985/886), reg 58 (1). A return posted in a prepaid and pre-printed envelope supplied for that purpose was "furnished" when posted (Hayman v Griffiths [1987] 3 W.L.R, 1125) see Stroud's Judicial Dictionary.

functions set out in the LAA and the AJA. The Commissioner has therefore concluded that all of the withheld information was information which was 'furnished' to LSC and not created by them.

Do the provisions of sections 38 and 20 permit disclosure in this case?

- 29 In the case of the AJA and the LAA these respective statutes prohibit disclosure but permit the information to be released in certain specified purposes. The respective purposes are set out at section 38 (1) (a) – (f) of the LAA and section 20 (2) (a)-(f) of the AJA as outlined in Annex B of this decision. These gateways provide a lawful basis for disclosure of information which would otherwise remain secret and include (but are not limited to) grounds such as consent of the individual in whose case it was furnished or for facilitation of the proper performance of a court or tribunal. There is also provision in each of these sections allowing for disclosure in summary form.
- 30 In considering each of these gateways the Commissioner enquired whether or not the relevant parties consented to disclosure of the withheld information in this case. LSC provided the Commissioner with evidence that consent was withheld by the relevant parties in this case.
- 31 The Commissioner noted a similar construction of section 38 (2) of the LAA and section 20 (3) (a) in that disclosure can be made the "*form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.*" The Commissioner is aware that the complainant drew this possibility of issuing this information in summary form to the attention of LSC in his correspondence of the 17th February 2005. In reviewing a sample of withheld information supplied by LSC, the Commissioner is satisfied that there was a high degree of possibility that such a summary would identify individuals, not only the authors of the particular withheld information but other individuals mentioned throughout. The Commissioner has noted the wording in section 38 (2) which states the summary must not enable identification of "any particular person" and section 20 (3) (a) "*any individual to be ascertained from it*". The Commissioner is of the view that any summary released by LSC would not meet the complainant's request in full without identifying a particular individual.

The Commissioner has also concluded upon reviewing the remainder of those gateways in which information can be lawfully disclosed, that the complainant's request under the Act does not fall within any of the gateways which facilitate its disclosure.

- 32 The Commissioner is mindful that in relation to the AJA, Parliament has expressed its clear intentions as to disclosure of information to the public under the Act. Article 9 of the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004 amends section 20 of the AJA by inserting new subsections (4A) and (4B). These subsections provide that in relation to disclosure by a person acting on behalf of a public authority covered by the Act, section 20(1) of the AJA will not prohibit the release

of information after a period of 100 years.⁶ In this case the Commissioner has considered the rationale for statutory prohibitions on disclosure. The Commissioner is aware of the policy considerations for imposing restrictions, and as in the case of the LAA and the AJA criminal sanctions for their breach. The Franks Report⁷ of 1972 argued strongly for statutory prohibitions to guarantee to the citizen that their information will be properly protected:

“The principle behind these provisions is that when the State requires the citizen to provide or reveal information which may be of a personal and confidential nature, or which should be kept confidential for commercial reasons, then the state should give the citizen a guarantee that this information will be properly protected....In our view there are proper reasons for maintaining the protection of criminal sanctions... The people have a right to expect their confidences to be safeguarded by the Government. Any breakdown of this trust between Government and people could have considerable adverse repercussions on the government of the country.”

- 33 The Commissioner is satisfied therefore that the withheld information in this case is exempt by virtue of section 44(1) of the Act, and since that section is an absolute exemption he is not required to consider the public interest test in this case.

The Decision

- 34 The Commissioner finds LSC complied with the following provision of the Act:
- (i) The Commissioner finds that LSC did correctly applied section 44 (1) of the Act and accordingly upholds the reliance by LSC on this section of the Act.

The Commissioner finds that LSC did not comply with the following provisions of the Act when responding to the complainant's request:

- (ii) LSC failed to comply with the duty under section 17 (1) (a) of the Act
- (iii) The Commissioner further finds that LSC did not comply with section 17 (7) of the Act as they did not correctly include a notice of those particulars outlined in section 17(7) in their refusal of this request.

⁶ See explanatory note accompanying Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of information) Order 2004.

⁷ The Report of the Departmental Committee on Section 2 of the Official Secrets Act 1911 (Cmnd 5104) paras 196 and 199.

Steps Required

- 35 In light of his conclusion at paragraph 34 above, the Commissioner requires no steps to be taken by LSC

Other Matters

- 36 Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:

LSC holds a considerable volume of information relating to the continuing MMR litigation. The Commissioner is concerned that LSC were not aware of the actual information held before responding to the complainant's request. The Commissioner has noted that LSC, following the Commissioner's investigation have stated that given the continued interest in MMR, they will now index the correspondence filing for future reference. There is a provision within the Act where the cost of compliance with a request exceeds the appropriate limit. It appears to the Commissioner that LSC ought to have considered the use of this section 12 before answering this request. It appears to the Commissioner that LSC accept they ought to have considered section 12 of the Act when responding to this request as LSC answered the complainant's request without a full knowledge of what they held and indeed added considerable time to the Commissioner's investigation of this request and completion of this decision notice.

37 Right of Appeal

38 Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of August 2007

Signed

**Richard Thomas
Information Commissioner**

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

Annex A – text of the complainant's request.

Request made on the 01 January 2005

“Freedom of Information Act Request: Research Commissioned on MR/MMR

It's a matter of record that the Legal Aid Board/Legal Services Commission, took the unusual step of commissioning research on alleged effects of the measles-rubella and/or measles, mumps and rubella vaccines. The commission has since acknowledges that this was a mistake.

In the event, however, two research reports were ordered and received:

- (a) From Dr [name redacted] at the Royal Free Hospital.
- (b) From Professor [name redacted] /Unigenetics Ltd, at the Coombe Women's Hospital, Dublin.

On advice, and on behalf of the commission, the chief executive, has subsequently stated that both reports will, in due course, be supplied to the Medical Research Council. This decision has been relayed in press notices and statements to the media and public.

In this decision, the commission has conceded that disclosure of the two reports:

- (a) Is in the public interest
- (b) Is not prohibited under section 38 of the 1988 Legal Aid Act
- (c) Does not involve a breach of privilege

The provisions of the 2000 Freedom of Information Act therefore apply to these reports. The act makes no provision for public bodies to pick and chose to whom they will release information, or when they will do so. Any issues requiring the deletion of names, or information that might identify a client, or patient, applies equally to any material supplied to the Medical research Council as it would to me. Any such deletions would be wholly reasonable.

In this light, I apply for copies of both reports.

Text of second email also sent on the 01 January 2005

“In May/June 2004, I supplied the commission with a 20-page document titled “proposed clinical and scientific study: A new syndrome: enteritis and disintegrative disorder following measles and measles/rubella vaccination?” On page 1 of this document was the name of the “co-ordinating investigator”, Dr [name redacted] of the Royal Free Hospital School of Medicine.

I asked whether this document had been supplied to the commission in Dr [name redacted] bid for a research contract in June 1996. The commission's reply, through [name redacted] in the press office, was “It appears that the proposed clinical and scientific study you faxed me isn't the same as was submitted to us. However, your version does appear to be based on the one sent to us”.

I am aware of a number of versions of what amounts to the same project proposal, and now apply for the following information.

- (a) Is the title of the project submitted to the Board as the basis for the contract the same as that above? If not, what was the name of the clinical and scientific study submitted to the Board? Is the proposal for a study of measles and measles/rubella vaccines, or is it a study of measles, mumps and rubella vaccine. [nb, M, MR and MMR are three different vaccine products]
- (b) In the proposed study submitted by Dr [name redacted], presumably through [name redacted], to the Board, was the project presented with the names of the investigators who were to perform the specified work in collaboration with Dr [name redacted]? [in my document, these names are given on pages 2 and 3]
- (c) If names are included, do the names of Professor [name redacted] and Dr [name redacted] appear among investigators named in the clinical aspect of the proposed study? [In my document, these names appear on page 2]
- (d) If names are included, do the names of Professor [name redacted] and [name redacted] appear among investigators named in the scientific aspect of the proposed study? [In my document, these names appear on page 2, with Professor [name redacted] again referred to on page 3]
- (e) If the names of [names redacted] appear in the document, do they appear in the following form:

"Professor [name redacted] (professor of Biological chemistry)" "[name redacted]" (Ph.D student, coordinating investigator – molecular studies) and "Professor [name and telephone number redacted.] Responsibilities * evaluation and description of histopathological changes * RNA studies for identification of measles and rubella viruses * Cobalmin studies*"
- (f) [Names redacted] do not appear in this form, how do they feature in the document?
- (g) Do the names of [names redacted] appear in any other documents supplied to the Board in connection with the MR/MMR litigation?
- (h) Were the results of tests on samples from autistic children, carried out by [name redacted] and/or [name redacted,] supplied to the commission?
- (i) Whether or not [names redacted] appear in the document, was the commission informed by Dr [name redacted] and/or [name redacted] in their submission of results from the research conducted under the contract with the Board that the RNA tests carried out by [name redacted], under [name redacted] and [name redacted] supervision had found samples from the autistic children taking part in the study to be negative for measles and rubella viruses?
- (j) In Dr [name redacted] report on the research commissioned by the Board, which I understand to have been supplied in January 1999 and to have led to the award of a further contract with Professor [name redacted], was the name of Dr [name redacted] given as being the person who carried out the RNA molecular tests? If not, who was named as having performed the work looking for evidence of measles virus?

(k) In addition to these points, I wish to apply for a copy of whatever document the commission holds and previously indicated to have been related to the version that I supplied last year.

You will know that I take the view that the public anxiety and risk to children's health arising from the MMR scare was in large measure a consequence of transactions between the Legal Aid Board, [names redacted] and others. I believe that the information I seek goes to the heart of this vital issue of children's safety, and that there can be few higher calls upon the public interest. Therefore, I trust that the commission will respond positively and proactively to my inquiries under the Freedom of Information Act. You may feel the most appropriate response would be to hand over the relevant documents, but it may be that detailed answers must suffice.

I would be grateful if you could reply in an attachment on the Commission's letterhead.

Annex B (text of section 38 of the Legal Aid Act 1988 and section 20 of the Access to Justice Act 2000)

Section 38 of the Legal Aid Act 1998 states:

38. —(1) Subject to the following provisions of this section, no information furnished for the purposes of this Act to the Board or any court or other person or body of persons upon whom functions are imposed or conferred by regulations and so furnished in connection with the case of a person seeking or receiving advice, assistance or representation shall be disclosed otherwise than—

(a) for the purpose of enabling or assisting the Lord Chancellor to perform his functions under or in relation to this Act,

(b) for the purpose of enabling the Board to discharge its functions under this Act,

(c) for the purpose of facilitating the proper performance by any court, tribunal or other person or body of persons of functions under this Act,

(d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence under this Act,

(e) in connection with any other proceedings under this Act, or

(f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions as regards barristers or solicitors.

(2) This section does not apply to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Subsection (1) above shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body of persons who did.

(4) A person who, in contravention of this section, discloses any information furnished to the Board or any court or other person or body of persons for the purposes of this Act shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings for an offence under this section shall not be brought without the written consent of the Attorney General.

(6) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving advice, assistance or representation under this Act is not information furnished to the Board or a person upon whom functions are imposed or conferred as mentioned in subsection (1) above.

Section 20 Access to Justice Act 1999 states:

Restriction of disclosure of information.

20. - (1) Subject to the following provisions of this section, information

which is furnished-

- (a) to the Commission or any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and*
- (b) in connection with the case of an individual seeking or receiving services funded by the Commission as part of the Community Legal Service or Criminal Defence Service, shall not be disclosed except as permitted by subsection (2).*

(2) Such information may be disclosed-

- (a) for the purpose of enabling or assisting the Commission to discharge any functions imposed or conferred on it by or under this Part,*
- (b) for the purpose of enabling or assisting the Lord Chancellor to discharge any functions imposed or conferred on him by or under this Part,*
- (c) for the purpose of enabling or assisting any court, tribunal or other person or body to discharge any functions imposed or conferred on it by or under this Part,*
- (d) except where regulations otherwise provide, for the purpose of the investigation or prosecution of any offence (or suspected offence) under the law of England and Wales or any other jurisdiction,*
- (e) in connection with any proceedings relating to the Community Legal Service or Criminal Defence Service, or*
- (f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions.*

(3) Subsection (1) does not limit the disclosure of-

- (a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or*
- (b) information about the amount of any grant, loan or other payment made to any person or body by the Commission.*

(4) Subsection (1) does not prevent the disclosure of information for any purpose with the consent of the individual in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body who did.

(5) A person who discloses any information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Proceedings for an offence under this section shall not be brought without the consent of the Director of Public Prosecutions.

(7) Nothing in this section applies to information furnished to a person providing services funded as part of the Community Legal Service or the Criminal Defence Service by or on behalf of an individual seeking or receiving such services.