

Message

**From:**

**Sent:**

**To:**

**CC:**

**Subject:**

FW: The Baker report Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

Hopefully on the way to being resolved. I will speak to Claire & Gerard after their 121 slot later today.

Happy to bring you up to speed just in case we need to escalate to Marion (Gerard is SCS2) prior to my A/L next week.

**Code A**

**Code A**

Senior Casework Manager

Freedom of Information Team

**Code A**

**From:** **Code A** PROFESSIONAL SERVICES DHLSD [mailto:

**Code A**

**Sent:** 25 July 2013 09:37

**To:** **Code A** Hetherington, Gerard

**Cc:** Tempest, Gary

**Subject:** RE: Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

And then be ready for immediate release.

I am extremely concerned to have heard that the submission has not yet gone up,

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**Code A** EU & Information Law

DH Legal Services;

Professional Services Group; DWP

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-----Original Message-----

**From:** **Code A**

**Sent:** 25 July 2013 09:34

**To:** **Code A** PROFESSIONAL SERVICES DHLSD; **Code A** Hetherington Gerard; **Code A**

**Cc:** Tempest, Gary

**Subject:** RE: Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

With many thanks. I would then suggest, subject to your own and any other views from Claire/Gerard that the circumstances require us to put a definite timing for the Minister to respond of say 7 working days.

**Code A** Gerard

Can we agree this, please?

Are you able to finalise the sub with the media handling plan & put forward in the next day or so with such a timing?

Thanks, **Code A**

**Code A**

Senior Casework Manager

Freedom of Information Team

**Code A**

**From:** **Code A** PROFESSIONAL SERVICES DHLSD [mailto:

**Code A**

**Sent:** 24 July 2013 18:08

**To:** **Code A** Hetherington, Gerard

**Cc:** Tempest, Gary

**Subject:** RE: Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

we discuss this on the telephone, rather than my putting it in detailing writing, so I think I should clarify the issue. In order for section 22 to be applicable DH has to be compliant with subsection (1)(c). This provides that "it is reasonable in all the circumstances that the information should be withheld from disclosure until..." the date of publication.

At the present moment, in view of the antiquity of the report, it is not reasonable to delay release of the report.

Therefore, if we do not publish very soon indeed, we will be legally obliged to release the information to the requestors under FOIA, as there will be no applicable exemptions so our legal duty will be to supply a copy of the report to anyone requesting it.

Apart from anything else, it will clearly be cheaper to publish quickly.

To summarise there are only two options:

1. To publish the report very shortly (that does not have to be with great fanfare or flurry; simply putting it on the DH website will do); or

2. To release the report to anyone making a request for it under FOI,

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**Code A** EU & Information Law  
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-----Original Message-----

**From:** **Code A**  
**Sent:** 24 July 2013 18:01  
**To:** **Code A** Hetherington Gerard; **Code A**  
**Cc:** Tempest, Gary  
**Subject:** FW: Peter Walsh IR 782924 24.07.2013 for GK

**Code A** Gerard)

We spoke yesterday about some concerns I had with the progress of the submission going to Ministers, which followed my earlier discussion with **Code A**. You may recall that Shareena was arranging for Number 10 to be involved in the approval/clearance for publication and the specific date.

I explained the "bigger picture" backdrop of the Mid Staffs, the LCP reports with you iro other similar reports that had gone into the public domain recently, and how this presents the Department (both to the public and our regulator, the ICO) if we continue to delay these decision on a publication date.

DH Legal are unhappy that the draft submission has still not yet been finalised and put forward to Ministers. Section 22 (1)(C) of the FOIA provides that a PA (in this case, the DH) has a right to decide upon a publication date. However, the key issue in properly engaging the exemption here is whether DH can defend whether the publication and its specific date is in reality "a reasonable interval" in all the circumstances.

If we are unable to secure a decision on a specific date that is a “reasonable interval”, the advice from DH Legal is that we should move to publication as a matter of urgency. Otherwise, the DH risks a legal Decision Notice being issued on a public website (the ICO’s) that will show the DH has had to be ordered to release the report. This lack of a date would leave us with little to mount any appeal against the decision of the ICO.

Happy to discuss with you and Gerard on a joint telecon tomorrow if that is helpful. In the meantime, may I ask you to provide me with a copy of the draft Annex (Media Handling Plan) to the submission for my records.

Thanks **Code A**

**Code A**

Senior Casework Manager

Freedom of Information Team

**Code A**

**From:** **Code A** PROFESSIONAL SERVICES DHLSD [[mailto:](#) **Code A**]

**Sent:** 24 July 2013 17:13

**To:** **Code A**

**Subject:** RE: Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

As it appears that there are serious questions about whether this will be published and certainly about whether or be published shortly, I do not think we can say this.

Indeed I think section 22 is increasingly looking not to be available, as it looks as though there will be unreasonable delay by the Department in publication. In which case we must release the report to the FOI request,

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-----Original Message-----

**From:** **Code A**

**Sent:** 24 July 2013 16:46

**To:** **Code A** PROFESSIONAL SERVICES DHLSD

**Subject:** Peter Walsh IR 782924 24.07.2013 for GK

**Code A**

This draft has not yet gone to Gerard for his OK, but thought it apt to put it to you for advice/comment initially.

Any thoughts?

Thanks **Code A**



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