

From: Billy Baird,  
Safety & Quality Unit

Date: 10<sup>th</sup> August 2007

To: David Reilly,  
Information Management Branch

Re: FOI - Trevor Birney - DHSSPS 73/07 (13500)

Thank you for your E-mail of 3 August 2007. For ease of reference I have summarised some of the events relating to a similar previous request from Trevor Birney, and which forms the basis for our approach on his current request:

The UTV Insight Programme, "When Hospitals Kill" was broadcast on Thursday 21 October 2004. It focused on the deaths of three children - Lucy Crawford, Raychel Ferguson and Adam Strain.

On 28 October 2004 the, then Permanent Secretary, Cliye Gowdy, trawled the Department for all relevant documents and records relating to the death of Lucy, Raychel and Adam, so that if necessary they could be made available for future examination. [Tab A]

The Minister announced the appointment of the O'Hara Inquiry into the three children's death on 1<sup>st</sup> November 2004.

The Inquiry sat for the first time on 3<sup>rd</sup> February 2005.

In February and March 2005, the Department provided the O'Hara Inquiry with all related material and ongoing correspondence, including all identified electronic correspondence relating to the O'Hara Inquiry in respect of the deaths of Lucy Crawford, Adam Strain and Raychel Ferguson. [Tabs B, C & D].

On 6<sup>th</sup> May 2005, the Departmental Solicitor's Office (Noel Kelly) provided legal advice [Tab E] in relation to a request from Trevor Birney, UTV, for documentation relevant to the O'Hara Inquiry.

On 10<sup>th</sup> May 2005 the Department wrote to Trevor Birney [Tab F] in response to his request indicating that the release of the information would be likely to prejudice the Department in the exercise of its functions in setting up the O'Hara Inquiry and would not be released in accordance with Section 31 (1) (G) and section 31 (2) (b) of the FoI Act. The Department undertook to make this available on request once it was possible to do so

On 7<sup>th</sup> June 2007 the internal review carried out by the Department on appeal upheld the Department's decision. [Tab G].

On 26<sup>th</sup> September 2005, the O'Hara Inquiry announced further to their decision to investigate the deaths of the three children, that pending investigation by the PSNI and the subsequent decisions by the Public Prosecution Service are known, the Inquiry had removed from its website all documentation related to those deaths. [Tab H].

On 30 September 2005 [Tab I], the Department wrote to Trevor Birney in response to a request for minutes of all meetings that discussed the broadcast of the television programme "When Hospitals Kill", involving the Minister and the Permanent Secretary (Clive Gowdy) to say that the release of the information presented to the Inquiry at that time would be likely to prejudice the Department in the exercise of its function (ie the establishment of an independent inquiry and giving it all the necessary information to enable it to carry out its task) within the meaning of the exemption set out in section 31(1) (g) and 31(2) (b) of the Freedom of Information Act. [NB That letter also referred to material supplied to the Inquiry but published on the website and subject to Section 21 exemption (information which is reasonably accessible to the applicant otherwise than under Section 1) – the information on the website was later withdrawn – see Tab H].

On 7<sup>th</sup> October 2005 the Department wrote to John O'Hara, Chair of the Inquiry, detailing the information which it had actually been possible to disclose to Trevor Birney. [Tab J].

#### Current Request for Information under FoI

Trevor Birney's current request [Tab K] for information dated 24 June 2007 comprised the following:

1. All written communication, letter and email, between the then Director of Corporate Affairs at Sperrin Lakeland Trust, Ms. Bridget O'Rawe and officials at the Department of Health between April 1, 2000 and November 18, 2004.
2. All correspondence between former Chief Medical Officer, Henrietta Campbell and Sperrin Lakeland Trust between April 1, 2000 and November 18, 2004 which discussed the death of Lucy Crawford the RBHSC in April, 2004.
3. All correspondence between Mr. Clive Gowdy and Mr. Hugh Mills between April 1, 2000 and November 18, 2004 which mentions the death of Lucy Crawford.
4. Dates and locations of meetings between Department of Health staff and Ms. Bridget O'Rawe between April 1, 2000 and November 18, 2004 to discuss the death of Lucy Crawford.

Having considered the detail of the request and taking account of the fact that the position in relation to the proceedings of the O'Hara Inquiry had not changed a response was issued to Mr Birney on 10<sup>th</sup> July [Tab L].

Trevor Birney has appealed this decision on 24 July 2007 [Tab M]. [NB: Item 1 of his original request now clarified is being handled as separate request under Freedom of Information by the Information Office (Contact Clare Baxter).

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To assist with your response to Trevor Birney's appeal you have requested answers to 3 questions. The questions and my replies as follows:

**Q. Why the exemption applies?**

A. To date the PSNI investigation has not concluded. The circumstances of the original letters [Tabs F & I] in which the Department invokes the exemptions set out in sections 31(1)(g) and 31(2)(b) have not changed. All information relevant correspondence and exchanges related to the Inquiry remains subject to the consideration of the O'Hara Inquiry. The Department, now, as then, considers that releasing the documentation whilst the Inquiry has still to deal with the matter would be likely to prejudice the proper consideration of the evidence, by the Inquiry.

**Q. Solicitor's advice? –**

A. The Departmental Solicitor provided advice at the time [Tab E ] to the effect that "releasing the documentation, at this stage, whilst the Inquiry is dealing with the matter would be likely to prejudice the Department in the exercise of its functions within the meaning of section 31 (1) (g) and (2) (b). The Department has commissioned the Inquiry to inquire into these events and it cannot assist the Inquiry if the evidence they are considering is released generally at this stage. My view would be that the Department should rely on Section 31 to claim an exemption..... "

**Q. The balancing of the public interest when deciding not to disclose?**

A. The Department has commissioned the Inquiry into these events and it can not assist the Inquiry if the evidence they are considering is released generally at this stage. The balance of the public interest continues to be on the side of on- disclosure until such time as the Inquiry concludes.