

## FOI Release

### *Information released under the Freedom of Information Act*

**Title:** TTIP - Transatlantic Trade & Investment Partnership: Impact on the NHS

**Date of release:** 7 January 2016

#### **Information request**

I am writing to ask to be given any legal evidence that you or your government may have that proves the NHS will not be subject to this trade deal (TTIP).

#### **Information released**

We can confirm that BIS holds information falling within the scope of the request. The information is exempt under section 42(1) of the Freedom of Information Act, which provides that information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information.

Section 42(1) is a qualified exemption and we have considered whether the balance of public interest favours our release of this material. TTIP is a trade deal about which there is significant public interest, particularly regarding the NHS. We recognise the importance of disclosing information wherever possible. There is a public interest in public authorities being accountable for the quality of their decision making, and ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability. Transparency in the decision making process and access to the information upon which decisions have been made can enhance accountability particularly over significant trade deals such as this.

However, this has to be weighed against a strong public interest that Ministers and officials are able to discuss and debate possible options fully and robustly with lawyers. Ministers and officials need space in which to seek candid advice from their lawyers. They are less likely to seek such advice if there is an expectation that it will subsequently be disclosable.

In this case, we believe that disclosure would very probably make officials within BIS more cautious about obtaining legal advice in future cases on other sensitive aspects of TTIP, on other trade negotiations, or on the formulation of policy more widely within the Department.

Disclosure of legal advice also has a high potential to prejudice the government's ability to defend its legal interests - both directly, by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour. Neither of these is in the public interest.

Releasing legal advice on TTIP and the NHS while talks are ongoing may also prejudice our legal or negotiating position with the US, within the EU or in the context of future litigation. It would prejudice our ability to make convincing legal arguments at either EU or international level or in legal proceedings. Situations where this could occur include further negotiations with the US about what the content of TTIP should be, and legal disputes that arise in the future under any of the numerous international trade agreements to which the EU and UK are parties. It is not possible to estimate the likelihood of such prejudice precisely in advance prior to relevant negotiations or litigation. However, we believe that such prejudice would be more likely than not in some form should the legal advice be disclosed.

Taking into account all the circumstances of this case, we have concluded that the balance of the public interest favours withholding this information.