



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No. EA/0239/0239

BETWEEN:

Department of Health

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

N/A

Second Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, the Tribunal approves the Consent Order in this matter in the form attached hereto, which has been signed by all parties.

Tribunal Judge:

Dated:

IN THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)

EA/2011/0239

BETWEEN:

DEPARTMENT OF HEALTH

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal be allowed.
2. The Decision Notice under reference FS50402010 dated 20 September 2011 to be substituted in the terms set out in Annex B.
3. No further steps are required to be taken by the Appellant.
4. There be no order for costs.

Dated this *7th* day of *December 2011*

Richard Bailey
Solicitor for the Respondent
Information Commissioner
Wycliffe House
Wilmslow
Cheshire SK9 5AF

Preeya Rajani FOR THE SOLICITOR
DWP/DH Legal Services
5th Floor, The Adelphi
1-11 John Adam Street
London, WC2N 6HT
Solicitor for the Appellant

ANNEX A

Statement of reasons for consent order

1. This appeal concerned the Respondent's Decision Notice FS50402010. That Notice sets out the terms of the original information request at paragraph 2. The Appellant relied upon the exemption under section 42 of FOIA to withhold information it held.
2. In the said Decision Notice (which only concerned the second part of the request), the Respondent decided that the public interest balance under section 42 of FOIA falls in favour of disclosure and the information withheld should be disclosed.
3. The Appellant appealed against the Decision Notice, arguing that, in fact the Commissioner was wrong to conclude that the Appellant held any information falling within the scope of the second part of the request.
4. The Respondent now accepts that, having reconsidered the information held by the Appellant, this information does not fall within the scope of the request.
5. In view of all the circumstances and subject to the Tribunal's views, the parties jointly submit that it is appropriate for these proceedings to be concluded by way of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).

ANNEX B

1. The Appellant does not hold information pursuant to section 1(1) of the Freedom of Information Act 2000 falling within the scope of part 2 of the request.
2. No further steps are required to be taken.