

Health secretary is ordered to disclose government's assessment of risk posed by NHS changes

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BMJ

England's health secretary, Andrew Lansley, has been ordered by the information commissioner to release a document that the Department of Health has sought to keep under wraps: its strategic risk register outlining the risks that his controversial reforms could pose to the NHS.

The department refused requests under the Freedom of Information Act from John Healey, the opposition Labour Party's former health spokesman, and the London *Evening Standard* newspaper for disclosure of its strategic risk register. It argued that making the risk assessment public "would jeopardise its ability to manage the transition and modernisation of the NHS, which would be detrimental to the totality of the policy, thereby risking the implementation of government policy and taxpayers' money."

However, the information commissioner, Christopher Graham, ruled on 2 November that "the factors are finely balanced in this case, but the considerable public interest in disclosure means that the information should be disclosed."

Critics claim that the changes proposed in the Health and Social Care Bill would jeopardise the quality of NHS care and lead to privatisation of the NHS. The BMA has successfully lobbied for major amendments but argued in a recent letter to members of the House of Lords that the bill still "poses an unacceptably high risk to the NHS in England."

The shake-up will abolish primary care trusts and hand over much of the budget for commissioning care to consortiums led by GPs. Clare Gerada, chairwoman of the Royal College of General Practitioners, said last month that the reforms would damage relationships between GPs and their patients by turning doctors into rationers of care who would have to decide between providing the best care and meeting financial targets (*BMJ* 2011;343:d6611, doi:10.1136/bmj.d6611).

Mr Graham said that the strategic risk assessment he had seen had analysed risks in relation to "business as usual," the "transition," and the "new system." He had to look at the balance of interests in disclosure or non-disclosure at the time that the freedom of information requests were made: in February this year in Mr Healey's case and November 2010 by the *Evening Standard*.

Both requests asked in general terms about any risk assessments that the health department had carried out. It was for the department to identify whether it had such a document. In the case of the newspaper's request, the department identified the "transition" risk assessment document. With the later request, it identified risks in relation to the three scenarios.

Mr Graham accepted that there was a significant public interest in ministers having a "safe space" to hammer out policy. At the time Mr Healey's request was made, the bill had been halted for the "listening exercise." The policy was "at a sensitive point" and was still under consideration.

But there was a very strong public interest in disclosure of the information, "given the significant change to the structure of the health service the government's policies on the modernisation of the NHS will bring," Mr Graham said. There had been widespread public debate and opposition from groups such as the BMA. "Disclosure would significantly aid public understanding of risks related to the proposed reforms and it would also inform participation in the debate about the reforms," he added.

Andy Burnham, who has succeeded Mr Healey as the Labour shadow health secretary, has written to Mr Lansley demanding that the risk register be made public while the Health and Social Care Bill is still being debated in the Lords. He said in his letter, "This information is absolutely crucial to proper parliamentary consideration of your bill and is why my predecessor the Right Honourable John Healey MP pressed you to release it. It is highly regrettable that you refused to do so during the bill's passage through the Commons."

The department has 35 days from 2 November, the date the rulings were made, to hand over the risk register. But it also has a right to appeal to the Information Tribunal by the end of the month. The bill is currently in its committee stage in the House of Lords.

A health department spokesman said, "We are currently considering the decision notice from the information commissioner."

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