

By email to: [REDACTED]

Human Tissue Authority
2nd Floor
2 Redman Place
London
E20 1JQ

Tel 020 7269 1900
Web www.hfa.gov.uk
Email enquiries@hta.gov.uk

Date: 14 January 2025

Dear [REDACTED]

Freedom of Information request

Thank you for your request for information under the Freedom of Information Act (FOIA), which was received by the Human Tissue Authority (HTA) on 28 November 2024. Your email outlined the following request:

“Please can you provide the following:

1. Copies of any training materials provided by the police to assist members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery.
2. Copies of any internal guidance/policies/instructions/documents to assist members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery

Clarification

We sought further clarification on the scope of the request on 6 December 2024. We asked:

- The timeframe you would like us to consider – we envisage that you do not wish us to provide documentation dating back to the HTA’s creation. Would information from 2021 onwards be helpful?
- Please can you clarify the scope – by ‘Members of the Human Tissue Authority’ do you mean Board Members of the HTA, or also the Executive staff of the HTA

We received clarification on 17 December 2024. You confirmed you wished for us to provide documentation from 2020 to the present date and that you wished us to interpret ‘Members of the Human Tissue Authority’ as both Board members and members of the executive (HTA staff).

Response

1. The Human Tissue Authority has never been provided with copies of any training materials by the police to assist members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery. Therefore the HTA does not hold this information.
2. In considering your request, we have concluded that some of the information you have requested is exempt from disclosure under Section 21 of the FOI Act because the information is already reasonably accessible by other means, as set out below.
 - a) The HTA's internal policy for handling living organ donation approvals (Policy 102) was published in the Board papers in June 2023 [HTA Board - 29 June 2023 | Events | Human Tissue Authority](#), when it was most recently updated.
 - b) The HTA's Guidance for transplant teams and clinicians, and Guidance for Independent Assessors, is also published on our website. The current versions, updated in April 2024, are available at this link: [Guidance for transplant teams and Independent Assessors | Human Tissue Authority](#). The previous version, published in March 2015 and updated in December 2017, is available on the National Archives website: [\[ARCHIVED CONTENT\] Guidance for transplant teams and Independent Assessors | Human Tissue Authority](#)
3. We are not releasing some information that the HTA holds as we believe this is exempt under section 31 of the FOIA. The information we are not releasing and to which we believe the section 31 exemptions apply is:
'copies of internal guidance / policies / instructions / documents to assist members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery.'
 - a) The HTA considers that the following subsections of Section 31(1) of the FOIA are applicable:
s31(1)(a) the prevention or detection of crime;
s31(1)(b) the apprehension or prosecution of offenders;
s31(1)(c) the administration of justice; and
s31(1)(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
 - b) S31(1)(2) set out the relevant purposes in relation to s31(1)(g). Those which the HTA considers relevant are:
'(a) the purpose of ascertaining whether any person has failed to comply with the law,
(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise'.
 - c) The exemptions under s31 are 'qualified exemptions' requiring an assessment of prejudice and public interest in determining whether information should be released.
 - d) The HTA has carried out a prejudice test and a public interest test, as set out below, and has reached the conclusion that specific harm would be likely to

arise if the information were released, and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

e) Prejudice Test

ICO guidance on Section 31 states that it applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Freedom of Information Act) including preventing crime, administering justice, and collecting tax¹. It also applies to considerations of potential regulatory action.

The HTA has set out its consideration of the prejudice test under the three relevant criteria, namely: identifying which law enforcement interest(s) could be harmed by the disclosure; whether the harm is real, actual or of substance and if there is a causal link between disclosure and harm; and the likelihood of that harm occurring.

i. Which law enforcement interest(s)?

The HTA considers that the additional information you have requested that we are not otherwise releasing (or are not already reasonably accessible in the public domain) is likely to be relevant to the broad law enforcement interest of detecting and preventing crime, administering justice and potential regulatory action by the HTA or other regulatory bodies, as summarised below.

The scope of potential law enforcement interests is broad and could cover regulatory or criminal breaches of the Human Tissue Act (2004), in particular offences relating to the prohibition on commercial dealings in human material for transplantation (section 32 HT Act), offences under s32 committed outside the UK (section 32A), restrictions on transplants involving a live donor (s33) and information about transplant regulations (section 34) and related regulations, including The Human Tissue Act 2004 (Supply of Information about Transplants) Regulations 2024.

Any such breaches could result in regulatory action by the HTA under the Human Tissue Authority's powers, or to criminal investigation by the police and subsequent prosecution, or to regulatory action by other relevant regulators (for example, the General Medical Council or other professional healthcare regulators) for breaches of professional conduct obligations in relation to any of these potential breaches and offences.

There is also potential law enforcement interest relating to this material under section 3(4) of the Modern Slavery Act (2015), which makes provisions concerning people trafficking for the purpose of organ removal.

The HTA therefore considers that this information is information to which s31(1)(a), (b), (c) and (d) and s31(1)(2)(a) and (c) could apply.

ii. Is the harm real, actual or of substance?

¹ [List of exemptions | ICO](#)

The HTA considers that releasing information about how the HTA assists members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery would create a real and substantial harm of this information being used by those intent on subverting the protections it has been put in place to prevent, namely the exploitation and potential trafficking of people for organ transplantation. If this information were to be made readily available in the public domain, it would provide a manual for those wanting to engage in this activity to utilise in order to present themselves, and those they are intending to traffic, in such a way as to not trigger the warning signs within the guidance. Given that people trafficking for organ transplantation is a known problem worldwide, the HTA considers this to be a real and material risk.

The HTA considers it would be prejudicial to its ability to fulfil its function, including identifying and taking appropriate regulatory action under its own powers or referring potential criminal offences for further investigation by the police, if this material were readily available in the public domain. This would be prejudicial to the HTA's ability to fulfil this important function and prejudicial to other law enforcement agencies' activities. This could increase the risk of successful abuse of this process by those intent on commercial dealing in organs, or people trafficking for the purpose of organ removal and hence would undermine the protection of the vulnerable and the prevention of unlawful activity that this information is aimed at achieving.

iii. The likelihood of harm occurring

Given that demand for organ transplantation far outweighs the supply of organs available, with the resulting pressures acknowledged as having created a black market in organs and the exploitation and trafficking of people for organ transplantation, the HTA considers that releasing this information is likely, or at least would be likely, to prejudice the law enforcement interests identified. The fact that a modern slavery offence arising from people trafficking for the purpose of organ donation was successfully prosecuted in the UK and that evidence at that trial indicated clear attempts to subvert the systems designed to identify such exploitation, confirms that there is a clear risk of such attempts being made again. Any such attempts would be supported if the information provided to HTA members and staff to assist in identifying this risk were readily available. This information could be used to misrepresent the circumstances of such cases to avoid triggering the risk indicators, with consequent harm to the ability of the HTA and others to detect, prevent, investigate, and where relevant prosecute any such offences, and could lead to undetected and successful criminal exploitation.

f) Public Interest Test

- i. We have set out below the considerations we have taken into account in determining where the balance of public interest lies concerning the release of the additional information you have requested to which we believe the exemptions in s31 apply, namely,

'copies of internal guidance / policies / instructions / documents to assist members of the Human Tissue Authority to identify potential victims of trafficking and modern slavery.'

- ii. We acknowledge that there is a public interest in how the HTA fulfils its function of approving living organ donations, including how we assist members of the HTA involved in that process to identify potential signs and indicators of commercial dealing in organs and people trafficking for organ removal (which is one of the statutory definitions of modern slavery). For this reason, our main policy and guidance is already published. The publication of that information provides a deterrent to those who may be tempted to undertake unlawful activity by clearly signalling that we are alert to such risks and reassures the public that there are mechanisms in place to identify and manage such risks.
- iii. The HTA also notes that it already publishes information about its policies and processes for approving living organ donation, including its guidance for clinical teams and independent assessors, all of which is accessible information on its website. All these documents include reference to risk indicators of exploitation, which may include commercial dealing in organs and people trafficking for the purpose of organ removal and transplantation.
- iv. However, there is a very strong public interest in protecting the ability of HTA to enforce the law, including protecting society from the impact of crime, protecting the HTA's ability to detect potential offences and protecting the integrity of any investigation that may be undertaken, by the HTA or other agencies. Publishing the additional information, such as training and guidance material aimed at identifying cases of people exploitation and trafficking for the purpose of organ transplantation, could be used by those intent on circumventing the intended protections to falsely present their circumstances in a way that evades identification. The HTA considers there to be a real and material risk that any such publication would undermine the public interest in there being an effective system to prevent such abuse.
- v. We have therefore concluded that the public interest in disclosing the additional information that is not already in the public domain, does not outweigh the public interest in not disclosing that information. Therefore, we are not disclosing the further information that we hold that is not already released through this Freedom of Information Act request or is otherwise published.

Further information

If you are unhappy with the way the HTA has handled your request for information in this case, you may in the first instance ask us for an internal review by writing to us at the above postal or email address.

If you remain dissatisfied with the handling of your request, you have the right to appeal directly to the Information Commissioner for a decision, at the address below. There is no charge for making an appeal.

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Telephone: 08456 30 60 60 or 01625 54 57 45

Website: www.ico.gov.uk

Yours sincerely,

