Legal Principles in Risk Communication
Legal and Ethical Understanding

- Staff handling a health crisis should have knowledge of the relevant laws and ethical considerations pertaining to the crisis
Objective

• To introduce the existing sources of law
• To ascertain from a legal perspective whether or not information should be released
• To identify the possible legal implications of disclosure/ non-disclosure
Sources of Law

- Federal Constitution
- Statutes
- Regulations
- General Orders
- Government directives and circulars
- Common Law
Government Circulars and Directives

• Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1983
  – Peraturan 19
• Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980
  – Perkara 17
  – Perkara 4
• Pekeliling Perkhidmatan Bil. 1 Tahun 1985
  = non-disclosure
Non-disclosure

• Government policy, program or decision on any issue
• Any factual information relating to department
• Explanation of incident or report

BUT
• People should have access to information in a democratic society
  – Allows for expression of constitutionally protected rights in Art 10 and 5 of the Federal Constitution
• Disclosure in good faith is a valid defense to a criminal action under the Penal Code s93
Federal Constitution - Article 10

10(1) Subject to clauses(2), (3) and (4) – every citizen has the right to freedom of speech and expression

Restrictions are imposed in the interest of national security, public order, etc
THE CONFLICT

Federal Constitution Ethical principles VS Gag orders

decision

IMPLICATIONS
information

Authorised Officer

Communications Officer

PUBLIC

Minister’s approval
Liabilities of authorised officers

• Subject to statutory duties of non-disclosure
  – E.g. PCID, Food Act, OSHA, Pesticides Act…
• Breach – offence under the statute, penalty as prescribed under the statute – e.g. fine and/or imprisonment
• + disciplinary action may be taken
Communications officer

MINISTER

YES

No problem

NO

comply

No problem

non-compliance

- disclosure

Disciplinary action
Further legal implications

- Negligence
- Breach of Confidentiality
- Defamation
- Public Nuisance
Negligence

• Liability may exist either for disclosure or failure to disclose depending on circumstances

• Need to prove three elements
  – Duty of care
  – Breach of standard of care
  – Damage/causation
Breach of Confidentiality

• Both legally and ethically wrong
• Protects special relationships of trust – e.g. between health care providers and patients
• Consider the context in which the information was given/ received –
Breach of Confidentiality - exceptions

• Sharing information with other health care providers
  – For effective management of crisis information
• If required by law
• In public interest – to prevent a greater danger to the public at large
Defamation

• Publication oral or written which may tarnish a person’s reputation

• Defences
  – justification
  – qualified privilege (public interest)
Public Nuisance

- If disclosure/non-disclosure results in injury to a class of persons in a particular area the government as protector of public health and safety may be liable
- An offence under section 268 of the Penal Code
VICARIOUS LIABILITY
-government liable

negligence

defamation

public nuisance

Breach of confidentiality
Case Studies

- Nipah outbreak
- Enterovirus
- Hand foot & mouth disease
- Haze
Nipah outbreak

• WHO should have released information?
  – Refer to government circulars –

• Should ANY information have been released if information was lacking/insufficient?
  – Negligence? If info released was wrong/info withheld?
Nipah outbreak

- Vaccination - effective?
  - To state effective – negligence?
- Discovery of actual virus – nipah not JE
  - What information to release? Is failure to release negligent?
    - General public
    - Vaccinated group