

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 April 2014

**Public Authority:** Parliamentary and Health Service Ombudsman  
**Address:** Millbank Tower, London, SW1P 4QP

### Decision (including any steps ordered)

---

1. The complainant has requested information relating to the structure, job descriptions and contact details for part of the Parliamentary and Health Service Ombudsman (PHSO).
2. The Commissioner's decision is that the PHSO has correctly applied section 14(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### Request and response

---

4. On 15 October 2013, the complainant wrote to PHSO and requested information in the following terms:
  - i. *Could you tell me the function of the executive office (as per diagram of executive office in relation to posts already provided)?*
  - ii. *And provide a 'Family Tree' chart for areas of responsibility.*
  - iii. *If names of post holders are available then could they also be supplied - so that correspondence can be sent to the correct person. If they are secret, then the 'family tree diagram' linked to chief officers will be sufficient.*

*Clearly, as a quasi-legal organisation, and, as executive office personnel are deciding on which documents on complex cases are received by chief officers, executive office personnel will have the legal training to understand the complexity of referred cases*

*before deciding to close them down by preventing access to chief officers.*

- iv. *Could you also therefore confirm that current post holders are all legally trained?*
  - v. *Could you please also supply me with the advertised job descriptions (internal or external) of executive office post holders?*
5. PHSO responded on 12 November 2013.
- i. *Executive Office provides secretariat and administrative support to Dame Julie Mellor and Helen Hughes. These roles are not directly involved in casework and the staff in the Executive Office Team do not make casework decisions. The Ombudsman's Casework team are responsible for managing the casework requiring Dame Julie or Helen Hughes' input and they review correspondence about specific cases addressed to Dame Julie or Helen Hughes.*
  - ii. *Attached to this email is a family tree of all the posts in the Executive Office.*
  - iii. *Sue Thomson is the Head of the Executive Office. I am unable to provide the names of the more junior members of staff as this constitutes their personal information. I am withholding this information under section 40(2) of the Freedom of Information Act 2000. The names I am withholding are not senior or customer facing roles. As you are clearly interested in the team who considers correspondence from the general public in relation to specific cases, the Ombudsman's Casework Manager is Sarah Fox.*
  - iv. *First, I should clarify that PHSO is not a quasi-legal organisation. PHSO is a lay led organisation. One of the individuals who works within the Executive Office has a law degree but does not hold a legal practitioner qualification. As you can see from the job descriptions attached, a legal qualification is not required for any of the posts in the Executive Office. We have an internal legal team who provide legal advice when required. The Legal Adviser and Assistant Legal Adviser roles are the only roles in PHSO where the posts require qualified lawyers.*
  - v. *Attached to this email are the job descriptions of all the roles who sit in the executive office.*
6. The complainant requested an internal review the same day. Following an internal review PHSO wrote to the complainant on 13 January 2014 and confirmed that it upheld the application of section 40(2).

7. Further background to this case and correspondence between the parties is contained in a confidential annex which is only to be disclosed to the complainant and PHSO.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 6 January 2014 to complain about the way her request for information had been handled.
9. Following correspondence to the complainant she clarified her concerns:
  - That PHSO has applied section 14 to the requests incorrectly as it has misunderstood them;
  - That PHSO has applied section 40(2) to part of the information requested;
  - That PHSO has not provided the information requested in relation to contact details for the Executive Office.
10. The Commissioner therefore considers the scope of this case to be to determine if PHSO correctly applied the exemptions it has cited.

### **Reasons for decision**

---

11. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
12. The term "vexatious" is not defined in the FOIA. The Upper Tribunal recently considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure.*" The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In the Dransfield case<sup>1</sup>, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).*

14. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The Commissioner has considered the representations of both parties in reaching his position.

### **Is the request obsessive?**

17. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

---

<sup>1</sup> GIA/3037/2011

<sup>2</sup>

[http://www.ico.org.uk/~//media/documents/library/Freedom\\_of\\_Information/Detailed\\_special\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/~//media/documents/library/Freedom_of_Information/Detailed_special_guides/dealing-with-vexatious-requests.ashx)

18. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
19. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
20. In this case, the complainant has stated that her request stemmed from difficulties in identifying where she should direct her complaint about the way her case had been dealt with, and the member of staff concerned.
21. The PHSO contends that the complainant was unhappy with its decision in her case and complained about it under its internal review process. At that time she made a number of requests for information through the 'whatdotheyknow' website as she sought to establish whether her complaint would be dealt with fairly and independently. She has continued to make requests since then and PHSO stated it had received almost 100 FOI requests through the course of this business year.
22. In addition, PHSO stated that parallel to these 'whatdotheyknow' requests there had been lengthy private discussions with her about how her complaints about PHSO's decision and staff would be handled.
23. PHSO stated that during this correspondence it had explained at length how it proposed to ensure her complaints about staff members would be dealt with independently by an External Reviewer.
24. PHSO stated that these two requests should be read in conjunction with each other. Request chain 1 started on 15 October 2013 and focused on the Ombudsman's Executive Office. Request 2 started on 24 October 2013 with a similar focus but this was broadened to include the 'top 50 paid staff'.
25. During the course of request chain 2 the complainant made the case for the release of the names and telephone numbers of PHSO managers. This was at the same time as she requested the telephone details of staff in request chain 1. The responses PHSO provided in relation to request chain 1 were in the context of the requests, the annotations and the dialogue taking place in request chain 2.

26. The Commissioner has taken into account the context and background to the request, in conjunction with the volume of correspondence to the PHSO and considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**Is the request designed to cause disruption or annoyance?**

27. The PHSO provided background to this case which is contained in the confidential annex which will not be disclosed to the public.
28. The Commissioner has considered all the evidence presented to him and found that is sufficient to suggest that the request was vexatious in that it was designed to cause disruption and annoyance to the staff at the PHSO.

**Does it have the effect of harassing the public authority?**

29. The Commissioner considers that a requester is likely to be abusing the section 1 rights of the FOIA if they use FOIA requests as a means to vent anger at a particular decision, or to harass and annoy the authority, for example by submitting a request for information which they know to be futile. When assessing whether a request or the impact of dealing with it is justified and proportionate, it is helpful to assess the purpose and value of the request.
30. The FOIA is generally considered applicant blind, but this does not mean that a public authority may not take into account the wider context in which the request is made and any evidence the applicant has imparted about the purpose behind their request.
31. In this case the request is made against a backdrop of other correspondence and complaints. Although the purpose of the request appears to be serious in its intent, it is related to seeking information regarding policies and structure which PHSO had already provided to her.
32. The Commissioner has considered the purpose of the request in the context of the other correspondence and finds that the effect is to harass and annoy the public authority.

**The Commissioner's decision**

33. The Commissioner has considered both the PHSO's arguments and the complainant's position regarding the information request. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the PHSO was correct to find the request vexatious. He has balanced the purpose and value of the

request against the detrimental effect on the public authority and is satisfied that the request is obsessive and has the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

34. Due to the overlapping nature of the requests and the information provided by PHSO in the confidential annex, the Commissioner has not gone on to consider the application of section 40(2).

## Right of appeal

---

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**