

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 August 2018

**Public Authority:** Parliamentary and Health Service Ombudsman

**Address:** Millbank Tower  
30 Millbank  
Westminster  
London  
SW1P 4QP

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the process and procedures in place in 2015 for handling complaints and the training of staff which investigated a particular complaint at this time. The PHSO provided what recorded information it holds.
2. The complainant disputes that he has been provided with all the recorded information the PHSO holds. The Commissioner's decision is that, on the balance of probabilities, the PHSO does not hold any further recorded information to that already provided. She therefore does not require any further action to be taken.

#### **Request and response**

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3. On 1 December 2016, the complainant wrote to the PHSO and requested information in the following terms:

"Please note that by my below reference to the '2015 complaint' I am referring to a 2015 complaint you handled to which you gave references; EN-223689 and EN-231978/0027.

I am requesting a copy of all information you hold of:-

1. The training the staff received, who dealt with the 2015 complaint, to

ensure they had the specific skills necessary to enable them to assess the alleged breaches of the Data Protection Act (DPA) in the 2015 complaint.

2. Which organisations and advisers (internally and externally) that, in 2015, you would seek advice from to assist you, in your assessments, as to whether or not:-

- a. A public authority had breached the DPA.
- b. The Information Commissioner's Office (ICO) Office had properly dealt with a member of the public's complaint that a public authority had breached the DPA in their handling of a service users personal data.

3. Who you actually sought and received advice from to assist you in your assessment, of the 2015 complaint, as to whether or not:-

- a. Ashton, Leigh and Wigan Primary Care Trust (ALWPCT) had breached the DPA.
- b. The ICO's Office had properly dealt with a complaint that ALWPCT had breached the DPA in their handling of a service users personal data.

4. What you should, and also must make, a record of in respect of the complainants specific complaint allegations in the 2015 complaint you handled.

5. How and where you should, and also must, make a record of the complainants specific complaint allegations that were sent to you in the 2015 complaint."

4. The PHSO responded on 3 January 2017. In respect of points 1 to 5, it applied section 44(1)(a) of the FOIA and informed the complainant that if he had any concerns about his own complaint with the PHSO he should contact it separately in accordance with the Data Protection Act 1998 (DPA), the Health Service Commissioners Act 1993 and the Parliamentary Commissioner Act 1967. It also confirmed that it does not have any specific guidance on how its handles complaints about a data breach under the DPA or the Information Commissioner's Office. However, it provided a link to its casework policies and guidance, which are available on its website. Additionally, it directed the complainant to a response it provided another applicant on 9 August 2016 in relation to PHSO staff obligations under the DPA.
5. The complainant requested an internal review on 7 March 2017. He stated that he is of the opinion that the PHSO does hold information fitting the criteria of his request, which he is entitled to receive under the FOIA.

6. The PHSO carried out an internal review and notified the complainant of its findings on 28 April 2017. It confirmed that it remained of the opinion that section 44(1)(a) of the FOIA applied and that it had supplied information detailing the broad training requirements of staff in relation to data protection by redirecting him to the information available in the public domain and so had met this element of the request.

## **Scope of the case**

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7. The complainant first contacted the Commissioner on 26 July 2017 to complain about the way his request for information had been handled. However, due to personal reasons the case was then closed in the October. The complainant asked the Commissioner to reopen his case in February 2018 and the Commissioner then proceeded to make her enquiries to the PHSO.
8. The complainant stated that the PHSO's refusal to provide the requested information under section 44(1)(a) of the FOIA was incorrect and unfair. He believes the PHSO holds recorded information falling within the scope of his request which can be disclosed to him under the FOIA.
9. During the Commissioner's investigation the PHSO made no further reference to the application of section 44(1)(a) of the FOIA and did not maintain its application to any elements of the request. Instead the investigation addressed whether the PHSO holds any further recorded information falling within the scope of the request to that already provided to the complainant.

## **Reasons for decision**

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### **Does the PHSO hold any further recorded information?**

10. The Commissioner asked the PHSO to review each element of the request and confirm what recorded information is held, if any, falling within scope. The Commissioner will address each element in turn, what the PHSO has said and her decision.

#### *Question one*

11. In this question the complainant asked to know what training the staff received, who dealt with the 2015 complaint (his complaint), to ensure that they had the necessary skills to assess alleged breaches of the DPA.

12. Firstly, the Commissioner wishes to point out that it is not within the remit of the PHSO to "assess" any alleged breaches of the DPA; this is the remit of the ICO. The PHSO will only consider whether the ICO has handled the particular complaint referred to it in accordance with its own policies and procedures and treated the complainant fairly.
13. The PHSO confirmed that it directed the complainant to a link on the What Do They Know website where information relating to the on line DPA training that staff received in 2015 was previously disclosed under the FOIA. It also provided a link to its guidance documents, available on its website. The PHSO advised that it does not hold any further recorded information falling within the scope of this question and does not hold any specific information on the training the staff who dealt with the complaint in 2015 received on how to handle complaints about the ICO.
14. The Commissioner wrote to the complainant to inform him of what the PHSO had said giving him an opportunity to comment further or to provide any information or evidence to the contrary. The complainant did respond. But he only stated that he remains of the opinion that the PHSO does hold more information and did not provide any further information or evidence for the Commissioner to consider.
15. The Commissioner is satisfied that on the balance of probabilities the PHSO does not hold any further recorded information falling within the scope of this element of the request. She has no reason to doubt the PHSO's response; it has explained what it does hold and provided this and what it doesn't hold and this appears fair and reasonable.

### *Question 2*

16. In relation to question 2(a), the PHSO explained that it would not assess if a public authority has breached the DPA, as this is the role of the ICO as regulator of the DPA. Therefore no recorded information is held falling within this element of the request.
17. Concerning question 2(b), the PHSO advised that the caseworker would look at the information provided by the complainant and the responses the ICO sent to the complainant in order to make a decision. It explained that the caseworker's decision is approved by a manager before a response is provided and it uses the case assessment checklist to do this. No other organisations or advisers would be sought for advice.
18. It confirmed that the case assessment checklist is the only recorded information it holds and this was provided to the complainant on 17 November 2015. Nothing further is held.

19. Again, the Commissioner informed the complainant of the PHSO's position and asked for his further comments. He responded saying that he did not agree but provided no fresh information or evidence for the Commissioner to consider.
20. The Commissioner is therefore satisfied with the PHSO's response to this element of the request. What recorded information is held has already been provided and, on the balance of probabilities, the PHSO holds nothing further.

### *Question 3*

21. Again the PHSO confirmed that it is not within the PHSO's remit to assess whether ALWPCT breached the DPA, as this is the remit of the regulator of the DPA the ICO. It therefore does not hold any recorded information falling within the scope of question 3(a).
22. Turning now to question 3(b) the PHSO said that as the caseworker was able to adjudicate the complaint and the decision was approved by a manager, no other advice was sought or received. It holds the case assessment checklist only, which falls within the scope of this element of the request (as it does for question 2 as well) and this was provided to the complainant in November 2015 in response to a Subject Access Request under the DPA.
23. As the complainant has provided no fresh information or evidence which questions the accuracy of the PHSO's response, the Commissioner is again satisfied that on the balance of probabilities the PHSO does not hold any further recorded information.

### *Questions 4 and 5*

24. The PHSO confirmed that the complainant's own complaint did not proceed to a statutory investigation. An initial investigation was undertaken. For an initial investigation such information is recorded within a Case Assessment Checklist (which the complainant has already received). It states that this checklist details what information should be recorded.
25. It went on to say that it holds the casework guidance referred to in question one, which advises the process of *dealing* with a complaint in 2015 but no other recorded information is held falling within the scope of these questions.
26. For the reasons previously explained, the Commissioner has no reason to doubt the responses she has received from the PHSO. It has explained what recorded information it does hold and provided this and explained why no further recorded information is held. The complainant

has provided no further information or evidence from which the Commissioner could make further enquiries and so she is again satisfied that on the balance of probabilities no further recorded information is held.

## **Right of appeal**

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27. 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: 0870 739 5836

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)

28. 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.
29. 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**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**