

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2018

Public Authority: Parliamentary and Health Service Ombudsman
Address: The Exchange
New York Street
Manchester
M1 4 HN

Decision (including any steps ordered)

1. The complainant has requested information relating to the organisational structure of the Parliamentary and Health Service Ombudsman (PHSO) between April 2017 and August 2017.
2. The Commissioner's decision is that, on the balance of probabilities, the PHSO does hold information falling within the scope of the request.
3. The Commissioner requires the PHSO to take the following steps to ensure compliance with the legislation.
 - Disclose all charts the PHSO has identified on its intranet dated March 2017 showing its various departmental structures.
4. The PHSO must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 August 2017, the complainant wrote to the PHSO and requested information in the following terms:

"You have previously disclosed that:

"As all positions require a DBS check, the number carried out per year would depend on the number of positions filled that year."

<https://www.whatdotheyknow.com/request/f...>

1. Please provide the number of DBS checks that were carried out in:

- i. The calendar year 2016; and*
- ii. the business year 2016/17.*

2. Of all the positions filled during the business year 2016/17, how many were:

- i. Full time permanent;*
- ii. Full time temporary;*
- iii. Part time permanent; and*
- iv. Part time temporary.*

3. Please provide a breakdown of the job titles filled which fall within each of the four categories identified. For example, if 4 Project Officers were full time permanent and another 7 were full time temporary, show the difference. Do not simply provide a combined figure of 11 Project Officers.

4. Please provide the names of all of the recruitment agencies you used during 2016/17 as well as the number of staff they each recruited during 2016/17.

5. Please provide the amount paid/due to each recruitment agency in respect of work done during 2016/17.

6. If you have paid, or are due to pay, money to any recruitment agencies that have done no work for you during 2016/17, please provide details of amounts paid/due.

A search of your website using the terms "organogram" and "organisational chart" yields nothing useful. You have previously claimed that you update your organisational chart on a quarterly basis:

"The organisational chart available on our website is accurate as of 7 July 2016. It is updated on a quarterly basis."

<https://www.whatdotheyknow.com/request/p...>

7. If you no longer produce organograms/organisational charts on a quarterly basis please provide information surrounding the decision to axe them. If you still produce them but do not make them available online, please provide details of the date the decision not to make them publically available was taken.

8. Please provide a copy of your latest organogram, if one exists. If the most recent version of your organogram predates April 2017, don't bother. Instead, please provide in written form the information that an organogram would normally contain, to show the current organisational structure of the PHSO (and staffing levels)."

6. The PHSO responded on 12 October 2017. It answered points 1 – 7 of the request. In regard to point 8, it said that it is unable to provide an organogram because it was going through a restructure.
7. The complainant wrote to the PHSO on 13 October 2018 in regard to the second portion of point 8 and requested an internal review. He said that although an organogram does not exist, it failed to provide any information held that an organogram would normally contain to show the organisational structure of the PHSO at the time of the request.
8. The PHSO conducted an internal review and wrote to the complainant on 30 November 2017. It said that an organogram did not exist as a final document at the time the request was received and that any information that would have been on it was exempt under section 22 (Information intended for future publication) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 4 December 2017 to complain about the way his request for information, specifically point 8, had been handled.
10. The Commissioner wrote to the PHSO on 1 February 2018 and asked it to reconsider point 8 of the request.
11. The PHSO reconsidered point 8 of the request and wrote to the complainant on 19 March 2018. It said that it was no longer applying section 22 of the FOIA to the information. It said that it has undertaken a search for the case file related to the request but was unable to locate a copy of the information that was withheld at the time. It said that at the time of the request the PHSO was undergoing a restructure and its intention was to publish a final organogram when all roles were in post but could not find any evidence of an intended publication date. It said

that the re-structure was complete and that it has published a recent organogram on its website. The Commissioner notes that the published organogram shows the organisational structure of the PHSO as at 7 August 2018. It said that section 21 of the FOIA now applies to the published information as it is reasonably accessible.

12. On 3 July 2018 the PHSO then wrote to the Commissioner and said that it had not been clear about its position in its previous correspondence. It said that section 22 of the FOIA has been applied in error and that the requested information does not exist. It explained that an organogram did not exist at the time of the request and that it had applied the exemption on the basis that *if* information that an organogram would normally contain was held by it, then as that information would be included in a future organogram it had applied section 22 of the FOIA to withhold it. It acknowledged that it had previously appeared to confirm that the information was for a time held by it [e.g., it stated that it could not locate a copy of the information that was withheld at the time]. It explained that this was because, it had applied section 22 in the event that information was held and after it realised it had done this it also realised that there was no withheld information to locate as it did not exist. The PHSO accepted that it had handled the request poorly and that this could be improved. It said that information within the scope of the request was searched for throughout the organisation, its Human Resources department and in corporate documents but no information was found. It also said that it considered other options in order to answer the request, e.g., *"we could request payroll reports or interrogate other systems to provide this information"*. It however said that this was not possible and it was wary of creating information for the purposes of answering the request.
13. The complainant was not satisfied with the PHSO's explanation as to why information falling under the second portion of point 8 of the request was not held by it and asked the Commissioner for a decision. The scope of the Commissioner's investigation has therefore been to determine whether the PHSO holds information within the scope of this portion of the request.

Reasons for decision

Section 1 of the FOIA – general right of access to information

14. Section 1 (1) of the FOIA states:

"Any person making a request for information to a public authority is entitled –

- (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) *is that is the case, to have that information communicated to him."*

The scope of the request

15. The Commissioner considers the scope of the request to be for an organogram or information that would normally be contained in an organogram that shows the organisational structure and staffing levels of the PHSO at the time of the request. For this reason, she does not consider information about staff that does not appear in an organisational or hierarchal structure [e.g., a list of names and job titles alone] to be within the scope of the request.

Determining whether information is held

16. In scenarios where there is a dispute between the complainant and public authority and whether or not information is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the Commissioner must decide whether it is more likely than not that a public authority does not hold any information which falls within the scope of the request (or did not hold it at the time of the request).
18. The Commissioner will consider the scope, quality and thoroughness of the searches performed, and whether the searches were appropriate and adequate. She will also consider any other explanations provided by the public authority for why the information is not held. Finally she will consider the arguments or evidence provided by the complainant as to why they consider the requested information must be held.

The PHSO's position

19. During a telephone conversation on 20 July 2018 between the Commissioner and the member of staff handling this matter at the PHSO about the searches it had undertaken for the requested information, she was informed that the PHSO had queried pay procedures with its HR department but that pay information was not held in accordance to job roles/titles. It said that it would make further enquiries to establish whether the information was held.

20. The PHSO then wrote to the Commissioner on 26 July 2018 and said that it had contacted its HR department again and repeatedly queried if the information was held, but was told it was not. In order to satisfy herself that relevant and thorough searches for the information had been carried out, the Commissioner wrote to the PHSO on the same day with a series of questions about the searches it had conducted.
21. The PHSO replied to the Commissioner on 27 July 2018 stating "*I may have some news as we have been continuing out searches*". But did not provide any further information about this.
22. The PHSO then sent the Commissioner an email on 17 October 2018 stating that the information was not held and responded to her questions. It said that it would normally expect to publish its structure at a summary level and would refresh it at least once a year to inform the public, bodies under its jurisdiction and others about the PHSO. It said that this requires a manual collation and verification of information before publication and it therefore would not have done this during a period of change [such as the one it was undergoing at the time of the request] and for this reason it was likely that the information was never held and later deleted. It said that there are no statutory requirements to retain the requested information. In relation to the searches it carried out, it said that it only operated 'thin' client devices which meant all its information is networked, and therefore searches were carried out on networked resources and emails. It said that non case workers only have the option of saving documents to its legacy document system. It said that if the information was held it would be held in a 'flat file', e.g., a word document or a PDF. In conducting electronic searches it searched the terms 'organogram', 'structure', 'lines of reporting' and "words" from the complainant's original request. It however provided a vague response in relation to where searches were carried out e.g., "*We looked in all the places you would expected to find a structure (online, in HR records) in which such records are now located*".
23. Specific information about the searches that had been carried out was then obtained by the Commissioner during a telephone conversation with the member of staff handling the matter at the PHSO on 12 November 2018. They said that searches for the information were carried out on its networked resources within its Human Resources, Learning and Development, and IT department as well as within its project management team. They said that the PHSO's email retention policy was 3 months at the time of the request and therefore any emails that would have contained information within the scope of the request would no longer be held by it.

24. During this call the member of staff searched the term 'consultation' on the PHSO's intranet which returned files pertaining to the 'Transforming the PHSO Project' which involved moving of the organisation's offices from London to Manchester, developing a new target operating model and the associated restructure. The information included various departmental structure charts within the organisation as of March 2017, e.g., the executive office chart dated 2 March 2017. They said that versions of these charts had been updated on 21 March 2017 and 15 September 2017. The member of staff said that she was specifically aware of the structure of the legal and governance department in late September 2017 and that it was different to the structure depicted in the March 2017 chart for that department. However, they said that the PHSO was unable to confirm whether any of the other charts showed the departmental structure of those departments during April and August 2018. They said that if the information did fall within the scope of the request, the PHSO would agree to release it. They then insisted that they had informed the Commissioner about this information during a previous telephone conversation and that it had been agreed that it was not within the scope of the request. The Commissioner did not agree and was surprised by the PHSO's insistence on this point as it had only searched the term 'consultation' and come across the information during the call.
25. The Commissioner has reviewed a large sample of the structure charts and can confirm that they contain information about the structure of various departments of the PHSO in March 2017 [1 month before the period specified in the request].
26. The Commissioner has considered the PHSO's arguments and all the information provided in this case. She notes that the complainant requested information showing the PHSO's organisational structure and staffing levels from April to August 2017. She also notes that the organisational charts dated March 2017 state that they were the 'current' structure of the relevant departments at this time. The PHSO did not publish its revised structure (assuming after the restructure had been finalised) until August 2018; some 17 months on. The charts from March 2017 post-date the request by one month. The Commissioner considers it is highly probable that these structures were still in force at the time of the request. It is possible that some elements may have then changed as the months went on. This can be said of any organisation's structure when taking into account the natural movement of staff. But this is more related to the accuracy of the information rather than a position of 'the information is not held'. On the balance of probabilities therefore, the Commissioner is of the opinion that the PHSO does hold information falling within the scope of this element of the

request (i.e. the charts dated March 2017) and these should be disclosed to the complainant.

27. The PHSO must therefore take the steps set out in paragraph 3 of this decision notice.

Right of appeal

28. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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**