

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2020

Public Authority: Parliamentary and Health Service
Ombudsman

Address: Millbank Tower
30 Millbank
Westminster
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested from the Parliamentary and Health Service Ombudsman ("PHSO") information relating to one of the public authority's web pages, an employment tribunal judgment, staff disability and disability training. The PHSO refused to provide the information, citing section 14(1) of the FOIA – vexatious request.
2. The Commissioner's decision is that the PHSO is entitled to rely on section 14(1) to refuse the request as vexatious.
3. The Commissioner does not require the PHSO to take any steps as a result of this decision.

Request and response

4. On 16 March 2019 the complainant made the following request for information under the FOIA:

"Information requests 1 to 8 relate to information on the following page of the PHSO website:

<https://www.ombudsman.org.uk/making-comp...>

1. Please provide for the year 2017/18 the number of telephone calls your received to your dedicated MP helpline 0300 061 4953.

2. Please provide for the year 2017/18 the number of cases to which the calls you received to your dedicated MP helpline related.

3. Please provide for the year 2017/18 the number of emails you received at the address [email address] (MP[at]ombudsman.org.uk).

4. Please provide for the year 2017/18 the number of cases to which the emails you received at [email address] (MP[at]ombudsman.org.uk) related.

5. Please provide for the year 2017/18 the number of requests received at [email address] (publicaffairs[at]ombudsman.org.uk) for a meeting with "the team". How many of these meeting were cancelled, if any?

6. Please provide (pseudonymized) the number of meetings with the team that were held by each of the five MPs and/or individuals acting on their behalf who had the most meetings.

7. Please provide the total expenses claimed in relation to meetings with MPs and/or individuals acting on their behalf, if applicable.

8. Please provide (pseudonymized) the expenses claimed in relation to each of the five MPs and/or individuals acting on their behalf referred to in (5).

9. Please provide a blank copy of the health form referred to in paragraph 12 of the employment tribunal judgment between H Rashid and PHSO dated 14 January 2019, in which PHSO was found to have directly discriminated against the claimant:

<https://www.hsj.co.uk/download?ac=3040650>

10. For each of the years 2016/17 and 2017/18, please provide the number of PHSO staff who declared a disability. Specify the number for dyslexia.

11. For each of the years 2016/17 and 2017/18, please provide the number of disabled PHSO staff who benefited from workplace adjustments.

12. For each of the years 2016/17 and 2017/18 please provide the amounts spent by PHSO on workplace adjustments for all disabled staff.

13. Paragraph 64 of the Rashid judgment refers to "training for managers and colleagues on issues related to dyslexia".

(i) For each of the years 2016/17 and 2017/18, please provide the amounts spent specifically on training for managers and colleagues related to disabilities of all kinds.

(ii) Where training was provided by anyone other than PHSO,

*please specify the total costs paid to external providers.
(iii) Please also provide details of the total expenses claimed by PHSO staff in relation to disability training. Include information on travel and accommodation costs, if applicable."*

5. The PHSO responded on 4 April 2019 and refused to provide the requested information citing section 14(1) of the FOIA as its basis for doing so.
6. On the same day the complainant asked for an internal review. He then followed up his review request on 5 June 2019.
7. After a reminder from the Commissioner, the PHSO provided an internal review on 8 August 2019 in which it maintained its original position, that the request was vexatious.

Scope of the case

8. The complainant contacted the Commissioner on 19 November 2019 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be the PHSO's application of section 14(1) to the request and, consequently, whether it was correct in stating that the request is vexatious.

Reasons for decision

Section 14 – vexatious

10. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

11. The FOIA does not define the term "vexatious". The Upper Tribunal (UT) considered the issue of vexatious requests in *The Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a *"...manifestly unjustified, inappropriate or improper use of a formal procedure."*

(paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.

12. The Dransfield judgment also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained 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).
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as follows -

"...concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).
14. The Commissioner's guidance¹ explains that the UT's decision established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
15. There are also a number of 'indicators' that the Commissioner has identified which are useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. They include (amongst others):
 - the burden on the authority;
 - personal grudges;
 - unreasonable persistence;
 - unfounded accusations;
 - intransigence;
 - frequent or overlapping requests; and
 - deliberate intention to cause annoyance.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

16. 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.
17. The Commissioner's guidance suggests that if a request is not clearly vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should aim to objectively judge the impact on itself and weigh this against any evidence about the purpose and value of the request.
18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
19. The PHSO has applied section 14(1) FOIA to this request, the Commissioner has therefore considered whether the request has been correctly categorised as vexatious in line with the above.

The PHSO's view

20. Firstly, it is important to note that the PHSO's analysis refers to the financial year 2018-19. However, the PHSO places this request within the context of many past information requests – 15 requests in 2017-18 and nine requests in 2016-17.
21. The PHSO states that the complainant submitted 12 FOI requests in 2018-19 with seven (including the subject of this decision notice) being received within the last 3 months of that year. The PHSO provided a table to the Commissioner which breaks down these requests. On four occasions there was full disclosure, six occasions – partial disclosure, and on two occasions the information was not held. Many of these requests have multiple parts including one request in 11 parts, one request in 7 parts, one request in five parts and three requests in four parts. This request is in 13 parts.
22. The public authority argues that the volume and nature of the requests submitted by the complainant place a significant burden on a small team that consists of only 3 FOI/DP Officers and that this request is considered disruptive and burdensome.
23. The PHSO characterises the requests as broadly similar in nature and overlapping. On more than one occasion a new request will be received before the previous request has been responded to. The number and subject matter of the requests and the complainant's

dealings with the PHSO, it argues, support the contention that this is a vexatious request. The frequency, length of requests and complexity add significantly to the administrative burden.

24. In analysing this request, the PHSO states that there is very little purpose or value to the request and that it jumps from subject to subject in a disjointed way and has no clear correlation.
25. The PHSO suggests that it is very difficult to understand how the disclosure of the information could possibly be in the public interest which it considers is indicative of this being a vexatious request. Any attempt to locate and gather this information would only serve the complainant's interests and not that of the wider public. This would be an unjustified use of staff time and a significant burden. The PHSO considers the matter to be relatively trivial and getting numerous departments involved in order to comply would mean expending a disproportionate amount of effort.
26. In an attempt to explain more fully, the PHSO states that there are 13 questions in this request. Searching for the level of detail requested would take a considerable amount of time, effort and resource. Questions one to four relate to the MP helpline and these would need to go to the Executive Office with possible input from ICT and, it is unclear what level of detail the PHSO would have recorded in relation to these questions without an in-depth search.
27. Questions five to eight relate to enquiries/requests via the Public Affairs mailbox and specifically for a meeting with 'the team' with details on the number of such meetings which were subsequently cancelled. These questions then branch off into asking for the number of meetings which took place which were held for the five MPs/individuals acting on their behalf who had the most meetings, total expenses claimed for these meetings and for each MP/representative. Input would be needed from Public Affairs, the Executive Office, ICT and Finance.
28. The PHSO argues that question nine then branches off again by asking for a copy of the blank health form referred to in an employment tribunal between a named person and the PHSO.
29. Questions 10-12 ask about staff declaring a disability, the specific number declaring that they have dyslexia, those that benefit from workplace adjustments and the amount spent on those adjustments. HR, Finance and Facilities would need to be contacted for this information.

30. Finally, question 13 refers to the employment tribunal judgment again and asks for the amount spent on training for managers and other staff in the 2016/17 and 2017/18 period relating to disabilities of any kind, the total costs paid for any external providers, and the total expenses claimed by the PHSO's staff in relation to disability training and includes travel and accommodation. At a minimum, both Learning and Development and Finance would need to be contacted.
31. The PHSO does not consider the time and effort to be justifiable. It underpins this assessment by pointing to the burden of this request, the number of parts to the request and their repetitious nature. It suggests that the level of public interest is not significant and that this should be taken into account when considering whether this leads to harassment and distress to staff in terms of well-being and morale. The PHSO points out the history of the requests and the activity on a public forum on the internet in which the complainant has involvement in his own right and that of other individuals regarding the PHSO. The PHSO believes this amounts to a personal grievance but emphasises that the complainant does not use abusive language.
32. The PHSO concludes by stating that the FOIA was designed to provide individuals with a greater right of access to official information with the intention of making public bodies more accountable and transparent. It does not believe that this is the case with regard to this request which the PHSO suggests is an inappropriate use of the FOIA process and does not serve this purpose. It contends that the primary purpose is to maliciously place a significant burden on the PHSO by causing an unjustified level of disruption, irritation and distress to the PHSO's administrative function and to waste valuable public resources.

The complainant's view

33. The complainant does not accept that the request is "burdensome" or would cause "unjustified disruption". He describes the vexatious threshold as a high one and that the PHSO had set the bar low.

The Commissioner's view

34. Having considered both the complainant and the PHSO's view, the Commissioner's decision is that this request is vexatious. It is fair to characterise the complainant's requests as neutral in tone and lacking in unfounded accusation. However, it is also clear that any response from the public authority is likely to lead to a further request, on occasion before the previous one has been responded to. Within context the request follows a pattern. Many of the requests concern the workings of the PHSO – its staff, recruitment, pay, redundancy,

training, levels of contentment with the service the PHSO offers. Although, the Commissioner does not agree that this request amounts to harassment or that it would necessarily cause distress to staff, the Commissioner's view is that the request appears to be less motivated by the desire to obtain information than to subject the PHSO to ongoing and, in this case, random scrutiny in the form of FOIA requests. As the complainant points out, applying section 14(1) solely on the grounds that it is burdensome is a high threshold. Had this been solely the case, she might have expected the PHSO to consider citing the cost limit at section 12. Within the context provided, the Commissioner agrees that the request is vexatious and that the PHSO was entitled to refuse it.

Other matters

35. There was a delay in the PHSO completing the internal review. This went beyond the maximum 40 working days recommended.

Right of appeal

36. 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@justice.gov.uk

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

37. 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.
38. 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

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