

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2020

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

Decision (including any steps ordered)

1. The complainant made a "meta-request" for information created or acquired as a result of a previous request he had made. The Parliamentary and Health Services Ombudsman ("the PHSO") withheld the requested information and relied on section 40(1) of the FOIA to do so.
2. The Commissioner's decision is that information falling within the scope of the request would be the complainant's own personal data. The PHSO was therefore entitled to rely on section 40(1) of the FOIA in order to withhold it. However, the Commissioner also finds that, in failing to issue its refusal notice within 20 working days, the PHSO breached section 17(1) of the FOIA.
3. The Commissioner does not require further steps.

Background

4. In 2019, the complainant made a request to the PHSO for various types of information. The PHSO refused the request as vexatious.
5. The complainant appealed the PHSO's use of section 14(1) of the FOIA to the Commissioner. Having investigated the matter, the Commissioner issued a decision notice in which she found the request to be vexatious.

Request and response

6. On 30 October 2019, the complainant contacted the PHSO via the whatdotheyknow.com website and requested information in the following terms:

"Please provide me with all information you hold relating to a request I made on [redacted]"¹

- 1. Please include information evidencing internal PHSO deliberations or discussion. In particular, please provide information which demonstrates that you first considered the application of section 12 FOIA before applying section 14 to my request.*
 - 2. Please make sure to include all information created as a consequence of any contact with the ICO. Include information passed from the PHSO to the ICO and vice versa.*
 - 3. Please search paper records and electronic records. Please do not restrict the search of electronic records to email. There may be notes of telephone conversations which would be captured by my request."*
7. The PHSO responded on 19 February 2020. It refused to provide the requested information as it considered that any information falling within the scope of the request would be the complainant's own personal data and thus exempt from disclosure under section 40(1) of the FOIA. It offered to treat the complainant's request as a Subject Access Request if he would provide an email address to which his personal data could be communicated without it being disclosed to the world at large.
8. The complainant wrote to the PHSO on the same day to request an internal review and argued that the information requested came within the scope of the FOIA. The PHSO had failed to complete its review at the date of this notice.

Scope of the case

¹ The Commissioner has redacted specific references to the earlier request in order to protect the identity of the complainant.

9. The complainant first contacted the Commissioner on 22 December 2019 to complain about the lack of response from the PHSO and the Commissioner's intervention was necessary to bring about a response.
10. The complainant then had to make a further complaint to the Commissioner on 22 May 2020, at which point the PHSO had yet to complete its internal review. As a result, the Commissioner made a further intervention in July 2020 to remind the PHSO of its responsibility to carry out an internal review.
11. On the 29 August 2020, having exercised considerable patience, the complainant came back to the Commissioner for a third time to note that the PHSO had still not completed its internal review. The Commissioner therefore considers it neither fair to the complainant, nor in keeping with her duty to promote good practice in responding to information requests, effectively to allow the PHSO to prevent her from reaching a decision by failing to complete its internal review. She has therefore exercised her discretion and accepted this case without requiring an internal review to be completed.
12. The Commissioner wrote to the complainant on 4 November 2020 to explain her provisional view that, based on the available evidence, it appeared that the PHSO had correctly applied section 40(1) to withhold information. The complainant did not accept the Commissioner's view and asked for a decision notice. Some of the concerns he expressed will be dealt with under the "Other Matters" section of this notice.
13. Given the wording of the request, the response of the PHSO and her expertise as the regulator of Data Protection legislation, the Commissioner considered that she did not need to seek a formal submission from the PHSO prior to issuing this notice. She did, however, ask the PHSO if it wished to add anything to its previous responses. The PHSO replied to say that it had nothing further to add.
14. The scope of this notice is to determine whether the PHSO correctly relied on section 40(1) to withhold the requested information.

Reasons for decision

15. Section 40(1) of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

16. Section 2(2) of the Data Protection Act 2018 defines personal data as: -

"any information relating to an identified or identifiable living individual."

17. The Commissioner's guidance on personal data states that information will be an individual's personal data if the information is about the individual, has the individual as its focus or is used to inform decisions made about the individual.

18. In this particular case, the complainant has been very specific about the information he requires in his "meta-request": he does not just want information about *any* previous request the PHSO has responded to, he specifically wants information about a previous request *he* made. This alone would render any relevant information the PHSO held as his own personal data - as it is an accepted principle of the FOIA that information cannot be considered in isolation from the request. The only information the PHSO could provide, which would satisfy the current request, must be linked to the previous request and, hence, to the person who made that request.

19. Furthermore, the Commissioner notes that both the previous request and the current request are visible on the whatdotheyknow.com website and linked to the same account – which is set up in the name of the complainant. There could thus be no doubt that any information the PHSO provided, unless it was so heavily redacted as to be meaningless, would be identifiable as being information about the complainant.

20. Not only would the information *identify* the complainant, but the Commissioner also considers it would *relate* to him as well. The complainant has made clear that he wants information relating to the PHSO's decision as to how to respond to his request and information exchanged with the Commissioner in order for her to determine his previous complaint. These two categories of information clearly involve "decisions" taken about the complainant and therefore any information falling within either category would "relate to" the person who was the subject of that data.

21. In relation to the latter category of data, the Commissioner was party to the original correspondence and has thus been able to confirm her understanding of the information within the scope of the request.
22. The Commissioner is therefore satisfied that the complainant would be identifiable from any information that the PHSO provide and that any information falling within the scope of the request would relate to the complainant, his previous interactions with the PHSO and decisions taken about him. It would therefore be the complainant's own personal data and so would have been exempt under section 40(1) of the FOIA.
23. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest or the complainant's own wishes.

Other matters

Internal reviews

24. Whilst there is no statutory time limit, within the FOIA, for carrying out an internal review, the Commissioner considers that internal reviews should normally take no longer than 20 working days and never longer than 40 working days.
25. The Commissioner notes that the PHSO, like many public authorities, has and continues to be, affected by the ongoing Covid-19 pandemic. However, she notes in this case that the complainant requested his internal review more than a month before the country went into lockdown and that the PHSO had already, at that point, taken in well in excess of 20 working days to issue its refusal notice – which could not reasonably be blamed on the pandemic. The fact that the PHSO has still not completed an internal review, some nine months after it was first requested and despite the Commissioner's intervention, represents extremely poor practice on behalf of the PHSO.

"Meta-requests"

26. In rejecting the Commissioner's preliminary conclusion that section 40(1) had been correctly applied, the complainant drew the Commissioner's attention to another meta-request he had made (and which had been responded to) by another public authority. He implied that the Commissioner's ruling in his case might have implications for others seeking to make meta-requests. The Commissioner therefore considers that it would be helpful to both parties to offer some further comments.

27. The issue in this case is not that the complainant is not entitled to receive any of the information he has requested – only that he is not entitled to receive it under the FOIA.
28. It is an established principle of the FOIA that, when information is disclosed, it is considered to be disclosed to the world at large. It is the equivalent of the public authority publishing the information on its own website – the fact that the complainant has chosen to make his request (and wished to receive a response) using the whatdotheyknow.com website demonstrates that this is not just a hypothetical test.
29. A Subject Access Request (SAR) gives an individual the right to access their own personal data. Disclosure under SAR is disclosure to that individual alone. What the individual then chooses to do with the information they have received is a matter for them. The exemption at section 40(1) of FOIA recognises that the public and unrestricted nature of disclosure under the FOIA means that a SAR is the more appropriate means of access for such information.
30. The Commissioner does not wish to comment specifically on the complainant's other meta-request and it would be inappropriate to do so, since she has not been provided with all the relevant facts. However, the Commissioner does publish guidance on information held in complaint files which is relevant to the general issue:
https://ico.org.uk/media/for-organisations/documents/1179/access_to_information_held_in_complaint_files.pdf
31. When receiving a request for information it is usually advisable for the public authority to identify any information which is the personal data of the requestor and deal with that under SAR first. Only once the personal data element of the request has been dealt with should any residual information be looked at under the FOIA.
32. In this case, the PHSO did offer to deal with the request as a SAR, but the complainant insisted that the request be dealt with under FOIA. Applying section 40(1) to the information was therefore the correct response.

Right of appeal

33. 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

34. 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.
35. 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

Phillip Angell
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