

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 May 2021

Public Authority: Parliamentary and Health Services
Ombudsman

Address: Millbank Tower
30 Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant requested an organogram and job descriptions. The Parliamentary and Health Services Ombudsman ("the PHSO") provided some information and relied on exemptions to either withhold information or refuse parts of the request.
2. The Commissioner's decision is that the PHSO breached section 16 of the FOIA by failing to ensure that it had obtained the correct objective reading of the original request. It did not breach section 16 of the FOIA in respect of the clarified request because its interpretation was the only objective reading. Finally, the Commissioner finds that the PHSO failed to identify all the information it held, within the scope of the request, within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 25 July 2020, the complainant wrote to the PHSO and requested information in the following terms:
 - "[1] *Could you please provide me with the organisational structure of the parliamentary and health ombudsman.*
 - "[2] *This should show job profiles/job descriptions, (i.e what would be used in any recruitment exercise to inform applicants of*

the expected role), with qualifications required for case workers and their immediate managers.”¹

5. The PHSO responded on 21 August 2020. In response to element [1], it withheld the information because it argued that the information was due to be published shortly and therefore section 22 of the FOIA applied. In respect of element [2], it relied on section 12 to refuse this element and argued that it was unable to respond without exceeding the cost limit.
6. On the same day, the complainant contacted the PHSO again. He accepted that the PHSO might have been in the process of producing a new organogram, but suggested it was odd that they didn't have an existing one – even if it was now out of date. In addition to complaining about the timeliness of the response, the complainant also challenged the PHSO's reliance on section 12 of the FOIA in the following terms:

"You have misinterpreted my request. I did not ask for all your job descriptions, only those which relate to case workers and their immediate managers. I find it hard to believe you have 250 of those. I would accept a few exemplars within the allowed time limits."
7. The PHSO responded on 3 September 2020, pointing the complainant towards its old organogram and responded again on 10 September 2020, when it provided two job descriptions.
8. The complainant sought an internal review on 13 September 2020. He was not happy with the way the PHSO had interpreted his original request and was unhappy with the length of time taken to provide him with information.
9. Following an internal review the PHSO wrote to the complainant on 15 September 2020. It stated that it had complied with the request within the FOIA deadline, that it had adopted a reasonable interpretation of the request and that the existing organogram would have been exempt under section 21 of the FOIA (reasonably accessible) even if it had been covered in the original response.

¹ The original request was submitted as a single paragraph including both elements. The PHSO split the request in two and the Commissioner has retained this split as it makes the following analysis easier to understand.

Scope of the case

10. The complainant first contacted the Commissioner on 20 September 2020 to complain about the way his request for information had been handled.
11. At the outset of her investigation, the Commissioner wrote to the complainant on 30 April 2021 to provide her provisional view of the grounds of complaint. She also noted that, given the low likelihood of remedial steps being ordered, the complainant would be better served by withdrawing the complaint in lieu of making a fresh request.
12. The complainant responded to say that he was unhappy with the way that the PHSO had interpreted his request and the time taken to provide the information. He did not dispute the PHSO's use of section 22 of the FOIA to withhold information.
13. The complainant did dispute the PHSO's contention, in its internal review, that the existing organogram was "reasonably accessible" to him as he had been unable to locate it on the PHSO's website. The Commissioner will not be looking into this matter as the PHSO did not formally cite section 21 to withhold information and has already indicated where the existing organogram may be found.
14. The complainant also alluded to the possibility of an underlying dispute with the PHSO and what he considered to be the mishandling of other requests he had made. The Commissioner's role, as set out in section 50 of the FOIA, is to determine whether a public authority has or has not complied with the FOIA in respect of its handling of a particular request. That determination is a matter of fact and unaffected by what may or may not have happened elsewhere. The complainant is free to bring further section 50 complaints about the handling of other requests if he so wishes and the Commissioner will dispose of them in due course.
15. The Commissioner considers that the scope of her investigation is to determine whether the PHSO adopted the correct interpretation of the request and whether it complied with section 10 of the FOIA.

Reasons for decision

16. Section 16 of the FOIA requires a public authority to provide such advice and assistance "as is reasonable in the circumstances" to those making, or proposing to make, information requests. Precisely what advice and assistance it will be "reasonable" to provide is not defined and will vary by the circumstances of each request – however, the Commissioner

considers that there are four key areas where a public authority should be providing advice and assistance:

- a) Where a public authority cannot identify the relevant information without further clarification from the complainant.
 - b) Where a requestor needs to refine their request such that it would fall within the cost limit.
 - c) Where the public authority does not itself hold particular information but is aware of another organisation that would hold the information.
 - d) Where the requestor would otherwise be unable to make an information request – for instance, because of a disability
17. Where a requestor has made a request for information which is unclear, either because it does not adequately describe the information sought or because it is capable of more than one objective reading, the duty to provide advice and assistance requires a public authority to obtain the correct objective reading of a request before proceeding.

Did the PHSO correctly interpret the 23 July request?

18. Although it split the complainant's request into two elements, the PHSO evidently considered that the second element followed on from the first element. As the first element (the organogram) clearly referred to the entire organisation, the second element (job descriptions) must similarly refer to the entire organisation.
19. However the complainant, in his correspondence of 21 August 2020, argued, in effect, that the two elements of the request the PHSO had identified were completely independent of each other. His argument was that the second element only sought information relating to "caseworkers and their immediate managers."
20. The Commissioner accepts that the PHSO adopted a reasonable interpretation of the request. When submitted, the request was not divided up and the beginning of the second sentence clearly refers back to the first sentence. However, she also accepts that the complainant's interpretation is one which is reasonable – the reference to caseworkers and their managers doesn't make much sense unless taken separately.
21. Whilst the Commissioner considers that the PHSO's interpretation is the more natural interpretation, the test is not whether the complainant's interpretation is the *most* reasonable, it simply has to be a reasonable objective reading of the wording of the request. Therefore the

Commissioner finds that the request was capable of more than one objective reading.

22. As the PHSO failed to ensure that it had obtained the correct objective reading of the request before responding, the PHSO breached section 16 of the FOIA.

Did the PHSO correctly interpret the 21 August request?

23. After the complainant had clarified that element [2] of his request only related to caseworkers and their immediate managers, the PHSO responded. It provided two job descriptions. The Commissioner has not seen the job descriptions, but when she explained to the complainant that, based on the context, she was assuming that the PHSO had provided one caseworker job description and one immediate manager job description, he did not contest this.

24. However, the complainant continues to contest that the PHSO holds more relevant information within the scope of this element of the request. He noted that his correspondence had referred to "a few exemplars." He also sent further correspondence to the PHSO on 21 August 2020 in which he added:

"to clarify and expand on my earlier response, as well as accepting a few exemplar job profile descriptions of case workers and managers..."

25. Section 8(1)(c) of the FOIA requires a valid request to "describe[s] the information requested." Whilst the Commissioner accepts that requestors will rarely be aware of precisely what information a public authority does and does not hold, she still considers that a requestor should provide sufficient clarity for the public authority to be able to distinguish between the information that would fall within the scope of the request and all other information it may hold.
26. Furthermore, the Commissioner does not usually consider that a request will be valid if its parameters are defined either by the cost limit or by a physical location – as such requests do not reveal any characteristics of the recorded information.
27. Turning to the text of what the complainant has asked for, he has very clearly sought information relating to caseworkers and their immediate managers – and these have been provided to him. He appears to want additional job descriptions but has not defined which ones he is interested in. The PHSO has told him that it cannot provide all the 250 or so job descriptions it holds without exceeding the cost limit.

28. Whilst the Commissioner appreciates that the complainant cannot reasonably be expected to know all or even most of the job titles used at the PHSO, that does not prevent him from specifying which additional job descriptions are of interest to him. For example, he could ask for job descriptions of roles above (or below) a certain level of seniority or he could ask for job descriptions relating to a particular area of the PHSO's work.
29. Despite having this vagueness pointed out to him, the complainant has still not explained what other job descriptions he believes should have been provided to him. The Commissioner cannot consider that the wording of this request to be capable of more than one valid objective reading. To the extent that the complainant wants further information beyond that relating to caseworkers and their immediate managers, his request is not valid as it does not define the information sought.
30. The PHSO therefore used the only objective reading of the request and did not commit a further breach of its section 16 duty.

Timeliness

31. Section 1(1) of the FOIA states that:

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) if that is the case, to have that information communicated to him.*

32. Section 10(1) of the FOIA states that a public authority must comply with its duties under section 1(1) of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

33. Section 10(6) of the FOIA clarifies that

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

34. In this particular case, whilst the complainant acknowledged that his request had been dealt with within 20 working days, it had not been dealt with "*promptly.*"

35. The Commissioner's guidance on timeliness recognises that the 20 working day deadline is a backstop and that a public authority should not wait until the 20th working day if it is able to respond sooner.
36. However, the Commissioner also recognises that responding to FOI requests will be one of many functions or legal obligations that a public authority is required to discharge. There is no requirement for a public authority to drop everything it is doing until it has responded to a request. With most requests, the team that co-ordinates responses to information requests will need to consult other officers within the organisation – whose main responsibility is not responding to requests – who will need to find time, amongst their other duties, to supply relevant information.
37. Therefore in practice, the Commissioner considers that there will be few occasions where a public authority that has responded to a request within 20 working days has not also responded "promptly" to that request. Just because a public authority *could*, in theory, have responded to a request sooner, does not mean that it *should* have done so.
38. In this particular case, the PHSO was entitled to take account of the August Bank Holiday in Scotland – which fell between the date the request was received and the date it was responded to. The Commissioner is therefore satisfied that the PHSO responded to the request before the 20th working day following the date that the request was received.
39. The complainant has not put forward any specific reason as to why the PHSO should have responded to his request earlier – other than that he considered that his request was straightforward. But, as the Commissioner has already pointed out, the request was not straightforward. The Commissioner is therefore satisfied that the request was responded to promptly.
40. However, section 10 of the FOIA does not refer to the date that a request should be responded to, but the date the public authority complies with its duty under section 1(1). In this case, the PHSO did not comply fully with its section 1(1) duty until 3 September 2020 – when it directed the complainant to its existing organogram. This was information which fell within the scope of the original request but which was not identified when the PHSO first responded.
41. As the PHSO did not comply with its section 1(1) duty within 20 working days, it breached section 10 of the FOIA in responding to the request.

Right of appeal

42. 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

43. 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.
44. 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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