

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 15 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested information about clinical advisors, a case worker, a practice, and the numbers of complaints during a particular timeframe from the Parliamentary and Health Service Ombudsman (PHSO). Some information was provided but the remainder of the request was refused under sections 44, 40(2) and 40(1) FOIA. Some information was 'not held'.
2. The Commissioner's decision is that the PHSO was correct in citing sections 40(2) and 44(1)(a) FOIA with regard to the requested information.
3. The Commissioner does not require the PHSO to take any further steps.

Request and response

4. On 30 May 2022, the complainant wrote to the PHSO and requested information in the following terms:

"1. The Name, Position, Medical Number, where they have practised medicine for your clinical advisor. The one with 30 + years

service. I will then consult with NHS England as all her cases need to be reviewed and appealed.

2. The number of cases he/she worked on and made decisions on - along with
 3. Full details of **[redacted]** qualification and training that allows him to make such a decision and what investigation he did - ie: Did he take the word of one person and not even question this - seems anyone with some common sense would have been taught about drug withdrawal. What training has he received on drug withdrawal.
 4. Full details of how many complaints **[redacted]** has over seen in the last 2 years, what these entailed and what % did he refuse to uphold/hold
 5. Full breakdown of all complaints dealt with by this Ombudsman over the last 2 years, including reason for complaint, % of outcomes in favour of the practice/Doctor.
 6. Full information as to why my suffering has been ignored over the word of someone who has no idea about me or the condition - let alone anything to do with any withdrawal. I mean people have withdrawal systems for coffee, cigarettes within 6 hours, yet Tramadol suffers nothing for over 5 days?
 7. Why the 1st decision was classed as incorrect and then the same thing - maybe you should get **[redacted]** to look into all complaints and save the wages of **[redacted]** and his colleague.
 8. Training and Qualifications from the previous advisor who refused this and what experience she had in investigating this - why did she not consult with anyone, like **[redacted]** has so supposedly done.
 9. Any information about Complaints about **[redacted]**, reasons for the complaints and outcomes."
5. On 24 June 2022 the PHSO responded, refusing parts one, two, three, four and eight under the exemption for third party personal data. Parts five and nine were partly provided (breakdown of complaints and the number of complaints) and partly refused under section 44(1)(a) (reasons for complaints). Part seven was refused under section 40(1) and provided separately under data protection legislation. Part six of the request was 'not held'.

6. Following an internal review on 20 July 2022 the PHSO maintained its position whilst providing some additional explanation.

Scope of the case

7. The complainant contacted the Commissioner on 30 July 2022 to complain about the way their request for information had been handled, focusing on their "legal right to face anyone involved in providing information in a complaint or anyone would be able to lie and nothing would be done".
8. The Commissioner does not intend to look at the PHSO's citing of section 40(1) to part seven of the request as the PHSO stated that it was providing it to the complainant as part of a subject access request. Personal data where the applicant is the data subject is absolutely exempt under the FOIA. Neither does he intend to look at part six as the information is 'not held' because it required the PHSO to agree to the complainant's strongly felt opinion.
9. The Commissioner has not seen the withheld information, nor obtained further submissions from the PHSO. From various other cases he has considered, he is satisfied that sections 40(2) and 44(1)(a) FOIA apply. The following paragraphs will explain why.

Reasons for decision

Section 40 - personal information

10. The complainant has requested what is clearly the personal information of third parties – including the clinical advisor's name, position, medical number, their qualifications and training, where they practised medicine, the number of cases they had worked on/made decisions on. The complainant also asked for how many cases had been overseen by their case worker, what they entailed and what percentage were upheld/not upheld and the training and qualifications of a previous advisor and their training.
11. This complaint, though not identical, involves the release of similar information (concerning clinical advisors) from the same public authority to that which has already been the subject of previous decisions. The PHSO informs its clinical advisors that their names and identifying details will not be released when they agree to work for it. Some of the information concerns the personal data of an individual that the PHSO

classes as junior staff which it does not release as a matter of policy. The Commissioner is relying on the same arguments provided in paragraphs 10-46 of his previous decision [FS50823461](#) as to why the PHSO was correct to refuse to provide the third party personal data requested.

12. He acknowledges that disclosure is necessary from the point of view of the complainant as there is no less intrusive means of achieving the legitimate aims identified. Those legitimate aims are that they believe their human rights have been breached and that they require these details whilst they consider their options. Nonetheless, the Commissioner has previously accepted that there is a real risk that clinical advisors would be vulnerable to harassment, either by being directly contacted by those dissatisfied with the PHSO's findings or by internet campaigns. The Commissioner is not suggesting that this is the aim of the complainant but, however legitimate the complainant's reasons, there are other mechanisms for challenging decisions. Releasing this information under FOI is to the world at large. Once released, it is available to any individual that might wish to harass or otherwise distress these individuals.
13. For these reasons, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 (UK GDPR) basis for processing and so the disclosure of the information would not be lawful.
14. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
15. The Commissioner has therefore decided that the PHSO was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 44 – prohibitions on disclosure

16. Section 44(1)(a) FOIA provides that information is exempt information if its disclosure is prohibited by or under any enactment. It is an absolute exemption so the public interest balance does not apply.
17. The PHSO refused to provide some of the information from parts five and nine of the request (the reason for the complaints).
18. The PHSO has previously argued that the relevant legislation specifies that investigations must be conducted in private and that information

obtained for the purposes of an investigation may only be disclosed in certain circumstances as set out in section 15(1) of the Health Service Commissioners Act 1993¹.

19. The Commissioner's guidance² is as follows:

"Parliamentary and Health Services Ombudsman deals with complaints from individuals against government departments, other public bodies and the health service in England. In her role as Health Services Commissioner, her powers are mainly drawn from the Health Service Commissioners Act 1993 (HSCA), as amended. Section 15 of the HSCA provides that information obtained by a Commissioner or her officers in the course of, or for the purposes of, an investigation shall not be disclosed except for the purposes of the investigation and any report made in respect of it, or for certain other specified purposes, none of which are relevant to FOIA disclosures. Section 15 of the HSCA can therefore operate as a statutory bar under section 44(1)(a) of FOIA."

20. The Commissioner is satisfied that the disclosure of the information withheld under this exemption is prohibited under an enactment and consequently that section 44(1)(a) FOIA is engaged. As this is an absolute exemption, there is no public interest test to carry out.

21. The Commissioner will not question or examine the reasonableness of the public authority's decision where a public authority has discretion about applying a gateway to disclosure. He does not consider that it is a matter for the Commissioner or the First-tier Tribunal to decide. If there is a statutory prohibition on disclosure and the authority had decided that it is not disapplied by a gateway, the Commissioner will accept that section 44(1)(a) applies. This position was established by the binding decision of the Upper Tribunal in the case of *Ofcom v Gerry Morrissey* and the IC, 2011 UKUT 116 AAC.

¹ [Health Service Commissioners Act 1993 \(legislation.gov.uk\)](http://legislation.gov.uk)

² [Prohibitions on disclosure \(section 44\) - FOIA guidance - version 1.1 31122020 \(ico.org.uk\)](http://ico.org.uk)

Right of appeal

22. 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

23. 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.
24. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF