

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2024

Public Authority: House of Commons
Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant submitted a four part request to the House of Commons (HoC) asking for information relating to how the HoC distinguishes between MPs' paid lobbying and the criminal act of bribery. The second part of the request asked for information on allegations of bribery against MPs and what action has been taken by the HoC.
2. The HoC said that it did not hold information relating to question 1. It referred the complainant to some published information, and relied on section 34(2) (Parliamentary privilege) of FOIA to refuse to confirm or deny that it held information relating to the remaining questions. The complainant did not accept that the HoC did not hold information relating to question 1.
3. The Commissioner is satisfied that, on the balance of probabilities, the HoC does not hold recorded information within the scope of question 1.
4. The Commissioner does not require the HoC to take any steps.

Request and response

5. The complainant originally contacted the HoC on 5 May 2023, asking it to explain the distinction between paid lobbying and the criminal offence of bribery as set out in the Bribery Act 2010. The HoC requested clarification as to the recorded information sought by the complainant.

6. On 7 June 2023, the complainant wrote to the HoC and requested information in the following terms (numbers inserted by the Commissioner for reference):
 - '[1] The incidence of MPs being reprimanded for paid lobbying is common enough that the distinction which separates this from criminally accepting bribes must be clearly set out as the parliamentary commissioner is prohibited from investigating allegations of criminal misconduct, therefore the distinction must be applied before the commissioner can investigate. What then is that distinction?'
 - [2] ...on how many occasions have you received allegations of members receiving a financial advantage in exchange for the improper performance of their duty?
 - [3] How many of these have you referred to the police and [4] how many have you found guilty of paid lobbying?'
7. The complainant clarified that he was interested in the figures for the last five years.
8. The HoC responded to the request on 20 June 2023. The HoC explained that it did not hold any recorded information in relation to question 1.
9. In respect of question 2, the HoC confirmed that reports regarding investigations against Members are regularly published for transparency purposes. The HoC signposted the complainant to the relevant web pages and cited the exemption at section 21 of FOIA (information accessible to the complainant by other means).
10. The HoC refused to confirm or deny that it held any further information falling within the scope of question 3. It stated that the information it held in respect of question 4 was exempt from disclosure in accordance with section 34(2) of FOIA.
11. The complainant contacted the HoC on 21 June 2023 and requested an internal review. The complainant interpreted the HoC's response to question 1 as suggesting that it made no distinction between paid lobbying and bribery, and he wished to challenge this.
12. The HoC's internal review response on 13 September 2023 upheld its original position.

Scope of the case

13. The complainant contacted the Commissioner on 18 August 2023 and 20 September 2023 to complain about the way the HoC handled his request. The complainant did not accept the HoC's response that it did not hold information in respect of question 1. He did not raise any issue with the HoC's response to the other parts of his request.
14. In light of the above the Commissioner's investigation was limited to the HoC's response to question 1 of the complainant's request. The Commissioner has not considered the other questions.

Reasons for decision

Section 1 - Information not held

15. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption applies.
16. Section 84 of FOIA defines "information" as: "information recorded in any form".
17. FOIA therefore only applies to information that a public authority already holds in recorded form at the time of a request. The Commissioner's published guidance¹ further explains that if the HoC do not hold a particular piece of information that a requester has asked for, they do not have to create it. FOIA does not require a public authority to answer general questions, provide opinions or explanations that are not already held in recorded information.
18. The Commissioner has carefully considered the wording of question 1 of the request:

'The incidence of MPs being reprimanded for paid lobbying is common enough that the distinction which separates this from criminally accepting bribes must be clearly set out as the parliamentary commissioner is prohibited from investigating allegations of criminal misconduct, therefore the distinction must be applied before the commissioner can investigate. What then is that distinction?'

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

19. The HoC explained that it did not hold any recorded information in relation to this request. It stated that:

'...before commencing a formal investigation, the Commissioner must first be satisfied that details of the allegation received fall within his remit, and he will then consider whether the evidence provided is sufficient to justify beginning an investigation. It is therefore up to Commissioner in each instance to consider which allegations should be dealt with and how.'

20. The complainant has argued to the Commissioner that

'Unless the Parliamentary Commissioner for Standards treats all incidents of bribery as trivial infractions of the rules of the House, which is entirely possible, but fundamentally wrong, they must have a written protocol to define the difference.'

21. The Commissioner is mindful that he may only investigate whether, on the balance of probabilities information likely to be held, which is generally a matter of fact. He cannot consider whether information ought to have been created or retained.
22. If a public authority does not hold recorded information to answer a request, the Commissioner cannot require the authority to take any further action. In this instance the HoC advised the complainant that it held a protocol document for circumstances such as an investigation into conduct and provided a link to its webpage.
23. The HoC confirmed to the Commissioner that it had checked whether the office of the Parliamentary Commissioner for Standards holds any written manual or instructions for staff in interpreting these issues. The HoC considered that the Parliamentary Commissioner's office was the most appropriate place to search, because the Commissioner considers cases involving allegations that Parliament's internal rules have been breached. However the HoC had not located any relevant information as a result of its search.
24. The Commissioner considers the HoC's search to be reasonable and proportionate to the request. He is unable to identify any further searches or other action that the HoC could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify or locate the requested information. If information is not held in recorded form then it cannot be disclosed in response to a request.
25. Furthermore the complainant has not provided any evidence that would indicate that the HoC does hold the requested information, other than that he believes it "must" be held.

26. The Commissioner, therefore, finds on the balance of probabilities, that the HoC does not hold any recorded information falling within the scope of question 1 of the request.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

28. 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.
29. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF