

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2024

Public Authority: Parliamentary and Health Service
Ombudsman

Address: Millbank Tower
30 Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence from a specific complaint. The Parliamentary and Health Service Ombudsman (“the public authority”) refused to provide the requested information, citing section 44(1)(a) (prohibitions on disclosure).
2. The Commissioner’s decision is section 44 has been correctly applied and the information is exempt.
3. The Commissioner does not require further steps.

Request and response

4. On 16 June 2024, the complainant wrote to the public authority and requested information in the following terms:

“Please supply the following information that falls inside the remit of the FOIA and outside the remit of Subject Access laws.

Part 1: Communications sent by PHSO.

- Specific to case C-2120832, please kindly provide copies of communications the PHSO sent to other parties, excluding myself. This includes communications sent to the ICO and other PHSO staff.

Part 2: Communications received by PHSO

- Specific to case C-2120832, please kindly provide copies of communications the PHSO sent to other parties, excluding myself. This includes communications sent to the ICO and other PHSO staff.

Part 3: Rules on preventing recurrence of issues

- Please kindly provide the specific document(s) held that outline the circumstances in which PSHO staff can conclude that ICO staff do not need to follow these rules on preventing the recurrence of issues:
 - a) ICO service charter
 - Relevant section: "We will use the learning from complaints to improve our services and prevent the same problems happening again."
 - b) FOIA/EIR casework service guide
 - Relevant section: "Staff are required to identify and address any systemic issues that arise from casework and implement measures to prevent the recurrence of such issues."
 - c) Principles for remedy
 - Relevant section: "Public bodies should have systems in place to identify lessons learned from complaints and to ensure that the same mistakes do not happen again. This includes taking steps to put things right and to prevent similar issues in the future."
 - d) Principles of good complaint handling
 - Advocates for learning from complainant to improve services and prevent recurrence.

Part 4: Rules on accountability

- Please kindly provide the specific document(s) held that outline the circumstances in which PHSO staff can conclude that ICO staff do not need to follow these rules on accountability.
 - a) ICO service charter
 - Relevant section: "We are committed to being accountable for our actions and ensuring that our staff adhere to the highest standards of conduct."
 - b) ICO code of conduct

- Relevant section: "Staff must be held accountable for their actions and must take responsibility for addressing any issues that arise from their conduct. This includes taking corrective actions to prevent similar issues in the future. "
- c) Principles of good complaint handling
- Relevant section: "Public bodies must take responsibility for their actions, ensuring accountability at all levels of the organisation."
5. The public authority responded on 17 June 2024. It explained that parts 1 and 2 of the request represented the complainant's personal data and therefore would be handled as a subject access request ('SAR'), rather than a request under FOIA.
 6. On 17 June 2024 the complainant acknowledged that some case information would be their own personal data. However they clarified that, for the purposes of this request, they were seeking 'information that falls inside the remit of the FOIA and outside the remit of Subject Access laws' and did not include any correspondence they had already received.
 7. On 28 June 2024 the public authority responded again; it withheld the information requested at parts 1 and 2 under section 44(1)(a). In relation to parts 3 and 4 of the request, it denied holding any specific documents in line with section 1 (general right of access to information) of FOIA. It also directed the complainant to publicly available documents on the ICO's website¹ and cited section 21 (information reasonably accessible to applicant by other means).
 8. On the same day, the complainant requested an internal review into the way that parts 1 and 2 of the request had been handled. They didn't raise any concerns about the public authority's handling of parts 3 and 4 of the request.
 9. The public authority provided the outcome to its internal review on 12 July 2024. It upheld its previous position in relation to parts 1 and 2 of the request.

¹ [ICO Service Charter](#); [Code of conduct](#); [Service complaint policy](#); [FOIA EIR Casework Service Guide](#)

Scope of the case

10. The complainant contacted the Commissioner on 12 July 2024 to complain about the way their request for information had been handled.
11. Neither the complainant's internal review or complaint raises any concerns about the handling of parts 3 and 4 of the request. The complainant seems to accept that the PHSO doesn't hold any recorded information as described, so the Commissioner won't consider parts 3 and 4 any further.
12. The Commissioner considers that the scope of his investigation is to determine whether the public authority was correct to withhold the information requested at parts 1 and 2 under section 44(1)(a).

Reasons for decision

Section 44 – prohibitions on disclosure

13. Section 44(1)(a) states that information is exempt from disclosure under FOIA if its disclosure is prohibited by or under any enactment.
14. The PHSO is specifically cited in the Commissioner's guidance² on section 44(1)(a). The PHSO deals with complaints from individuals about government departments, other public bodies and health services in England.
15. The PHSO's powers are drawn from the Health Services Commissioner's Act 1993 ('HSCA'). Section 15³ of the HSCA states that information obtained by the PHSO and its staff 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. To reiterate, what is being requested here is a copy of correspondence exchanged during the course of such an investigation.
16. There are other specific purposes in section 15 of the HSCA that would allow the disclosure of investigation information but disclosure under FOIA is not one of them.

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

³ [Section 15, Health Service Commissioners Act 1993](#)

17. Therefore, section 15 of the HSCA operates as a statutory bar under section 44(1)(a) of FOIA.
18. The complainant has put forward extensive arguments as to why disclosure of the requested information is in the public interest. However, section 44 is an absolute exemption which means that, if information is covered by any of its subsections, it is exempt from disclosure. It's not subject to the public interest test so these arguments aren't relevant.
19. Ultimately, the PHSO has a legal obligation not to disclose the requested information to the world at large and the Commissioner is satisfied that the PHSO was correct to withhold the requested information under section 44(1)(a) of FOIA.

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
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Wycliffe House
Water Lane
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Cheshire
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