

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 9 November 2020

Public Authority: Parliamentary and Health Service Ombudsman

Address: Millbank Tower
30 Millbank
Westminster
London
SW1P 4QP

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-45092-T8X4, for a decision whether a request for information made by the complainant to Parliamentary Health Service Ombudsman (PHSO) on 7 June 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 7 June 2019 the complainant requested the PHSO to disclose the following information:

"provide all documents of any kind, including emails, notes, etc, which contain any mention of the term 'functus officio', only from your record management system so no cross referencing necessary, for the period 1 August 2016 to 1 February 2018 (18 months), that have not previously been produced for FOI request FDN-275088."
3. The PHSO extended the time for compliance and notified the complainant of this decision on 27 June 2019.
4. The PHSO issued its response on 1 August 2019. It provided links to copies of relevant case law and refused to disclose the remaining information under sections 40(2), 44(1)(a) and 42(1) of the FOIA.
5. The complainant requested an internal review on 23 August 2019.
6. As he received no response, he chased the PHSO on 24 September and 10 October 2019.
7. The PHSO carried out an internal review and notified the complainant of its findings on 14 October 2019. It maintained the application of sections 40(2), 44(1)(a) and 42(1) of the FOIA.
8. The complainant referred the matter to the Commissioner on 16 January 2020.
9. The Commissioner wrote to the PHSO on 14 April 2020 to enquire what capacity it had to address this complaint in light of Covid-19.
10. The PHSO confirmed that it had capacity and the Commissioner clarified which request had been referred to her on 15 April 2020. She requested a copy of the withheld information and further submissions explaining the application of the exemptions cited.
11. The PHSO confirmed receipt of the Commissioner's email of 15 April 2020 the same day and said it would respond accordingly.
12. As the Commissioner did not receive a response, she chased the matter on 5 July 2020. She asked the PHSO to provide the requested information by 20 July 2020 or explain why it is still unable to do so.
13. The PHSO contacted the Commissioner by telephone on 3 August 2020 to enquire which request was under investigation and what information was needed.

14. The Commissioner responded on 4 August 2020. She provided additional copies of her correspondence to the PHSO which details the request referred to her and the information required.
15. As the Commissioner did not receive a response, she chased the matter again on 23 September 2020. She requested a response by 30 September 2020.
16. The PHSO responded on 23 September 2020. It confirmed that it would respond by the deadline set or provide a further update.
17. As the Commissioner received no response, she contacted the PHSO on 26 October 2020 and set a final deadline for 2 November 2020. To the date of this notice no response has been received.

Information required

18. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the PHSO shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - The withheld information.
 - Further more detailed arguments to support the application of sections 40, 42 and 44 of the FOIA as outlined in the Commissioner's email of 14 April 2020.

Failure to comply

19. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

20. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

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