

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2019

Public Authority: Parliamentary and Health Services
Ombudsman

Address: 29th Floor
Millbank Tower
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested copies of a Joint Working Team manual published in March and June 2019.
2. The Commissioner's decision is that, on the balance of probabilities, the Parliamentary and Health Service Ombudsman (PHSO) does not hold information within the scope of the request.
3. The Commissioner does not require the PHSO to take any further steps.

Request and response

4. On 28 June 2019, the complainant wrote to the PHSO and requested information in the following terms:

"I am trying to understand how the PHSO/LGSCO Joint Working Team Manual has been amended during the past year (e-mail exchanges between myself and [name redacted] below, refers).

I have obtained full pdf copies of the two JWT Manuals issued one with a created date of 12/7/2018 (pdf 160418), and the other with a created date of 04/03/2019 (pdf 040319 clean).

Under the FoI procedure, can you provide me with full pdf copies of the versions created in March and June 2019 (as referred to in [name redacted] e-mail of 26th June 2019)?"

5. The PHSO responded on 16 July 2019. It refused the request on the grounds that it did not hold the information requested because the author of these documents is the Local Government and Social Care Ombudsman (LGSCO).
6. Following an internal review the PHSO wrote to the complainant on 28 August 2019. It maintained its position with regard to the request.

Scope of the case

7. The complainant contacted the Commissioner on 6 September 2019 to complain about the way his request for information had been handled.
8. The complainant also brought a complaint under section 77, which has been considered and concluded separately by the Commissioner and does not form part of this decision.
9. The Commissioner considers the scope of this case is to be whether the PHSO holds information falling within the scope of the request.

Reasons for decision

10. 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.*

11. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The Complainant's position

12. The complainant's position is that the PHSO holds copies of the Joint Working Team (JWT) manuals specified in his request.
13. In his complaint to the Commissioner, the complainant argued that the PHSO is legally required to hold copies of these manuals:

"the failure of the JWT Manuals as requested, is a denial of its jurisdictional obligations...that denial can be interpreted legitimately as a rejection, or ignorance of its own jurisdiction, or an attempt to avoid any acknowledgement of its jurisdiction and its obligation to follow proper process and procedures"

The PHSO's position

14. The PHSO's position is that they do not hold copies of the JWT manuals of the type specified in the request.
15. At internal review, the PHSO explained that the JWT is managed within the Local Government and Social Care Ombudsman (LGSCO) as part of an agreement between PHSO and LGSCO. Whilst both Ombudsman work in cooperation with each other, the PHSO state that the chief body in charge of the JWT is the LGSCO.
16. In their submissions to the Commissioner the PHSO asserted that the LGSCO is the authority responsible for producing policy and guidance documents for the JWT and so would be most likely to hold this information for the purpose of the FOIA.

The Commissioner's view

17. The Commissioner's view is that, on the balance of probabilities, the PHSO does not hold the requested information.
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request,

the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. The Commissioner considers the PHSO to have interpreted the request correctly and carried out relevant and logical searches in order to establish whether it holds information within the scope of the request. In response to the Commissioner's enquiries, the PHSO consulted the Policy team who are responsible for the PHSO service model. As the requested information is operational in nature, the PHSO explained that the Policy team would be the team most likely to hold the information of the type specified in the request. Members of the Policy team confirmed that their electronic searches did not return information of the type specified in the request.
21. In order to assist the complainant the PHSO went on to contact the Joint Working Team and an Information Officer at the LGSCO. According to the PHSO, consultations with the relevant departments confirmed that the LGSCO would be most likely to hold previous versions of the JWT manual as they are responsible for producing this document. The PHSO went on to provide the complainant with the contact details of the relevant team at the LGSCO. The Commissioner considers that if the PHSO held information falling within the scope of the request it would likely have been located by these searches.
22. The Commissioner notes that the question of whether information is held in this case is largely dependent on how the PHSO/LGSCO work together on cases that are referred to the JWT. It is the complainant's view that the PHSO is obligated to hold copies of the JWT manual because it informs how the PHSO makes decisions on cases that fall under their jurisdiction, as well as that of the LGSCO.
23. The Commissioner notes that it would not be unreasonable to suggest that the PHSO hold previous versions of the JWT manual. However, the PHSO have clearly explained to the complainant that the LGSCO is the Ombudsman that is chiefly responsible for the JWT and the JWT manuals. The PHSO also explained to the Commissioner that staff go on secondment to the JWT and that the LGSCO is chiefly responsible for the day to day management of the team.

24. As stated previously, whilst the LGSCO accepts submissions from the PHSO, PHSO does not control the eventual contents or publication of the JWT manuals. Copies of the JWT manuals are stored on the LGSCO website and the PHSO argue that it has no control over the production of the manual. The Commissioner is therefore satisfied that the PHSO do not hold copies of the JWT manuals published in March and June 2019.
25. On the basis of the responses provided to the complainant by the PHSO, and the submissions provided to her over the course of her investigation, the Commissioner is satisfied that the PHSO does not hold information falling within the scope of this request.

Right of appeal

26. 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

27. 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.
28. 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

Mr Phillip Angell
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