

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 2020

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

Decision (including any steps ordered)

1. The applicant has requested information relating to the legal status of re-opening cases.
2. The Commissioner's decision is that the Parliamentary and Health Service Ombudsman (PHSO) has correctly cited section 14(1) of the FOIA in response to the request.
3. The Commissioner does not require PHSO to take any steps.

Request and response

4. On 11 October 2019, the applicant wrote to the public authority and requested information in the following terms:

(1) Please provide all relevant documents (commissioned legal advice, discussions, emails, legal briefing notes, unabridged Board Meeting Minutes etc..) that the PHSO possess with regard to the legal status of the re-opening of PHSO investigations after a case has been closed.

(2) Please provide all relevant documents (commissioned legal advice, discussions, emails, legal briefing notes, unabridged Board Meeting Minutes etc..) that the PHSO possess with regard to the legal status of fresh/new investigations after a case has been closed.
5. PHSO responded on 29 October 2019 and refused to provide the requested information citing section 14(1) of the FOIA as its basis for doing so.

6. Following an internal review PHSO wrote to the applicant on 26 November 2019 and maintained its position.

Scope of the case

7. The applicant contacted the Commissioner 27 November 2019 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the public authority has correctly applied section 14(1) to the request.

Reasons for decision

9. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
10. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
12. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the: "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
13. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in her

published guidance on vexatious requests¹. In brief these consist of, in no particular order: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence; frequent or overlapping requests; deliberate intention to cause annoyance; scattergun approach; disproportionate effort; no obvious intent to obtain information; futile requests; frivolous requests.

14. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
15. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
16. Where relevant, public authorities need to take into account wider factors such as the background and history of the request.
17. In its response of 29 October, PHSO simply stated:

"We consider that your request is burdensome with a level of unjustified disruption. To respond to this request is considered to be disruptive, burdensome and the PHSO would have to expend a disproportionate effort to meet the request which engages section 14(1) whereby we cannot reasonably be expected to comply."

18. The applicant responded stating:

"I am writing to request an internal review of Parliamentary and Health Service Ombudsman's handling of my FOI request 'The legal minefield of the PHSO re-opening of cases and the PHSO commencement of fresh/new investigations.'"

I do not agree that my request is vexatious.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealingwith-vexatious-requests.pdf>

The ICO have stated that the PHSO failed to provide relevant legal advice to the First-tier Tribunal regarding the review process. This current request is simply in response to this confusion.”

19. The case referred to above is currently under appeal and as that matter has yet to be decided the Commissioner is unable to comment further, however, she has taken into account any relevant information provided to her by PHSO in that case².
20. Following the internal review PHSO stated that since 24 January 2018 it has received 20 requests (containing 36 questions) from the applicant on the subject of reviewing PHSO’s decisions, and the legality behind its decision making. Nine of these have gone to internal review, and four have been referred to the ICO. None of these appeals have been successful. One is currently at First Tier Tribunal, but no decision has yet been reached.
21. It went on to explain that the request is similar to PHSO request R0000153, which asked for the same document types regarding the legal status of PHSO’s reviews, and the application of refusing a request because an alternative legal remedy was available. This request was refused under Section 42(1) of the Freedom of Information Act 2000 as it was legally privileged, and the ICO upheld the refusal of this request.
22. PHSO further explained that the request is also similar to PHSO request R0000532, which asked for whether PHSO obtained and received external legal advice on its review process. This request was refused under Section 14(1) of the Freedom of Information Act 2000 as vexatious, and again the ICO upheld the refusal of this request.
23. With regard to the specific arguments that this request is also vexatious PHSO stated that this subject has been looked at previously on numerous occasions by PHSO.
24. Most requests of the previous requests were complied with in full, but the applicant has previously shown what could be referred to as “unreasonable persistence”, and this request is another attempt to pursue the subject further.
25. PHSO further stated that request R0000532 asked for confirmation of information held, this was refused as vexatious by PHSO and the

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615684/fs50835684-1.pdf>

decision was upheld by the ICO. This was then followed up with a wider request asking for a copy of the actual information and further documents indicating that the applicant was misusing the formal procedure afforded to him under Freedom of Information Act 2000.

26. PHSO noted that the applicant stated this request was intended to address a matter concerning his appeal of request R0000532 to the First-Tier Tribunal. It explained that any disclosure to a request under Freedom of Information Act 2000 is to the world, and is not the appropriate process for ensuring the Tribunal has all the material it needs before proceeding with an appeal. This provides further evidence that the purpose of this request is unjustified, and that the request is vexatious.
27. Finally, PHSO stated that this request creates further work to a subject it has already diverted significant resources to. There have been many requests on the subject of PHSO's reviews, and several appeals through internal review, the ICO, and the First Tier-Tribunal. The PHSO only has a small team to handle freedom of information requests, and a significant amount of time has been spent dealing with information regarding the review process.
28. However, PHSO considered the threshold was crossed with R0000532 when it refused a request as vexatious, which was upheld by the ICO, yet the applicant submitted a further request with a wider scope, which would involve further work. It considered this burden is an unjustified disruption and shows the request can be considered vexatious.

The Commissioner's decision

29. The Commissioner notes the number of requests preceding the request which is the subject of this Notice relating to PHSO case reviews and the legality of that.
30. The Commissioner is satisfied that this does demonstrate a high frequency of requests and the significant burden this imposes on PHSO. She further notes that PHSO has responded to many of the previous requests providing information despite the burden. It is therefore reasonable for PHSO to now consider section 14(1) as it is unable to sustain this level of disruption.
31. Given the subject matter of previous requests the Commissioner considers that PHSO responding to this request would be unlikely to be a satisfactory conclusion for the applicant. This is evidenced by the fact that this request was a wider request than that previously submitted and refused.

32. In all the circumstances of the case, the Commissioner is satisfied that PHSO correctly cited section 14(1) of the FOIA in response to this request.

Right of appeal

33. 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

34. 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.
35. 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

Pamela Clements
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