

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2021

Public Authority: Parliamentary and Health Service Ombudsman
Address: Citygate
Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant has requested certain statutory and regulatory information. The Parliamentary and Health Service Ombudsman ('PHSO') has advised that it does not hold the specific information requested.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, PHSO does not hold the requested information and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require PHSO to take any remedial steps.

Request and response

4. In correspondence to PHSO about its handling of a complaint he had submitted to it about a government department, on 16 July 2020 the complainant wrote to PHSO and requested information in the following terms:

"I am also going to again repeat my request that the PHSO provide statutory and regulatory details which support their current stance as without any legal justification you and your colleague are just making statements which neither of you can legally justify and therefore the

decisions currently made by you both and on behalf of the PHSO are unlawful.”

5. As a result of the Commissioner’s decision in IC-62249-T4D1, PHSO provided a response to the request on 9 December 2020. In line with the duty under section 16(1) of the FOIA to offer applicants advice and assistance, PHSO advised the complainant that it had interpreted his request as being for information that explains why PHSO is able to refuse “complaints made to UK government departments” as premature and, specifically, the legal basis for doing so. [The Commissioner considers that PHSO may have meant “...complaints made *about* UK government departments...” here.]
6. PHSO went on to explain that section 5 of the Parliamentary Commissioner's Act 1967 explains the matters subject to investigation by the Parliamentary Commissioner, and that section 5(5) of the Parliamentary Commissioner's Act 1967 states the following on when to initiate a complaint:

“(5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Commissioner.”
7. Finally, PHSO provided the complainant with a link where he could read the legislation online.
8. PHSO provided an internal review on 18 February 2021. It upheld its position and confirmed it does not hold the specific information the complainant has requested.

Scope of the case

9. The complainant contacted the Commissioner on 11 March 2021 to complain about the way his request for information had been handled.
10. The Commissioner’s investigation has focussed on whether, on the balance of probabilities, PHSO holds recorded information that falls within scope of the complainant’s request.

Reasons for decision

Section 1 – general right of access to information held by public authorities

11. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
12. The complainant has requested statutory or regulatory information that supports PHSO's position not to investigate his complaint before a particular process had been exhausted - in this case, before the department concerned had issued the complainant with a final decision letter.
13. In its submission to the Commissioner, PHSO has noted that the request asks for "statutory and regulatory details" which support its position. It has confirmed that no such detail exists.
14. PHSO then referred to section 2.36 of its main Service Model Guidance:

"2.36 In health cases, the law prevents us from conducting an investigation unless we are satisfied the complaints process has been used and exhausted, or it was not reasonable to expect the complainant to have done so. (Legal requirement). There is no legal requirement for parliamentary complaints to have been looked at by the organisation complained about."
15. PHSO says that it looked through the Parliamentary Commissioner's Act 1967 to determine whether there was anything specific which would support its position that a final response from the government department concerned to the complainant was required. The complainant has specifically asked for information held in an enactment or referencing an enactment. PHSO considers that as there is no reference in "an enactment" [by which the Commissioner understands PHSO to mean the Parliamentary Commissioner's Act 1967] it seemed reasonable that it would not hold recorded information that stated anything to the contrary.
16. Summarising, PHSO says it maintains its position that it holds no information within the scope of the complainant's specific request. Its Service Model Guidance makes clear that there is no strict statutory detail that requires PHSO to have a final response from a government department [that is, to have a copy of a final response from the department to the individual submitting a complaint to PHSO] before it

can accept a complaint under the Parliamentary Commissioner's Act 1967. However, PHSO *does* have discretion in whether a complaint is duly made as per section 5(5) of the Parliamentary Commissioner's Act 1967, which it had referred the complainant to in its original response to the request. Using its discretion on this occasion, PHSO requires the complainant to have received a final decision from the government department before it will accept his complaint about that department.

17. The Commissioner is satisfied that the information to which the PHSO directed the complainant in its response of 9 December 2020 - section 5(5) of the Parliamentary Commissioner's Act 1967 - addresses the complainant's question. While there is no strict statutory detail that requires PHSO to have a final response from a government department before it can accept a complaint, section 5(5) of the Parliamentary Commissioner's Act states that the Parliamentary Commissioner has discretion as to when to initiate, continue or discontinue an investigation under that Act. There is no statutory or legislative duty on PHSO to manage complaints brought to it in a particular way – PHSO has discretion as to how it manages those complaints. PHSO's position is therefore that it does not hold any recorded information within scope of the complainant's request and the Commissioner accepts that is the case. She has decided that PHSO does not hold the requested information and complied with section 1(1)(a) of the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

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