

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 January 2022

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

Decision (including any steps ordered)

1. The complainant requested information relating to case-handling procedures. The Parliamentary and Health Service Ombudsman ("the PHSO") initially withheld the information before disclosing all the information it said it held within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the PHSO holds no further information beyond that which it has already disclosed to the complainant or published on its website. However, as it failed to respond to the request within 20 working days, it breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 1 July 2021 the complainant requested information of the following description:

"[1] Could you please set out the procedures available and training provided in order to ensure that case workers and managers within the Parliamentary and Health Ombudsman are able to identify when any case they are investigating requires expertise that they do not possess, and the processes in place to ensure that this advice is sought and provided."

"[2] Also, what measures are in place which provides assurance to the service that these procedures are being followed and are used."

5. On 8 February 2021 the PHSO responded to element [1] of the request. It noted that the information was already reasonably accessible to the complainant and pointed him towards a document on its website.
6. On 11 March 2021, the PHSO responded to element [2] of the request. It provided a small quantity of information, but withheld the remainder. It relied on section 22 of the FOIA (intended for publication) to withhold that information.
7. The complainant requested an internal review on 13 March 2021. The PHSO sent the outcome of its internal review on 14 May 2021. It revised its position, withdrew its reliance on section 22 and disclosed the information it had previously relied on that exemption to withhold.

Scope of the case

8. The complainant contacted the Commissioner on 9 June 2021 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether or not the PHSO holds further information within the scope of the request.

Reasons for decision

Section 1 - Held/Not Held

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. 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. He 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, he will consider any reason why it is inherently likely or unlikely that information is not held.

12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's view

13. The complainant considered that the documents the PHSO had provided to him were irrelevant to his request as they were not specific enough. He argued that most of the document did not deal with the specific issue raised in his request and those that might be thought to cover it did not do so in sufficient detail.
14. The complainant felt that the PHSO did not have documents he thought that it should have and instead had provided irrelevant information, noting that:

"The section of the procedures stated the case workers should seek professional legal advice when needed, but the information did not explain how the case workers might identify this, and importantly what efforts the PHSO devote to training to ensure that they understand how to satisfy the requirement to identify the gaps in their knowledge. I would argue it should not be down to the case worker to do this, but if the PHSO say the case worker is responsible, they need to make this possible."

15. The Commissioner is aware from earlier complaints that the complainant was dissatisfied with the way the PHSO had dealt with a complaint he had previously submitted.

The PHSO's position

16. The PHSO explained to the Commissioner that it was satisfied that it held no further information beyond that provided. It noted that:

"PHSO asked its Policy Team, which creates the processes that caseworkers and their managers should follow, and so are best suited to know what recorded information is held which would comply with the first request."

PHSO also asked its Quality & Improvement Team, which is responsible for reviewing casefiles to ensure that procedures are being followed appropriately, and are tasked with identifying potential improvements in the casework process. This team would

be best suited to identifying information relevant to the second request."

17. The PHSO explained that it had not carried out formal searches as its initial enquiries with these teams had indicated that there would be nothing to find. In any case, it considered that devising relevant searches likely to identify any further information would not be straightforward.

18. Turning to its processes, the PHSO noted that:

"Regarding the first request, when caseworkers join PHSO they complete an internal training course which explains how they are supposed to handle complaints. PHSO has caseworkers and managers who've been working here for vastly different lengths of time, so the training they went through will have been amended since.

"In order to ensure that there is continuity in approach caseworkers and managers refer to PHSO's Service Model Guidance, which provides details on when to refer matters to information experts and the processes for doing so. This is available on PHSO's website as a reference for complainants and complained about organisations, similar to how the ICO has guidance on how FOIA exemptions should be considered. Therefore the Service Model Guidance is the guide that caseworkers and managers must refer to in order to "identify when any case they are investigating requires expertise that they do not possess, and the processes in place to ensure that this advice is sought and provided".

"Regarding the second request, PHSO provided a copy of its internal document 'Quality Standards and Measures -Branded Final Version'. This shows the checks that are made by its Quality & Improvement Team in order to ensure that the correct procedures are followed, including seeking advice from internal or external experts where required."

The Commissioner's view

19. On the balance of probabilities, the Commissioner is satisfied that the PHSO has identified all the information that it holds within the scope of the request.
20. Whilst the exact complaint-handling processes followed are not the same, the Commissioner is able to draw on some of his own experience as a regulator dealing with complaints.

21. Every year, the Commissioner, like the PHSO, receives thousands of complaints encompassing a wider variety of different scenarios. It would be neither possible nor practical to create bespoke rules that would deal with every issue that might plausibly arise. Instead, caseworkers are provided with a framework and broad principles which they are expected to apply to the individual circumstances of each case. They may also have a certain amount of discretion to be flexible in the way that they apply the framework if it is likely to lead to a more satisfactory outcome.
22. The PHSO's own guidance makes clear that, in most cases, legal advice will not be required.¹ Drawing on his own experience, the Commissioner does not consider this to be surprising. A case officer's first port of call when they encounter an issue that they are unfamiliar with will be to seek the advice of their line manager or another more experienced member of staff. Only when these options have been exhausted without finding a definitive solution is more formal, professional, advice likely to be sought.
23. Equally, it is difficult to lay down a precise set of rules to determine when a particular caseworker needs advice or when they don't. A less confident, less experienced member of staff is far more likely to seek advice on any given case than someone with more experience and expertise. Ultimately a caseworker either knows that they need to seek advice or knows that they do not.
24. Turning to the second element of the request, the information that has been provided sets out that the PHSO will seek advice "when needed" from internal and external sources. "When needed" is necessarily a subjective standard because it will depend on the precise circumstances of the case.
25. The Commissioner is not convinced that the PHSO would have any business need for the relatively precise set of instructions that the complainant apparently believes it ought to hold. Many of the decisions that the PHSO needs to take are necessarily fact-specific and having prescriptive rules is not necessarily desirable. The complainant appears to be of the view that his PHSO complaint could not have been dealt without such rules being in place – but that is not the Commissioner's experience as a regulator and he sees no evidence to suggest that the PHSO takes a substantially different approach.

¹ (See para 3.58)

https://www.ombudsman.org.uk/sites/default/files/Service_Model_Main_Guidance_19.0.pdf

26. Nevertheless, the question for the Commissioner is not whether the PHSO ought to hold the requested information, but whether it in fact does so. No evidence has been put forward to demonstrate that the PHSO's assertion that it does not hold the requested information is not correct and, in the circumstances, the Commissioner agrees that it is more likely than not that the PHSO has provided all the information it holds within the scope of the request.

Procedural Matters

27. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of FOIA and communicate all non-exempt information "promptly and in any event not later than the twentieth working day following the date of receipt."
28. Whilst the PHSO responded to the first element of the request within 20 working days, it did not respond to the second element until two months after the request was first made.
29. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a complete response to the request within 20 working days, the PHSO has breached section 10 of the FOIA.

Other matters

30. The Commissioner notes that this is the third decision notice he has issued for the complainant in the last nine months. It is also the third request that would appear to stem from the complainant's dissatisfaction at the way his original PHSO complaint was dealt with.
31. It is not for the Commissioner to judge whether the PHSO complaint was or was not dealt with correctly. However, he would warn the complainant that the FOIA is not the appropriate mechanism by which to revisit, reopen or reargue the outcome of a PHSO complaint. There is a risk that future, similar, requests may be considered to be an abuse of the FOIA process.

Right of appeal

32. 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

33. 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.
34. 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

Roger Cawthorne
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