

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2025

Public Authority: Parliamentary and Health Service Ombudsman
Address: Citygate
47-51 Mosley Street
Manchester M2 3HQ

Decision (including any steps ordered)

1. The Commissioner's decision is that the Parliamentary and Health Service Ombudsman (PHSO) is entitled to refuse the complainants' request for information about their late relative under section 44(1)(a) of FOIA, which concerns prohibitions on disclosure. PHSO failed to issue a section 44 refusal notice, however, and so didn't comply with section 17(1).
2. The Commissioner doesn't require further steps.

Request and response

3. Regarding their late relative, the complainants made the following information request to the Parliamentary and Health Service Ombudsman (PHSO) on 4 September 2024:

"The request and response for Medical Advice (Nursing) dated 19th April 2024 - unredacted apart from author's details

The request and response for Medical Advice (Nursing) dated 26th July 2024 - unredacted apart from author's details."
4. The Commissioner hasn't been provided with a copy of the complainants' original request, but he believes that they understood that they had submitted it to PHSO under FOIA.

5. PHSO responded on 12 September 2024. It advised that it was handling the request under the Health Service Commissioner's Act 1993 (HSCA). PHSO provided some relevant information and advised that it had made redactions to that information in line with HSCA's requirements.
6. Following the complaint to the Commissioner, and contact from him, PHSO advised that it wouldn't be carrying out an internal review as it had handled the request under HSCA and not FOIA.
7. In a subsequent submission to the Commissioner, PHSO explained that it had treated the request as a 'material evidence' request. It said that this was because the complainants are requesting information relating to their late relative. The UK General Data Protection Regulation 2018 and Access to Health Records 1990 don't provide the complainants with a right of access to their relative's medical information from PHSO, but PHSO's 'material evidence' policy does. That's why PHSO chose this option for the complainants.
8. PHSO went on to say in its submission that were it to handle the request under FOIA, it would be refused under section 44(1)(a).

Reasons for decision

9. This reasoning covers whether PHSO is entitled to refuse the complainants' request under section 44(1)(a) of FOIA, and an associated procedural matter.
10. Section 44(1)(a) of FOIA says that information is exempt information if its disclosure (otherwise than under FOIA) by the public authority holding it is prohibited by or under any enactment. Section 44 is an absolute exemption, which means it's not subject to the public interest test.
11. In its submission, PHSO has confirmed that [section 15\(1\) of the Health Service Commissioners Act 1993](#) prohibits it from disclosing information obtained during an investigation. Such information is confidential and can only be disclosed in very specific circumstances [none of which are relevant here].
12. PHSO has noted that disclosure under FOIA is, in effect, disclosure to the world and says it would never place the confidential information the complainants have requested into the public domain, by disclosing it under FOIA.

13. The Commissioner is satisfied that PHSO is entitled to refuse the complainants' request under section 44(1)(a) of FOIA, as the HSCA prohibits its disclosure under that legislation. This is in line with the Commissioner's decision in similar cases, such as [IC-319530-Z1C1](#) and [IC-256162-X7J7](#).

Procedural matters

14. Under section 17(1) of FOIA, a public authority that's relying on an exemption to withhold information should provide the applicant with a refusal notice that cites the exemption being relied on and explains why that exemption applies.
15. In correspondence to the Commissioner, the complainants have described their request as a FOIA request. The Commissioner has reviewed PHSO's response to the request (and its subsequent correspondence with the complainant). In its response, PHSO explains that it's handling the request under HSCA, but doesn't explain why it's not handling it under FOIA.
16. The Commissioner considers that PHSO should have provided the complainants with a section 44 refusal notice under FOIA, before moving on to discuss HSCA. This might have made it easier for the complainants, as lay people, to understand a somewhat complicated situation. As such, the Commissioner finds that PHSO breached section 17(1) of FOIA.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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