

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 23 March 2015

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

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the register of staff interests.
2. The Commissioner's decision is that the Parliamentary and Health Service Ombudsman does not hold any further information within the scope of the request.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

**Request and response**

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4. On 15 November 2013, the complainant wrote to the Parliamentary and Health Service Ombudsman (PHSO) and requested information in the following terms:

*"Could you please send new an up to date disclosure log if employees interests starting from January 2011."*

5. PHSO responded on 13 December 2013 and refused to provide the requested information. It cited section 12 of the FOIA (cost of compliance) as its basis for doing so.
6. The complainant made a further request on 25 May 2014 in the following terms:

*"From your internal files, it is now my understanding that clinical advisors come into the senior officer category and therefore the information on their registered conflicts of interest should have been given, along with that of the directors.*

*Because, the PHSO's employee Relations Manager states in the internal file. 'as the clinicians are SA1's and SA3's, they come into the senior officer bracket.'*

*In the PHSO's Conflict of Interest policy it states:*

*'The Register of Interests for Senior Staff is included in the PHSO publication scheme and is, therefore, openly available', as JM of the FOI department states.*

*This document should spell out exactly what conflicts of interest clinicians have...In which areas of expertise and with which health boards.*

*I would therefore like to read the register of interests for Senior Staff for the past five years... Since it is 'openly available' but not included with this reply"*

7. PHSO responded on 25 May 2014 and provided a copy of the clinical advice form and advised that interests of senior managers are declared as part of its Resource Accounts. It also provided a link to its website for previous reports.
8. PHSO further stated that 2013/2014 Directors' interests would be published shortly and therefore cited section 22 of the FOIA.
9. Following an internal review PHSO wrote to the complainant on 18 August 2014. It stated that it did not hold any further information within the scope of the request.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 14 November 2014 to complain about the way her request for information had been handled. The Commissioner considers from the nature of her request of 25 May 2014 and the outline of her complaint to him that her issue is specifically about the fact that clinical/nursing advisers should be considered senior members of staff and therefore should fall within the scope of the request.

11. The Commissioner considers the scope of this case to be to determine whether this is in fact the case and also whether the PHSO holds further information falling within the scope of the request which it has not provided to the complainant. As no complaint has been specifically made about the PHSO's application of section 22 the Commissioner has not investigated or made a decision on this.

## **Reasons for decision**

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### **Section 1(1) – information not held**

12. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that PHSO holds further information, this argument cannot carry weight.
15. In correspondence with the Commissioner the complainant explained that she considered there was a contradiction in PHSO statements. The complainant considered that the interests of all senior officers are publically available, or they are not.
16. The Commissioner invited PHSO to review its handling of the request. It became clear at this point the complainant's concern had been caused in part by a fundamental misunderstanding of who the phrase "senior staff" applies to in its policy and guidance.
17. PHSO went on to explain that the complaint to the Commissioner is, in part, predicated on the fact that its clinical and nursing advisers are senior staff. The complainant has highlighted references in papers previously provided to her that their pay grades are the same or equivalent of senior staff. It therefore appears that they are or should be included in the information PHSO publishes about the registered interests of senior members of staff.

18. PHSO stated that it uses the phrase "senior staff" to refer to senior managers i.e. staff at the top of the organisation. Although clinical advisers may well be paid at a senior grade (commensurate to their skills and experience in the NHS), they do not have a management role and are not directly responsible for leading the organisation. Clinical advisers provide advice on the clinical and nursing aspects arising in complaints which is then used by PHSO caseworkers and managers in deciding what decisions to make.
19. PHSO acknowledged that there may at times be a conflict of interest, but this is managed and recorded differently. In the first instance, all staff are asked to declare any interests/potential conflicts and this information will then be held on their HR file. However, clinical and nursing advisers all have current or former links to the NHS which means it is more practical to consider a potential conflict on a case by case basis. As such, clinical and nursing advisers also declare interests in relation to the specific case they have been asked to advise on, rather than on a central register.
20. Therefore in response to the request for a register of interests which includes clinical and nursing advisers PHSO has stated that it does not record or include that information in a central register of interests. In addition this is not published because clinical and nursing advisers are not considered to be senior managers.
21. The Commissioner is mindful of the complainant's genuine reasons for making this request. However, it is clear that the terminology used of "senior staff" is where the problem has arisen.
22. PHSO has explained that pay scales for clinical and nursing advisers may well be the same as "senior staff", however due to their role of providing advice rather than management responsibilities or leading the organisation, they are not considered to be "senior staff" in the PHSO structure and therefore would not be included in the registers it publishes.
23. Each adviser is asked on a case by case basis if they have any conflict of interest i.e. if they have any links with the organisation being complained about. The adviser completes a form and it remains with the case file.
24. Having considered the response provided by the PHSO the Commissioner is satisfied that the definition of senior staff does not include clinical and nursing staff. He is therefore satisfied that it has provided all the information it does hold about senior staff conflict of interest records or links to it other than that to which it has applied section 22 which the complainant has not complained about.

## **Other Matters**

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25. The Commissioner notes that PHSO does hold the 'building blocks' to compile a register for all other staff if this information was requested. However in order to be able to provide the information it would need to be extracted from individual HR files and/or complaints case files where it may be in part recorded and then would need to be put into a register.
26. The Commissioner is therefore also mindful that if PHSO were to attempt to compile such a register for the purposes of a response to a request for information, it would be highly likely to invoke section 12 (costs to comply) or section 40(2) (third party personal data) of the FOIA.

## Right of appeal

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27. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**