

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2017

Public Authority: Parliamentary and Health Service Ombudsman

Address: Millbank Tower
Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested information about complaints, assessments, investigations and individuals. The Parliamentary and Health Service Ombudsman (PHSO) says it is not obliged to comply with the requests under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that PHSO is not obliged to comply with the requests under section 12(1). The Commissioner is satisfied that PHSO met its obligation under section 16 to offer advice and assistance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 May 2016, the complainant submitted two requests to PHSO through the '*WhatDoTheyKnow*' website:

Request 1

"For the period 1 April 2015 to 31 March 2016 please provide:

- 1. The total number of enquiries the PHSO received;*
- 2. The total number of individuals who complained to the PHSO;*
- 3. The number of individuals who had one, two, three, complaints etc.;*
- 4. The total number of assessments completed;*
- 5. The total number of individuals with assessments;*
- 6. The number of individuals who had one, two, three assessments etc.;*
- 7. The total number of investigations accepted;*
- 8. The total number of individuals with investigations;*
- 9. The number of individuals who had one, two, three investigations etc.;*
- 10. The total number of fully/partly upheld investigations;*
- 11. The total number of individuals with fully/partly upheld investigations;*
- 12. The number of individuals with fully/partly upheld investigations who had one, two, three investigations etc.;*
- 13. The total number of investigations that were not upheld;*
- 14. The total number of individuals whose investigations were not upheld; and*
- 15. The number of individuals whose investigations were not upheld who had one, two, three investigations etc."*

Request 2

"1. Please provide details of the number of open complaints you have about yourselves as of today. Specify the numbers for:

- i. service;*
- ii. decision; and*
- iii. service and decision.*

2. Please provide details of the length of time these complaints have been open:

- 5 working days or less from today;*
- 6-10 working days from today;*
- 11-15 working days from today;*
- 16-20 working days from today;*
- 21-25 working days from today;*
- 26-30 working days from today;*
- 31-40 working days from today;*
- 41-50 working days from today;*
- 50-60 working days from today;*
- 61-80 working days from today;*
- 81-100 working days from today;*

*101-150 working days from today;
151-200 working days from today;
201-250 working days from today;
251-300 working days from today;
301-350 working days from today; and
351 or more working days from today.*

I would be content with "today" being taken as 2 May 2016 or any day in the first week of May if this would be more convenient, whilst allowing for a reply within the statutory time scale.

3. Please provide details of the number of open complaints (decisions) you have about yourselves as of today that have been passed to the Corporate Casework Team for a review.

4. Please specify the length of time these complaints about yourselves have been open with the Corporate Casework Team:

*5 working days or less from today;
6-10 working days from today;
11-15 working days from today;
16-20 working days from today;
21-25 working days from today;
26-30 working days from today;
31-40 working days from today;
41-50 working days from today;
50-60 working days from today;
61-80 working days from today;
81-100 working days from today;
101-150 working days from today;
151-200 working days from today;
201-250 working days from today;
251-300 working days from today;
301-350 working days from today; and
351 or more working days from today.*

I would be content with "today" being taken as 2 May 2016 or any day in the first week of May if this would be more convenient, whilst allowing for a reply within the statutory time scale."

5. PHSO responded on 28 May 2016. It said that, under section 12(1) of the FOIA, it had refused to comply with these requests when they had been submitted by another requester, as it would exceed the appropriate limit to do so. PHSO said that section 12(1) therefore applied to the requests submitted by the complainant. PHSO advised the complainant that requests for the same or similar information, and

received from an individual or individuals working in concert, can be amalgamated for the purposes of section 12.

6. Following an internal review PHSO wrote to the complainant on 25 July 2016. It maintained its position that it is not obliged to comply with his requests under section 12(1) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 2 August 2016 to complain about the way his requests for information had been handled.
8. The Commissioner's investigation has focussed on whether PHSO correctly applied section 12 to the two requests. She has also considered whether PHSO met its obligation to offer and advice and assistance, under section 16.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

9. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
10. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to PHSO. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and

- (d) extract the information from a document containing it.
11. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.
 12. The Commissioner agrees with PHSO that the two requests are for broadly similar information, and notes that they were submitted on the same day. The Commissioner therefore considers that PHSO is correct to aggregate the two requests for the purposes of applying section 12(1).
 13. In its submission to the Commissioner, PHSO says that its Information Management specialists have calculated that it would take over 23 hours to comply with the first request.
 14. PHSO explained that this is because the information the complainant has requested cannot easily be extracted from its case management system. While some parts of the request would only take a few minutes per part, to answer other parts would take a long time. These parts relate to the number of individuals.
 15. PHSO says it captures how many complaints are made, and each of these has a contact record attached to it, which relates to an individual, advocacy group, pressure group or other. PHSO refers to these as 'complainants'. PHSO says there is not one complainant for each complaint it receives, because people can submit multiple complaints. It is also possible that one contact record covers two people (eg 'Mr & Mrs Smith', who would be two individuals).
 16. PHSO has told the Commissioner that the only way to extract the total number of people who have made complaints is to go through each record manually. It would also need to rule out duplicate contact records as it is aware that some people have been added to its system more than once. PHSO says there is no easy way of filtering out these duplicate records other than running checks against each record to ensure it is not a duplicate record.
 17. With regard to the complainant's second request, PHSO had confirmed that he has requested information held by PHSO's Customer Care team at a specific date in May.
 18. PHSO has told the Commissioner that before the introduction of a new case management system in late 2016, its Customer Care team was very reliant on the use of spreadsheets which each Customer Care Officer used to compile and keep track of their work (referred to as 'trackers'). In addition, it was not possible to extract a snapshot of this

data from any computer system, so would all have to be manually extracted.

19. As the date of the request had passed (at the point PHSO responded to it) extracting the information would mean recreating the state of the trackers at that date (2 May 2016). PHSO says it would have to look at any cases currently open and which may have been open on 2 May 2016 and work out how many days each was open for. PHSO says it would then need to look at any cases that have since been closed to find out if they would have been open at the specific date in May, and work out how long they would have been open at that date.
20. PHSO says its Customer Care team has extracted this data for information requests previously and it arrived at a figure of seven hours to extract this information in order to respond to the complainant's request.
21. PHSO has also said that if someone wanted to know how many cases it has open as of today's date, it could produce this figure far more easily as its new case management system is better suited to producing this type of data.
22. Given the volume of information requested and PHSO's record and case management systems at the time of the request, the Commissioner is prepared to accept as credible and reasonable PHSO's estimate of 30 hours work to respond to the two requests. She is therefore satisfied that PHSO is correct to apply section 12(1) to the requests, and is not obliged to comply with them.

Section 16 – advice and assistance

23. In its internal review of its response to the requests, PHSO advised the complainant how his requests might be refined so that they might be responded to within the cost and time limit; namely by submitting a smaller number of individual requests.
24. PHSO has told the Commissioner that it was not possible to provide more precise information on how to best narrow the requests as the granular nature of all the data requested meant there was not one obvious part that could be answered easily. While PHSO routinely publishes data about the types of complaints it receives, it does not produce this data in the context of individuals making those complaints.
25. The Commissioner is satisfied that PHSO complied with section 16 and offered the complainant adequate advice and assistance with regard to his requests.

Right of appeal

26. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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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