

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2017

Public Authority: Parliamentary and Health Services Ombudsman

Address: Millbank Tower
Millbank
London SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested information from the Parliamentary and Health Service Ombudsman (PHSO) about a publication. PHSO says it does not hold the specific information that has been requested.
2. The Commissioner's decision is that PHSO does not hold the requested information and has complied with its obligations under section 1(1).
3. The Commissioner finds that PHSO breached section 10(1) of the FOIA because it did not comply with section 1(1) within 20 working days. Finally, she has found there has been no breach of section 16(1) (advice and assistance).
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 12 May 2016, the complainant wrote to PHSO and requested information in the following terms:

"Page 40-41 of your publication 'Complaints about UK government departments and agencies, and some UK public organisations 2014-15' lists statistics in relation to complaints lodged about the Information Commissioner's Office:

Complaints accepted for investigation = 52

Investigations upheld or partly upheld = 8

Investigation not upheld = 55

1) How come there are more complaints "not upheld" than there are complaints accepted for investigation?

Having done a quick scan through the data, I've learnt that no other organisation displays this unique characteristic (of having more complaints upheld than accepted for investigation).

2) i) How come HM Revenue and Customs appear two times for both the 2014-15 data set and 2013-14 data set. Same goes for HM Treasury and Home Office.

One entry appears highlighted, other is not.

ii) Any information on how you propose for anyone to make sense of this data? (when there are multiple entries for an organisation with the same name; and an absence of a clear index to distinguish between the highlighted entry and the one that is not)

I note the publication contains an 'Annex A: Data considerations and caveats' on page 30. Having read through it I am non the wiser about the answers to the questions above."

6. PHSO responded on 15 June 2016. It said that it does not hold information within the scope of the complainant's requests, in recorded form. PHSO apologised for the difficulty the complainant had had in understanding the information contained in the publication in question. It provided narrative answers to requests 1 and 2(i) and with regard to request 2(ii) expressed the hope that its answers to 1 and 2(i) had clarified matters.
7. Following an internal review PHSO wrote to the complainant in correspondence dated 7 September 2016, which was posted on the 'WhatDoTheyKnow' website on 8 September 2016. PHSO acknowledged that it had not responded to the complainant's request within 20 working days. It upheld its position that it does not hold the information the complainant has requested.
8. PHSO confirmed that it considered that the information it had given to the complainant in respect of requests 1 and 2(i) was adequate and appropriate and disputed that 2(ii) was only answered in part. It further confirmed that it considered it had been appropriate to treat requests 2(i) and 2(ii) as two separate requests. It said that as information

requested in respect of requests 2(i) and 2(ii) was not held, there was no requirement for PHSO to provide clarification in respect of request 2(ii). Finally PHSO said that the apology it had given, and the general information it had provided, went beyond PHSO's obligations under the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 30 August 2016 to complain about the way his request for information had been handled. The focus of the complainant's concern was the internal review that PHSO had carried out and remained so during the greater part of the Commissioner's investigation. In later correspondence, following repeated confirmation that provision of an internal review is not a requirement of the FOIA, the complainant told the Commissioner that he disputes that PHSO does not hold particular information he requested and considers that PHSO did not provide him with adequate advice and assistance.
10. The Commissioner's formal investigation has focussed on whether or not PHSO holds information requested at request 2(ii); whether it complied with section 10(1) and whether section 16 has been breached.
11. The Commissioner has considered the internal review that PHSO undertook separately, under 'Other Matters'. Provision of an internal review is not a requirement of the FOIA and it is therefore not appropriate to include this particular matter as part of the Commissioner's formal investigation.

Reasons for decision

Section 1 – general access to recorded information

12. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
13. The complainant considers that PHSO *does* hold information relevant to part 2(ii) of his request. He considers that when a report such as '*Complaints about UK government departments and agencies, and some UK public organisations 2014-2015*' is compiled, data would need to be transferred, stored and analysed with several personnel involved. The complainant says that data itself is likely to be held in a central

repository. The strategies and methods for analysis will be held on documents and emails of the personnel involved or in an archive, in accordance with the organisation's data retention schedule.

14. PHSO's position is that it does not hold this information. It has confirmed to the Commissioner that the information contained in the report that is the subject of the complainant's request derives from PHSO's casework management system (CMS). PHSO says it has consulted with its Management Information Team which is responsible for compiling information for such reports. The Team has confirmed that the information in the report is pulled from PHSO's CMS and sent to PHSO's External Affairs and Strategy Team, which produces the publication. This Team has confirmed that, apart from statistics, no methodology or analysis document such as the complainant has described was produced. In addition, PHSO's searches of its electronic document management system have confirmed this.
15. The Commissioner has considered the information that was requested at part 2(ii) of the complainant's request. She considers that the explanation that PHSO has provided and that the additional search it undertook was sufficient. Consequently, and on the balance of probabilities, the Commissioner is satisfied that PHSO does not hold information falling within the scope of this element of the request.

Section 10 – time for compliance

16. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) as soon as possible and within 20 working days. In this case, the complainant submitted his request on 12 May 2016 and received a response on 15 June 2016. This was three working days over the 20 working day requirement and therefore a breach of section 10(1).

Section 16 – advice and assistance

17. Section 16(1) of the FOIA places a duty on the public authority to offer the applicant advice and assistance, so far as it would be reasonable.
18. The complainant appears to consider that PHSO did not offer him adequate advice and assistance regarding request 2(ii) specifically, and that had it done so it might have better understood this request and found it does hold related information.
19. The duty to provide advice and assistance arises in certain situations. These are broadly:

- a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds;
 - b) if a request for information is not clear to the public authority; and
 - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit.
20. With regard to b) above, in his request for an internal review, although the complainant expressed dissatisfaction with PHSO's response to request 2(ii) he did not indicate that PHSO had misunderstood this particular request. In the Commissioner's view, PHSO had correctly interpreted the request. She has reviewed PHSO's response to the requests and its internal review response and considers its reasoning regarding requests 2(i) and 2(ii) is sound and that it handled the three requests satisfactorily.
21. The Commissioner considers that PHSO can be said to have provided advice and assistance by providing the complainant with narrative responses to the complainant's requests. PHSO is correct that it was not obliged to do this under the FOIA.
22. The Commissioner therefore finds there that PHSO has not breached section 16(1).

Other matters

Internal reviews

23. The Commissioner has explained to the complainant more than once that provision of an internal review is not a requirement of the FOIA.
24. The Commissioner recommends that public authorities undertake an internal review as a matter of good practice. She advises that internal reviews are carried out within 20 working days of the request for one, and in no cases longer than 40 working days. But to repeat, this is a recommendation and not a requirement.
25. In this case, the complainant requested an internal review on 12 July 2016 and PHSO provided one on 7 September, just within the 40 working days that the Commissioner advises. Had PHSO exceeded 40 working days, the Commissioner would not find that PHSO had breached

the FOIA because, as above, provision of an internal review is not a requirement of the Act.

26. In its internal review, PHSO addressed concerns the complainant raised and apologised that its response to his request had been late. The complainant is dissatisfied that PHSO found that request 2(ii) had been treated as a separate request. He considers that PHSO was not clear on the information that had been requested and should have contacted the complainant in order to clarify the matter.
27. As discussed elsewhere in this notice, the Commissioner has reviewed PHSO's internal review and considers it, PHSO's treatment of the three requests and the advice and assistance it provided, to have been satisfactory.

Right of appeal

28. 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

29. 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.
30. 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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