Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2020

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

Decision (including any steps ordered)

1. The complainant has requested information about its clinical advisors from the Parliamentary and Health Service Ombudsman ('PHSO'). PHSO has categorised the request as vexatious under section 14(1) of the FOIA and has refused to comply with it.

2. The Commissioner's decision is as follows:

    - The complainant's request is a vexatious request under section 14(1) of the FOIA and PHSO is not obliged to comply with it.

3. The Commissioner does not require PHSO to take any remedial steps.

Request and response

4. On 4 August 2019 the complainant submitted a request for information to PHSO in the following terms:

    "This information request relates to DN FS50823461:

    https://urldefense.proofpoint.com/v2/url?u=https-3A__ico.org.uk_media_action-2Dweve-2Dtaken_decision-2Dnotices_2019_2615346_fs50823461.pdf&d=DwICaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=Rbm6SSzB-

RuZkBxvZzo7QNA7NNDpFVaH5P9CXsuN3oBHEawj63j348bb4fUMN5xG&m=sB69aPHW6eTNCABcnx01zAAuN7ovFT67XcMy__sp-a4&s=hcwOhU6VTg9b-BVdWUajG67VJK3hgU2vSinX2Ye9sy4&e=

The following extract is from paragraph 40:

'This means that the advice and identity of the clinical advisors may be shared with the person who makes the complaint and the organisation that the complaint is about. The complainant may receive the names and advice of clinical advisors in the draft report, which would later be anonymised in the final report.'

1. Please provide the number of times the identity of the clinical advisor was shared with (a) the person making the complaint and (b) the organisation about which the complaint was made in respect of the 50 most recently completed final reports. Please also provide the dates the final reports were completed.

The following extract is from paragraph 39:

"Its current policy is that the clinical advisors will remain anonymous to safeguard their objectivity and privacy so that they are not exposed to public pressure and harassment."

2. In respect of the 50 final reports referred to part 1 of my request, please provide the number of times your records reveal that clinical advisors were exposed to either (a) public pressure or (b) harassment. Additionally, please provide brief details of the unwelcome intrusion identified in each case."

5. On the same day, the complainant clarified part 2 of his request, as follows:

"Where I wrote: 'in respect of the 50 most recently completed final reports' I meant final reports involving the advice of a clinician."

6. PHSO responded to the request on 22 August 2019. It refused to comply with the request which it categorised as vexatious under section 14(1) of the FOIA. PHSO invited the complainant to request an internal review if he was not satisfied with its response.

7. The complainant requested an internal review on 3 September 2019. PHSO did not carry out an internal review of its response but subsequently confirmed to the Commissioner that it would not reverse its decision that the request is vexatious under section 14(1).

Scope of the case

8. The complainant contacted the Commissioner on 19 November 2019 because he had not received the internal review he had requested. The Commissioner accepted the complaint as eligible for further consideration once PHSO confirmed, in July 2020, that it was not able to carry out an internal review at that point.

9. The Commissioner's investigation has focussed on whether the complainant's request can be categorised as vexatious under section 14(1) of the FOIA. She has discussed the matter of the internal review under 'Other matters'.

Reasons for decision

Section 14 – vexatious and repeat requests

10. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:

- Abusive or aggressive language
- Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

13. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner

considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

15. In its submission to the Commissioner, PHSO says that at the time of the complainant's current request, he had previously submitted 15 FOI requests between 7 April 2018 and 4 August 2019. Nine of these requests (including the current request) were received between 10 January 2019 and 4 August 2019. PHSO has provided the Commissioner with a summary of these 15 requests and their outcomes. It has advised that the complainant's requests span a number of years but that it has focussed on April 2018 to August 2019 for relevancy and context. However, PHSO has nonetheless noted that the complainant submitted 15 FOI requests in 2017/18 and nine in 2016/17.

16. PHSO advised that, notwithstanding the volume of requests received between April and December 2018, the Commissioner should consider the number received in the eight months preceding the current request and the number of parts to each request (41 parts over eight requests).

17. PHSO went on to say that the volume and nature of the requests that the complainant has submitted placed a significant burden on a small team that consisted of only three FOI/data protection officers at the time of the request. It considers that the volume of correspondence received from the complainant is disruptive and burdensome. PHSO notes that the requests the complainant makes are broadly similar in nature and overlapping. Often, insufficient time is given to respond to a request before another is submitted.

18. PHSO considers that there is very little purpose or value to the current request. It notes that the request is a direct response to the Commissioner's decision in FS50823461[1] which the complainant escalated to the First-tier Tribunal (Information Rights)('FTT'). In its view this request is clearly aimed at undermining PHSO's response as published in the Commissioner's decision. PHSO considers the request is asking for an unnecessary level of detail when it has already provided relevant information.

[1] https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615346/fs50823461.pdf

19. PHSO has told the Commissioner that the information being requested is not routinely recorded in a central record as it is unique to each case. To try and collate the information would involve first identifying the last 50 final reports issued which required clinical advice. Again, the use of clinical advisors is unique to each case. Once identified, each of the 50 cases would need to be reviewed in depth - many of these reports run to hundreds of pages - to understand if the complainant requested the clinical advisor's name, if it was shared and whether the named organisation submitted the same request. Dates would need to be recorded for each to understand when the investigation (final report) was completed.

20. PHSO says it would then have to trawl through each record to see if there is any evidence of the clinical advisor informing it of exposure to public pressure and/or harassment. This information may not even have been saved to a specific case if, for example, it receives a complaint directly from the clinician to the clinical advice team, which would be recorded elsewhere.

21. PHSO concludes its submission to the Commissioner by making the following five points:

    1. PHSO considers the current request to be a repeat request which has previously been addressed insofar as the complainant seeks to revisit its justification - part of an earlier complaint to the Commissioner (ie FS50823461) - that disclosing clinical advisor names would cause harassment and expose the clinical advisors to public pressure.

    2. The questions being asked here are trivial. They only serve the complainant's interests to use the information in the FTT as evidence to dispute PHSO's decision when it previously exempted clinical advisor names under section 40(2) of the FOIA (personal data).

    3. A disproportionate amount of effort would have to be expended to meet the request which cannot be justified. PHSO believes the intention of the request is not to provide information of wider public value but to obtain information of little value that only serves the complainant's own interests. It would take up a disproportionate amount of PHSO's Information Rights team's time and the Ombudsman's resources. The "knock on" effect impacts on the morale and wellbeing of staff and effects their ability to meet legislative time frames, which causes them distress.

    4. The Freedom of Information Act was brought in to provide the public with a greater right of access to official information with the

intention of making public bodies more accountable and transparent. However, as evidenced above, this request is an inappropriate use of the FOIA process and does not serve this purpose.

5. The request would only service to place a significant burden on the Ombudsman which would likely cause an unjustified level of disruption, irritation and distress. This is why it was refused under section 14(1) as vexatious.

Conclusion

22. In his request for an internal review, the complainant made a reference to two quite separate Upper Tribunal and FTT section 14(1) decisions and stated that he considered that PHSO had misapplied the test for vexatiousness. The Commissioner does not consider that argument to be compelling.

23. With regard to PHSO, the Commissioner cannot take into account the size of its FOI/data protection team. PHSO's resources are PHSO's issue and not one that should necessarily result in it categorising this, or any other, request as vexatious. However, the Commissioner can take account of the value of the request and the proportionality of the resulting burden caused to that team by complying with it. She can also take account of the wider context and history of the request.

24. The Commissioner notes that her decision in FS50823461 – which found against the complainant – concerned PHSO's withholding of information the complainant had requested about its clinical advisors under section 40(2). The complainant has appealed that decision. His current request refers to the decision and PHSO has indicated that the complainant may be seeking the current information to support his appeal arguments in that case. However, the complainant did not refer to his intention to appeal the above decision in his original request or request for a review and has not submitted any arguments to the Commissioner as to why his request has a value and purpose – to him if no one else. Complying with the detail of the request would cause a burden to PHSO and the Commissioner has not been persuaded that that burden is proportionate to the request's value.

25. If the complainant had previously submitted only a small number of purposeful requests to PHSO, the Commissioner might have been less inclined to view the current request as vexatious. As it is, the complainant's request is the latest in a long series of, often multi-part, requests to the PHSO – over a number of years. The Commissioner has reviewed the requests the complainant sent to PHSO during April 2018 to August 2019. She does not consider that these requests have any

obvious value, although notes that PHSO complied with all but one of them, not including the current request. Furthermore, in the Commissioner's view a reasonable person would not be inclined to submit 15 requests for information – of limited value - to a public authority over 18 months, including nine over eight months ie more than one request a month. The Commissioner has also noted that the complainant was submitting requests to PHSO prior to April 2018 at a similar rate. To very regularly submit requests to the same public authority for approximately three years (at the time of the request) is, the Commissioner considers, unusual.

26. The complainant may have had a genuine concern and interest when he first sent a request for information to PHSO – some years prior to 4 August 2019. But, as above, the purpose and value of his requests during April 2018 to August 2019, including the current request, is less clear. *If* there is a theme to the requests, it is broadly PHSO staff. PHSO has said in its submission that the complainant is using the FOIA to purse a grievance against it. PHSO has noted that the complainant is an active annotator on his own PHSO requests and other PHSO responses that are published on the WhatDoTheyKnow website.

27. Having considered all the circumstances of this request, the Commissioner agrees that a reasonable conclusion to draw is that the request is part of a longstanding campaign of requests, generated by the complainant's dissatisfaction with a decision PHSO originally made about a matter he brought to its attention, in 2016 or before. The Commissioner agrees with PHSO that dealing with a large number of requests that have very limited, if any, wider public interest and no clear purpose other than to burden staff would be demoralising and distressing for those staff. The evidence suggests to the Commissioner that the complainant's intention, at this point, is to disrupt PHSO and generally cause a nuisance. Clearly, that is not the purpose of the FOIA. The Commissioner has therefore decided that PHSO was correct to categorise the complainant's current request as a vexatious request under section 14(1) of the FOIA.

Other matters

As has been noted, in its refusal of the request PHSO invited the complainant to request an internal review if he was not satisfied. The complainant did so but did not receive a review response. The Commissioner reminds PHSO that if it offers an applicant an internal review, and the applicant requests one, PHSO should carry out a review within the appropriate timescale of 20 working days.

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@justice.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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