

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2022

Public Authority: Parliamentary and Health Service Ombudsman (PHSO)

Address: 47-51 Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant made a request for information relating alternative dispute resolution between a complainant and the PHSO similar to the Financial Ombudsman Service's Independent Assessor. PHSO confirmed that it does not hold information falling within the scope of the request under section 1(1)(a) FOIA.
2. The Commissioner considers that PHSO was correct to confirm that it does not hold information falling within the scope of the request under section 1(1)(a) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request on 1 October 2022:

"In the event of an unresolved issue between a complainant and PHSO. Does PHSO have recourse to Alternative Dispute Resolution along the lines of/or similar to the Financial Ombudsman Service's Independent Assessor. If it does, how is it accessed and what is the procedure."
5. On 12 October 2022 PHSO responded, it confirmed that it did not hold the requested information under section 1(1)(a) FOIA, it explained that:

"PHSO does not hold information relevant to your request and therefore cannot comply with your request.

We do not have any established recourse to external Alternative Dispute Resolution in terms of resolving differences between PHSO and service users as we have established internal processes and are subject to judicial review proceedings ultimately."

6. The complainant requested an internal review on 19 October 2022. In particular the complaint argued that:

"In earlier correspondence with your legal team reference was made to "ADR not being appropriate" at the time but "would be kept under review"

In those circumstances your response conflicts with the previous statement."

7. PHSO provided the outcome of the internal review on 25 October 2022, it upheld its response:

"The alternative dispute resolution referred to by PHSO's legal team was in reference to Pre-Action Protocol for judicial review:

[Pre-Action Protocol for Judicial Review - Civil Procedure Rules \(justice.gov.uk\)](https://www.justice.gov.uk/pre-action-protocol/civil-justice)

This process is purely in relation to litigation and is not part of the Ombudsman's remit to investigate complaints about maladministration.

PHSO does not have its own independent assessor such as the Financial Ombudsman Service. As such, it does not have recorded information which meets the information described in your request. I am satisfied that the searches carried out were appropriate to identify any held information, and that the response was correct to deny that any relevant information was held by PHSO."

8. During further correspondence with the complainant, the PHSO accepted that its legal team's records would come within scope of FOIA but did not amend its position for the reasons above as it considers that this information does not fall within the scope of this particular request.

Scope of investigation

9. The Commissioner has considered whether the PHSO was correct to confirm that it does not hold information falling within the scope of the request under section 1(1)(a) FOIA.

Reasons for decision

10. Section 1(1) FOIA provides that:
- “Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”
11. PHSO has explained that it does not have any established recourse to external alternative dispute resolution in terms of resolving differences between PHSO and service users as it has established internal processes and is subject to judicial review proceedings ultimately. It has explained that the alternative dispute resolution referred to by PHSO’s legal team is purely in relation to litigation and is not part of the PHSO’s remit to investigate complaints about maladministration. As PHSO does not have its own independent assessor similar to the Financial Ombudsman Service's Independent Assessor (as specified in the request) it does not therefore have recorded information which meets the information described in the request.
12. On the balance of probabilities the Commissioner is satisfied that the requested information is not held by PHSO. If the complainant wishes to obtain information regarding alternative dispute resolution in relation to litigation it is open to the complainant to make a new request for this specific information.
13. PHSO has therefore complied with its obligations under section 1(1)(a) FOIA in this case.

Right of appeal

14. 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

15. 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.
16. 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.....

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