

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2023

Public Authority: Parliamentary and Health Service Ombudsman
Address: City Gate
Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant made a request for information relating to the applicable disciplinary procedure for the post of Ombudsman. The Parliamentary and Health Service Ombudsman (PHSO) confirmed that it did not hold some of the requested information under section 1(1)(a) FOIA and provided links to some information it said it held in relation to parts of the request under section 1(1)(a) and (b) FOIA.
2. The Commissioner considers that PHSO correctly denied holding some of the requested information. In relation to the information PHSO confirmed it held and provided to the complainant, this information does not fall within the scope of the request and therefore the Commissioner considers that PHSO was incorrect to confirm it held information in relation to parts of the request. The Commissioner considers that PHSO does not hold information in relation to this request and therefore PHSO should have denied holding any information falling within the scope of this request in its entirety under section 1(1)(a) FOIA.
3. As the PHSO failed to deny holding information relevant to the scope of this request within the statutory time for compliance, it breached section 10 FOIA in the handling of this request.
4. The Commissioner requires no steps to be taken.

Request and response

5. The complainant made the following information request to the PHSO on 26 July 2022:

"1. details of the Disciplinary Procedure which applies to Mr. Rob Behrens, PHSO;

2. a copy of that Procedure;

3. the name and contact details of the person / organisation to whom allegations of misconduct by Mr. Behrens, PHSO should be submitted for consideration and investigation under that Procedure;

4. confirmation that the person / organisation identified in 3 above has the power and authority to investigate such allegations and impose disciplinary sanctions if and when deemed appropriate. If they do not, then please provide details of the person / organisation who holds such power and authority."

6. On 3 August 2022 the PHSO responded, it explained that:

"Mr Behrens, as the Ombudsman reports to [Public Administration and Constitutional Affairs Committee] PACAC, who consider feedback about PHSO's service as part of their scrutiny process. If you have concerns about Mr Behrens these can be fed back to PACAC. Here is a link to the relevant address:

<https://committees.parliament.uk/work/1503/parliamentary-and-health-service-ombudsman-scrutiny-202021/>

However, the deadline for submitting evidence to the most recent meeting has now passed but will re-open later this year.

You can also find out more about PACAC at the link below:

[Public Administration and Constitutional Affairs Committee - Summary - Committees - UK Parliament "](#)

7. On 4 August 2022 the complainant asked the PHSO to carry out an internal review as the information it had provided was not the information the complainant had requested.

8. On 2 September 2022 the PHSO provided the internal review:

"In our response on 3 August 2022, we confirmed that the information was held and provided you with links to the Public Administration and Constitutional Affairs Committee (PACAC) and information about the Parliamentary and Health Service Ombudsman Scrutiny 2020-21.

You have raised concern that our response did not answer your questions and that the incorrect information was provided to you.

I have now had a chance to review our response to your request and I can see that we did not provide information to parts 1 and 2 of your request. This is because we do not hold information specifically detailing a 'Disciplinary Procedure' that applies to the Ombudsman, Rob Behrens.

We did however provide information on PACAC which is the Organisation you would need to contact and raise any concerns or feedback to in relation to the Ombudsman and his conduct. As this information is reasonably accessible to you it is exempt under Section 21 of the Freedom of Information Act 2000, which means we do not have to send you a copy.

I am satisfied that we have provided the correct information in response to your FOI request."

Scope

9. On 10 October 2022 the complainant submitted a complaint to the Commissioner as he considers that PHSO has not provided the information requested and that information was being withheld as he had obtained information from the PACAC about the role of the Ombudsman which PHSO had not provided him with.
10. The Commissioner has considered whether PHSO was correct to confirm that it does not hold information in relation to parts 1 and 2 of the request under section 1(1)(a) FOIA and whether it responded correctly under section 1(1)(a) and (b) FOIA in relation to parts 3 and 4 of the request.

Reasons for decision

Section 1

11. 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.”

12. In its response to the Commissioner, PHSO provided the Commissioner with information about the role of the Ombudsman to demonstrate that an official disciplinary procedure for the Ombudsman does not exist.
13. The PHSO explained that the PACAC is the closest procedure in place to what the complainant set out in their request. PHSO acknowledged that it does not match the scope but confirmed that there is no information held which matches the information described in the complainant's request. PHSO therefore revised its position and concluded that there is no relevant information held for the complainant's request.
14. Upon viewing correspondence between the complainant and PACAC (provided to the Commissioner by the complainant in support of the complaint), whilst this information is useful in explaining the role of the Ombudsman and PACAC, this information does not fall within the scope of the request to PHSO and therefore the Commissioner would not have expected PHSO to provide this information to the complainant in response to the request of 26 July 2022.
15. As it is clear from the submissions provided by PHSO that an official disciplinary procedure for the Ombudsman does not exist. PHSO should have confirmed from the outset that no information is held falling within the scope of any parts of this request under section 1(1)(a) FOIA. The PHSO therefore failed to comply with section 1(1)(a) FOIA in this case in relation to parts 3 and 4 of the request.

Section 10

16. Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
17. In this case as PHSO did not deny holding information in relation to parts 1 and 2 of the request until the internal review and did not deny holding information in relation to parts 3 and 4 until it responded to the Commissioner's section 50 FOIA investigation, it breached section 10 FOIA in its handling of this request.

Other matters

18. The PHSO has referred to the section 21 FOIA exemption (information reasonably accessible to the requester) in relation to information it had provided links to within its responses to the complainant. As this information does not actually fall within the scope of the request the Commissioner has not addressed the potential application of this exemption in this Decision Notice.

Right of appeal

19. 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

20. 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.
21. 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
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Cheshire
SK9 5AF