

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 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 arrangements and processes and the Code of Conduct specifically for the role of the Ombudsman. The Parliamentary and Health Service Ombudsman (PHSO) confirmed that it did not hold the requested information under section 1(1)(a).
2. The Commissioner considers that PHSO was correct to confirm that it does not hold information falling within the scope of this 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 to the PHSO on 5 September 2022 (this followed on from a previous request which is detailed in Decision Notice IC-196329-M7K6):

"If you still maintain that Mr. Behrens does not have a copy of the relevant disciplinary procedure and is unable to access this, please instead provide a full and accurate description of (1) the conduct standards and (2) the disciplinary arrangements and processes, that apply to Mr. Behrens in his position as PHSO. In this case, please also replace references to the disciplinary procedure in my FoI request with references to this description of the relevant conduct standards and disciplinary arrangements and processes and respond accordingly."

5. PHSO confirmed to the Commissioner that it responded to this specific request on the 13, 20 and 30 September 2022. It provided the Commissioner with an email chain to demonstrate this. The Commissioner has found responses dated 13, 21 and 30 September 2022 within this chain.

6. On 13 September 2022 PHSO responded that:

"In response to your email please see the following link which will redirect you to [Parliamentary Commissioner Act 1967 \(legislation.gov.uk\)](https://legislation.gov.uk) this is the legislation that governs the Ombudsman's work and role. If you wish to raise concerns about Rob Behrens's conduct whilst in office, you would need to raise these concerns with PACAC for which we have already provided you with a web link to the relevant informant."

7. On 20 September 2022 the complainant expressed dissatisfaction with PHSO's response:

"Thank you for your email of 13th September 2022 in which you redirect me to the Parliamentary Commissioner Act 1967. Whilst the Act provides limited information on how the PHSO may be removed from office on grounds of misbehaviour, it does not provide the information outstanding from my FoI request as amended in my email of 5th September 2022.

To date, in addition to the above, I have only received information that complaints about the PHSO's conduct should be submitted to PACAC and that the PHSO does not have a copy of a disciplinary procedure which applies to himself."

8. On 21 September 2022 the PHSO responded confirming it had nothing further to add.

9. On 26 September 2022 the complainant requested an internal review of his amended request.

10. On 30 September 2022 PHSO responded confirming:

"I can confirm we don't not hold the information you have requested..."

Scope

11. On 24 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. This was because he had obtained information from the PACAC about the role of the Ombudsman which PHSO had not provided him with.
12. The Commissioner has considered whether PHSO was correct to confirm that it does not hold information in relation to the request under section 1(1)(a) FOIA.

Reasons for decision

13. 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.”
14. PHSO has previously provided the Commissioner with information about the role of the Ombudsman to demonstrate that official disciplinary arrangements and processes and a Code of Conduct specifically for the role of Ombudsman does not exist.
15. The PHSO has previously explained that the PACAC is the closest procedure in place to what the complainant set out in their request which is why the response refers to this but this does not fall within the scope of the request.
16. The complainant has previously provided the Commissioner with correspondence between the complainant and PACAC. 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. Therefore the Commissioner would not have expected PHSO to provide this information to the complainant in response the request of 5 September 2022.
17. The Commissioner is aware that the role of Ombudsman combines the two statutory roles of Parliamentary Commissioner for Administration

(the Parliamentary Ombudsman) and Health Service Commissioner for England (Health Service Ombudsman), whose powers are set out in the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993 respectively.

18. The Ombudsman is a Crown Servant and is appointed under section 1 and 2 of the Parliamentary Commissioner Act 1967 and may only be removed in accordance with section 3:

“(3) A person appointed to be the Commissioner may be—

(a) relieved of office by Her Majesty at his own request, or

(b) removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.”

The PHSO has referred the complainant to this legislation in its response of 13 September 2022.

19. The Commissioner has also located on the PHSO’S website a Code of Conduct to be followed by its employees. Whilst this would not apply to the role of Ombudsman and would not fall within the scope of the request, it is publicly available and may assist the complainant in understanding the standards of behaviour and conduct expected of PHSO employees.
20. Given PHSO’s clear confirmation that no disciplinary arrangements and processes nor a Code of Conduct specifically for the role of Ombudsman exist and the statutory basis for removal and appointment of the Ombudsman, the Commissioner is satisfied that on the balance of probabilities the requested information is not held by PHSO under section 1(1)(a) FOIA.

Right of appeal

21. 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

22. 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.
23. 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