

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2011

Public Authority: Parliamentary and Health Service Ombudsman

Address: Millbank Tower
Millbank
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant requested information from the Parliamentary and Health Service Ombudsman (the 'PHSO') that informs staff reviewing complaints about its own work how to handle those complaints. Specifically, the complainant wanted to know what legal arguments and principles staff use when reviewing cases and what materials the PHSO uses to train those staff to make decisions on cases.
2. The Commissioner's decision is that, on the balance of probabilities, the PHSO does not hold any information in addition to that it provided to the complainant.
3. However, he also considers that whilst the PHSO did provide the information requested it did not do so within 20 working days of the request and so it breached section 10 of the FOIA.
4. The Commissioner does not require any steps to be taken.

Request and response

5. On 16 February 2011, the complainant wrote to the PHSO and requested information in the following terms:

"The legal arguments and principles used by the Review Team in deciding whether a customer service team decision is flawed or unreasonable.

The current training documents referring to legal arguments and legal principles used in preparing review team members to appraise or judge earlier decisions made by staff in the PHSO service."

6. The PHSO responded on 21 February 2011. It stated that complaints which the PHSO deals with regarding its own work are handled in line with the 'Ombudsman's Principles of Good Complaint Handling.' It provided Mr Parker with information in the form of a document which it titled its 'Casework Policy and Guidance.'
7. Following an internal review which the complainant requested on 28 February 2011, the PHSO wrote to the complainant on 20 May 2011. It sent the complainant further information in the form of a pack containing the 'Ombudsman's Principles of Good Administration' and stated it had provided all of the information it held in relation to his request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the PHSO held any information, other than that which it had provided to him, that came within the scope of his request. In addition, the complainant maintained that the PHSO should have clarified his request for information.

Reasons for decision

9. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the actions taken by the authority to check that the information was not held and he will consider if the public authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the

information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities." ¹

11. The complainant argued to the Commissioner that the information the PHSO had given to him was not what he had requested. He alleged that he had had a telephone conversation with the PHSO which led him to suspect that it held more information.
12. Further, the complainant argued that as the internal review explained that the documents given to him were the "primary documents" which were "relevant to his request," it was shown that the PHSO held further information. In addition, the complainant expressed dissatisfaction that the PHSO did not seek to clarify his request for information.
13. The PHSO explained to the complainant in its internal review it had no record of any communication during the telephone call referenced by the complainant as being suggestive of it holding more information.
14. The Commissioner asked the PHSO what searches had been carried out for the requested information. The PHSO confirmed that it had contacted the head of the review team to ask whether any further information, other than that which had been provided to the Complainant was held in respect of the request. This member of staff confirmed that no additional information was held.
15. The Commissioner considers that the search carried out by the PHSO was, within the circumstances of this case, a reasonable and logical search. In consulting the head of the review team, the PHSO took a reasonable course of action in identifying the most relevant member of staff who would be likely to know what information was held due to their responsibilities and the seniority of their role.
16. The Commissioner inspected the information the PHSO provided to the complainant. He did not find any evidence within that information that suggested the PHSO held further information within the scope of the complainant's request.
17. The Commissioner is of the view that the PHSO did not hold information within the scope of the complainant's request other than that which was provided to him. He also considers that the public authority was not

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/ Environment Agency (31 August 2007) EA/2006/0072

required to clarify the complainant's request for information in this case as it was clear what had been requested.

18. The Commissioner has considered the length of time that was taken by the PHSO to provide the complainant with the requested information. The request was dated 16 February 2011. The PHSO provided an initial response with information to the complainant four working days after this date, on 21 February 2011. Further information was provided to the complainant with its internal review on 20 May 2011, approximately 64 working days after the request.
19. The Commissioner therefore finds that whilst the PHSO provided the information it held within the scope of the request, it failed to comply with section 10(1) of the FOIA as it did not provide the complainant with that information within 20 working days.

Other matters

20. Although it does not form part of this decision notice the Commissioner wishes to highlight the following:
21. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his "Good Practice Guidance No 5", the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case an internal review was requested on 28 February 2011 and it was provided on 20 May 2011. The Commissioner is therefore concerned that it took approximately 56 working days for the review to be completed by the PHSO as he does not consider that there were exceptional circumstances to justify this delay.

Right of appeal

22. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Faye Spencer
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