

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2023

Public Authority: Parliamentary and Health Service Ombudsman

Address: Millbank Tower

30 Millbank

London

SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested a report into a maladministration case. The PHSO refused to provide the requested information, citing section 44(1)(a) (prohibitions on disclosure).
2. The Commissioner's decision is that the requested information is exempt under section 44(1)(a).
3. The Commissioner does not require further steps.

Request and response

4. On 11 July 2023 the complainant wrote to the PHSO and requested the following:

"I have a problem with my occupational pension scheme and the DWP. I have seen a summary of a maladministration case (shown in the title of this email) you had with the DWP together with the 2019 Round-up. I have shown below links to the summaries I already have.

However, I am aware from correspondence between the DWP and the Chair of the Work and Pensions Committee that a report was issued but I am unable to get hold of a copy.

"The PHSO report was sent to the committee (28 August 2020) to meet recommendation (e).

<https://committees.parliament.uk/publications/6267/documents/69159/default/>¹

I would be most grateful if you could send me a copy of the report referenced by Peter Schofield/Sir Stephen Timms

The Ombudsman's Casework Report 2019 | Parliamentary and Health Service Ombudsman (PHSO)²

Communication of changes to inflation of state pensions | Parliamentary and Health Service Ombudsman (PHSO).³"

5. The PHSO responded on 14 July 2023 and refused to provide the requested information, citing section 44(1)(a). The PHSO explained that 'The links you have attached to this request include the pseudonymised version of the report you have requested (under the section 'Putting it Right' on page 15). We are unable to disclose any version of the report that is more detailed than this, as this would reveal case-related information.'

¹ <https://committees.parliament.uk/publications/6267/documents/69159/default/>

² [The Ombudsman's Casework Report 2019 | Parliamentary and Health Service Ombudsman \(PHSO\)](#)

³ [Communication of changes to inflation of state pensions | Parliamentary and Health Service Ombudsman \(PHSO\)](#)

6. The complainant requested an internal review on 16 July 2023.
7. Following an internal review the PHSO wrote to the complainant on 9 August 2023. It upheld its original position.
8. The scope of the Commissioner's investigation is to determine whether the PHSO was correct to withhold the requested information.

Reasons for decision

Section 44 – prohibitions on disclosure

9. The Commissioner acknowledges that the complainant didn't specifically submit their request under FOIA. However the Commissioner considers the PHSO was correct to handle the request under FOIA, for the reasons outlined in this notice.
10. Section 44(1)(a) states that information is exempt from disclosure under FOIA if its disclosure is prohibited by or under any enactment.
11. Section 44 is an absolute exemption, which means that, if information is covered by any of its subsections, it is exempt from disclosure. It's not subject to the public interest test.
12. The PHSO is specifically cited in the Commissioner's guidance⁴ on section 44(1)(a). The PHSO deals with complaints from individuals about government departments, other public bodies and health services in England.
13. The PHSO's powers are drawn from the Health Services Commissioner's Act 1993 ('HSCA'). Section 15 of the HSCA states that information obtained by the PHSO and its staff in the course of, or for the purposes of, an investigation shall not be disclosed except for the purposes the investigation and any report made in respect of it.
14. There are other specific purposes in section 15 of the HSCA that would allow the disclosure of investigation information but disclosure under FOIA is not one of them.
15. Therefore, section 15 of the HSCA operates as a statutory bar under section 44(1)(a) of FOIA.

⁴ [Prohibitions on disclosure \(section 44\) - FOIA guidance - version 1.1 31122020 \(ico.org.uk\)](https://ico.org.uk/for-organisations/foia-guidance/prohibitions-on-disclosure-section-44-foia-guidance-version-1.1-31122020)

16. The Commissioner is concerned that the reports have already been shared with a specific individual, Sir Stephen Timms, and the details of the individuals to which the reports relate are already in the public domain. The complainant is concerned 'there is no danger of the PHSO breaching a confidentiality' if it discloses the requested information.
17. In its internal review outcome, the PHSO explained to the complainant that:

"The report 'Trusting in the Pension Promise' was a report on systemic issues which is required to be laid before the House of Commons. The reports that come within the scope of your request are reports into individual complaints and are not laid before the House of Commons, and the disclosure of them is set under Section 10 of the Parliamentary Commissioner Act 1967. This requires PHSO to send a copy to the complainant, the MP who referred the complaint to PHSO, and to the relevant principal officer of the investigated organisation."
18. The Commissioner accepts that the PHSO is obligated, under the HSCA, to share a copy of the withheld information with the MP who brought the matter to the PHSO in the first place.
19. He also accepts that there is information about individuals who have been affected by the DWP maladministration in question. The Commissioner can't verify if these are the same individuals named in the report and, if so, how this information came to be in the public domain.
20. However, confidentiality isn't the issue here. The issue is that the PHSO has a legal obligation not to disclose the requested information to the world at large. Even if some of the requested information is in the public domain, this doesn't disbar the PHSO's duties under section 15 of the HSCA and the Commissioner is satisfied that the PHSO was correct to withhold the requested information under section 44(1)(a) of 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: 0203 936 8963

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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
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