

## Freedom of Information Act 2000

### Decision notice

**Date:** 13 February 2014

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested information from the Home Office relating to investigations conducted by the Parliamentary and Health Service Ombudsman. The Home Office responded to the request stating that certain information was not held in its records and that some information was exempt under section 40 of the Freedom of Information Act.
2. The Commissioner's decision is that the Home Office does not hold any relevant information and was incorrect to cite section 40 in its response. No further action is required.

#### Request and response

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3. On 12 December 2011, the complainant wrote to the Home Office and requested information in the following terms (numbers added by the Commissioner for reference):

*"The Complaint Handling and Compensation Policy you referred to in your response of 12 December 2011 states that "cases are held by PCMT<sup>1</sup> and can be made available to Customer Service staff on request".*

*I require:*

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<sup>1</sup> Parliamentary Correspondence Management Team

1. *any document showing a list of findings (created by IPS<sup>2</sup> staff) with any confidential personal information redacted; and*
2. *any document which formed the basis for the Complaint Handling and Compensation Policy's own list of "lessons that need to be borne in mind" on page 8; and*
3. *any management documentation or management information circulated to management showing any past findings in cases that have involved the IPS being investigated by the Parliamentary Commissioner for Administration<sup>3</sup> or lessons to be learned with confidential information redacted."*
4. This request was the subject of a previous decision by the Commissioner, which found that the Home Office incorrectly refused the request as vexatious.<sup>4</sup> No further action was required as the Home Office had agreed to drop its use of section 14 and the Commissioner had provided a copy of the Home Office's subsequent refusal notice response to the complainant on 26 September 2012.
5. The Home Office response – dated 29 August 2012 – stated that information for items 1 and 2 of the request was not held. Information relevant for item 3 was withheld under section 40(2) (third party personal data).
6. The complainant requested an internal review on 2 October 2012 but to date one has not been issued.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 18 March 2013 to complain about the way his request for information had been handled.

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<sup>2</sup> Identity and Passport Service, now replaced by Her Majesty's Passport Office

<sup>3</sup> Also known as the Parliamentary & Health Service Ombudsman (PHSO)

<sup>4</sup>

[http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs\\_50434971.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs_50434971.ashx)

8. The Commissioner considers the scope of the case to be whether the Home Office holds information relevant to items 1 and 2 of the request and whether section 40(2) applies to item 3 of the request.

## Reasons for decision

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### Section 17

9. If a public authority wishes to refuse to disclose information to an applicant then in accordance with section 17 of the Act it must give them a notice which states that fact and the reasons why the information is being withheld. As the Home Office did not give the complainant a copy of its refusal notice dated 29 August 2012 it has breached section 17 of the Act.

### Section 1

10. Section 1(1) of the Act states 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. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. So in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### Item 1 of the request

*"I require any document showing a list of findings (created by IPS staff) with any confidential personal information redacted"*

12. During the course of the Commissioner's investigation the Home Office provided two logs which it considered might be within the scope of the complainant's request. These logs list the investigations the Home Office has undergone from the PHSO. Having reviewed the logs the Commissioner considers that they do not contain any "findings" about

PHSO investigations. Instead they contain information such as investigation reference numbers, personal details of those involved in the complaint and the nature of the complaint. Therefore the Commissioner does not consider that these logs are within the scope of the complainant's request.

13. The 'Complaint Handling and Compensation Policy' referred to in the request is an internal Home Office document. Under the section for the 'Parliamentary Commissioner for Administration' it states the following:

*"IPS has had comparatively few cases referred to the PCA that have been investigated. These cases are held by PCMT and can be made available to Customer Service staff on request.*

*For staff dealing with claims for compensation the lessons that need to be borne in mind from these findings are...[list of points on how to improve case handling]"*

14. In the Home Office's submissions it explained that the "findings" come from the PHSO reports and are not conclusions drawn by the Home Office. This is in accordance with the quotation from the policy, which suggests that the Home Office retains the information about cases that led to investigations from the PHSO, but not that the Home Office produces a list with its own findings on instances of maladministration.
15. The Commissioner considers this to be reasonable, and he considers that on the balance of probability it is unlikely that the Home Office holds information relevant to item 1 of the complainant's request.

#### Item 2 of the request

*"I require any document which formed the basis for the Complaint Handling and Compensation Policy's own list of "lessons that need to be borne in mind" on page 8"*

16. As the quote from the Complaint Handling and Compensation Policy at paragraph 12 illustrates, the Home Office holds information about complaints made to the PHSO. In its submissions to the Commissioner the Home Office stated that the complaints will relate to passport issues so the files will contain the relevant passport application along with correspondence to and from the complainant, as well as any supplementary policy or legal advice. The Commissioner considers that this shows information is held that is relevant to the complainant's request.
17. However, the issue for the Home Office is that it does not have a record of the cases which were used for reference to form the list of "lessons that need to be borne in mind". It explained this is due to the policy originally being drafted in 1999, and there is no record of the files that

were examined at the time. The request is for specific documents used and the Commissioner does not consider that the specific documents can be identified. So whilst information that might be of relevance to the request is held, the information specific to the request is not. Therefore the Commissioner's decision is that the Home Office cannot identify the specific relevant information and so is not required to disclose any information to the complainant.

## **Section 40(2)**

18. Section 40(2) of the Act provides an exemption to the disclosure of personal data as defined by the Data Protection Act 1998 ("the DPA") where a disclosure of that information would breach any of the data protection principles.

### Item 3 of the request

*"Any management documentation or management information circulated to management showing any past findings in cases that have involved the IPS being investigated by the Parliamentary Commissioner for Administration or lessons to be learned with confidential information redacted"*

19. During the course of the Commissioner's investigation the Home Office confirmed that it would no longer be relying on section 40(2) in relation to item 3 of the complainant's request and that the exemption had been incorrectly cited in its response to the request. However, the Home Office did not provide an explanation as to why the exemption had been dropped or even if any information was held. The Commissioner wrote to the Home Office another three times to determine why it had changed its position but no new information was provided. The Commissioner eventually resorted to an information notice to compel the Home Office to provide a response that – in the Commissioner's view – could have been provided months beforehand.
20. The explanation for the Home Office's change in position was that it reassessed its view of what information the request was describing. As explained under item 1 of this decision, the Home Office had previously provided the Commissioner with two logs about PHSO complaints, one of which it had considered in scope for this request. In its response to the Commissioner's information notice the Home Office stated that it had at one point considered this log to fall within the scope of the complainant's request. However, it now considered that the log did not constitute "management" documentation or information.
21. The Commissioner has not focussed specifically on whether the log is a "management" document, rather whether the log shows any findings or conclusions based on the PHSO complaints. Whilst the log does show the

source and the nature of the complaint it does not show what actions were taken nor have any actions listed as a consequence of the complaints. As such, the Commissioner does not consider that the log can be said to show findings of PHSO complaints, and cannot be considered to fall within the scope of the complainant's request.

22. The Home Office stated that it does not produce reports with past findings about complaints it has received from the PHSO, and that its searches have not found any relevant information. The Commissioner is satisfied that the Home Office has demonstrated it has carried out the adequate and reasonable searches required to identify relevant information and so has met its obligation under the Act. Therefore, on the balance of probabilities the Commissioner's decision is that no relevant information is held and no further action is required.

### **Other matters**

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23. The Commissioner understands that the Home Office did not conduct an internal review of the complainant's request despite having sufficient time to do so. The Act does not provide a timescale for conducting internal reviews. Instead it is guided by the section 45 Code of Practice. At paragraph 42 it states that "target times" for responding should be "reasonable", although no definitive figure is given. The Environmental Information Regulations 2004 state that the time limit for a review is 40 working days, and the Commissioner considers that this is a useful guide for a "reasonable" time limit for requests made under the Act. The Commissioner asks that the Home Office works within this limit when handling future requests.

## Right of appeal

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24. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 .....**

**Gerrard Tracey  
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