

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2014

Public Authority: Parliamentary and Health Service Ombudsman
Address: Millbank Tower
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested the email address and direct telephone number of the Ombudsman in person. The Parliamentary and Health Service Ombudsman (the "PHSO") refused to provide this information under section 40(2) of the FOIA.
2. The Commissioner's decision is that the PHSO is correct to refuse this request under section 40(2). No steps are required.

Request and response

3. On 1 November 2013, the complainant wrote to the PHSO and explained she wished to submit a complaint about the Chief Operating Officer whose line manager is the Ombudsman. She therefore requested the following information:

"How would a complainant make their complaint to Dame Julie Mellor?"
4. On 29 November 2013 the PHSO informed the complainant that she can make a complaint about the Chief Operating Officer by writing to the Ombudsman.

5. The complainant requested an internal review on 2 December 2013. She explained she required an email address for the Ombudsman. On 10 January 2014, the PHSO sent her the outcome of its internal review.
6. The PHSO explained that it considered that the email address and telephone number of the Ombudsman to be exempt under section 40(2) of the FOIA. It explained that this information constitutes the Ombudsman's personal information.
7. The PHSO explained that although Dame Julie Mellor is the named Ombudsman it is not possible for her to speak to everyone who brings a complaint to the office. The PHSO case workers are the points of contact for people to discuss their cases.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2014 to complain about the way her request for information had been handled. The complainant considers that the email address of the Ombudsman should be made publicly available.
9. Although the complainant has focussed upon the refusal of the PHSO to provide the email address, the PHSO has explained to the complainant that it has interpreted the request as a request for the email address and telephone number of the Ombudsman.
10. The Commissioner considers the scope of this case to be concerned with the PHSO's application of section 40(2) to the request for the email address and telephone number of the Ombudsman.

Reasons for decision

11. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.
12. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

13. The Commissioner is satisfied that the data requested relates to a living individual who may be identified from that data and that it constitutes personal data.

Would complying with section 1(1)(b) contravene the first data protection principle?

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to provide the requested contact details of the Ombudsman and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the data subject's reasonable expectations of what would happen to their personal data;
 - the consequences of disclosure; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

16. The withheld information in this case is the email address and telephone number of the Ombudsman. The PHSO has explained that it is not possible for the Ombudsman to be involved in every case that comes to her office. In order to deliver a service to the many thousands of customers every year, the Ombudsman has to delegate work to her staff.
17. The information is therefore not made public on the Ombudsman's website. The PHSO does not routinely make such information available and does not wish to encourage members of the public to communicate directly with the Ombudsman.
18. The Commissioner appreciates that the requested information relates to the Ombudsman's professional life and that her role is a public facing role with inherent responsibilities to those individuals who make a complaint to the PHSO.
19. However, the Commissioner considers that the Ombudsman would have a reasonable expectation that her email address and direct telephone number would not be placed into the public domain by disclosure under the FOIA.

Consequences of disclosure

20. The PHSO has argued that its decision in this case is less about personal privacy and more about the level of disruption to its service which it is likely to face if the requested information is released.
21. The complainant regularly publishes information she is provided with onto the 'whatdotheyknow' website and when she was provided with the names of the PHSO managers in response to another FOIA request, these were placed on the campaign website that the complainant contributes to. The PHSO therefore considers it is reasonable to conclude that if disclosed, the complainant will place the email address and telephone number of the Ombudsman on the internet.
22. The PHSO has argued that it is reasonable to conclude that its staff (the Ombudsman included) would have to divert a disproportionate amount of time and resource to deal with the correspondence that would follow from the release of the Ombudsman's email address and telephone number. These are resources which would be diverted from other work and other cases. This would not be a constructive use of public money.
23. Although the complainant feels that everyone should have access to the Ombudsman when they want, the PHSO has argued that an organisation like the PHSO would not be able to function if that were the case.
24. The Commissioner is aware that the requested email address and telephone number are personal to the Ombudsman but are professional contact details. He considers that their disclosure is unlikely to cause the Ombudsman distress on a personal level. However the Commissioner is satisfied that disclosure would disrupt the running of the organisation and it is apparent that the consequences would have a negative impact upon the PHSO.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

25. The complainant has argued that as the Ombudsman's postal address is publicly available, it is reasonable that her email address should be provided to the public.
26. The complainant wishes to make a complaint about the Operations Manager who reports directly to the Ombudsman. She argues that she ought to be able to send a complaint to the line manager of the person she is complaining about.

27. The PHSO accepts that there is a public interest in organisations being as transparent as possible. It explained it routinely releases information about its staff in response to the information requests it receives. Its helpline and review complaints numbers are publicly available and its complainants are provided with the contact details of the people dealing with their cases at every stage of the casework process.
28. The PHSO has explained that it has considered the public interest in releasing the email address and telephone number of the Ombudsman, including the question of whether people need this information to access its service or progress their cases. It has argued that they do not.
29. The PHSO has therefore concluded that the public interest in the release of the information does not outweigh the public interest in the Ombudsman and her office (her Executive Office and the office more widely) being able to carry out their work without undue disruption.
30. It could be argued there is a legitimate public interest in publishing contact details for the Ombudsman. Disclosing information of this nature often promotes transparency and accountability. However, the Commissioner considers that this legitimate interest in transparency is met by the information already published on the Ombudsman's website. The contact details routinely provided by the PHSO allow members of the public to contact the office and case officers when this is necessary.
31. The Commissioner is therefore satisfied that the legitimate interest in transparency is outweighed by the right of the individual in this case to perform her role without the disruption of calls and emails from the public.
32. The Commissioner is satisfied that it would be unfair to provide the email address and telephone number of the Ombudsman in this case. Such disclosure is not within her reasonable expectations and would have a negative impact upon her work, and that of the PHSO. The legitimate interest in transparency is not strong enough to warrant changing the way the PHSO works. Disclosure would not be fair and would contravene the first data protection principle.
33. The Commissioner is therefore satisfied that the PHSO was correct to refuse to disclose this information under section 40(2) of the FOIA.
34. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Right of appeal

35. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Rachael Cragg
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