

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2014

Public Authority: Parliamentary and Health Service Ombudsman
Address: 29th Floor
Millbank Tower
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant has requested from the Parliamentary and Health Service Ombudsman (PHSO) information about its handling of a complaint case.
2. The Commissioner's decision is that in failing to deal with the complainant's request in accordance with the FOIA, the PHSO has breached section 1(1)(a) of the FOIA.
3. He requires the PHSO to take the following step to ensure compliance with the legislation:
 - Issue a response to the complainant's information request under the FOIA.
4. The PHSO must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. Given its length, the complainant's undated request to the PHSO is in an appendix to this notice. The request was submitted during correspondence the complainant had with the PHSO regarding a complaint case. This concerned the complainant's dissatisfaction with the PHSO's handling of a substantive complaint he had submitted to it,

which the Commissioner understands concerns the Intellectual Property Office (IPO).

6. The PHSO responded to the four elements of the request as 'normal course of business' in a letter to the complainant dated 8 January, which the Commissioner has seen.

Scope of the case

7. The complainant contacted the Commissioner on 13 May to complain about the way his request for information had been handled. He considers that his request comes within the FOIA and that the PHSO holds information within the scope of this request – in addition to that provided in its correspondence of 8 January – which it should release to him.
8. The PHSO has confirmed that it has not formally considered correspondence under FOIA. It said that whilst the complainant presented his requests as information access matters, his concerns relate squarely to his disagreement with the Ombudsman's decision on his case.
9. The PHSO has also indicated to the Commissioner that it does not hold any information within the scope of the requests and, if it had, it would have been exempt under section 44 of the Act (Prohibitions on disclosure). However as it has confirmed that it has not formally considered the request under FOIA the Commissioner will not make a formal determination on whether any information is held in this decision notice. He has focussed purely on the complainant's right of access under information legislation.
10. The Commissioner has therefore considered the PHSO's handling of the request and whether it has met its obligations under section 1(1)(a) of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA says that anyone making a request for information to a public authority is entitled to (a) be informed whether the public authority holds information specified in the request and (b) if so, to have that information communicated to them.
12. The PHSO has told the Commissioner that the caseworker who wrote the letter of 8 January treated the complainant's correspondence containing

the request as 'normal course of business' and as part of its complaints handling process. The caseworker addressed the complainant's four concerns and confirmed that the PHSO would not reopen his complaint case or change the decision it has made with regard to this case. The caseworker closed the letter by inviting the complainant to feedback on the service he had received to the PHSO's newly established Customer Care team.

13. The PHSO has told the Commissioner that the complainant subsequently requested further explanations regarding its decision, and that he has incorrectly cited a right of access under the FOIA.
14. The Commissioner notes that the PHSO attempted to deal with the complainant's correspondence informally and outside the scope of the FOIA. Dealing with a request informally may be appropriate in some circumstances, such as where the public authority believes that this would be the best means to assist the requester. This approach relies, however, on the requester agreeing to it. If the requester maintains that they wish their request to be dealt with under the FOIA, as appears to be the case here, the public authority is obliged to do so.
15. The Commissioner acknowledges that the complainant sent his request to the PHSO during his wider correspondence with the PHSO about his substantive complaint against the Intellectual Property Office. The Commissioner considers that the PHSO should nonetheless have considered it under the FOIA. Section 1(1)(a) places a duty on public authorities to tell an applicant whether or not they hold the information they have requested in recorded form. He notes that the PHSO's letter of 8 January does not clearly do this and consequently finds that the PHSO breached section 1(1)(a).
16. However, explaining that it does not hold the information in recorded form does not prevent an authority from going on to provide answers or explanations as a matter of normal customer service. He considers that the PHSO's approach – to then respond to the request as normal 'course of business' – would have been appropriate.

Right of appeal

17. 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@hmcts.gsi.gov.uk

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

18. 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.
19. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

APPENDIX

Question 1

What is the particular interpretation of the Supreme Court ruling that the external reviewer claims I have ?

It was inexplicably claimed that I have a particular interpretation of the Supreme Court ruling that the IPO must act within and so instead of this matter being dealt with by the Parliamentary Ombudsman that it would instead therefore have to go to the High Court for the Court's interpretation.

The U.K. Supreme Court on 2nd November 2011, in Human Genome Sciences Inc (Appellant) v Eli Lilly and Company (Respondent) stated that where "the (European) Board of Appeal has adopted a consistent approach to an issue in a number of decisions, it would require very unusual facts to justify a national court not following that approach."

I requested that the following be included in the IPO's legal manual, the Manual of Patent Practice :

The U.K. Supreme Court on 2nd November 2011, in Human Genome Sciences Inc (Appellant) v Eli Lilly and Company (Respondent) stated that where "the (European) Board of Appeal has adopted a consistent approach to an issue in a number of decisions, it would require very unusual facts to justify a national court not following that approach."

They are absolutely identical. So what is the particular interpretation of the Supreme Court ruling that the external reviewer inexplicably claims I have ?

In response, in your letter you obviously have not answered my question. All you have merely done is state that I claim it should have wider application than the IPO did, without explaining at all what that alleged wider interpretation is. Given that what I proposed was ABSOLUTELY IDENTICAL to the Supreme Court ruling precisely what is the different interpretation that you claim I am requesting ?

Question 2

By what legal means does the external reviewer claim, completely contrary to English law, that I am able to make a Court application (1) concerning OTHER people's patent applications, and (2) especially as any time for a legal appeal of any kind expired long before this suggestion was ever made by the assessor anyway ?

You very wrongly claimed that the Assessor did not say that I could bring legal proceedings in respect of other people patent applications. That is obviously deceitful. Both the original assessor and the external assessor clearly stated in their reports that this matter should be pursued by making an Appeal to the High Court concerning patent applications neither of which were mine.

So by which legal means is it being claimed that I could have resolved by making a Court application even though such a legal means does not exist. This has NEVER been answered. Without this the entire objection to the Parliamentary Ombudsman dealing with this complaint falls apart in its entirety.

Question 3

Given that appeals concerning patent applications would be decided on a variety of other matters, precisely by which legal means could an appeal have gone completely beyond its legal powers by compelling the IPO to do as requested, which is solely to incorporate the Supreme Court ruling in their Manual of Patent Practice ?

You have very evasively and completely failed to answer the actual question at all. What you have done instead is state that you thought that the IPO's decision was correct. That has

nothing to do with the question that was asked. So now please answer the actual question, which is how could an appeal, which is what the assessor claimed I should make, have gone completely beyond its legal powers by compelling the IPO to do as requested. If you can not explain how even an appeal could resolve this matter then you had no grounds for claiming that a Court application was the only means of correcting this matter.

Question 4

How does the overturning of one patent decision, which is not the issue of this complaint anyway, do as the complaint against the IPO has requested, which is correct the IPO's failure to assess thousands of patent applications correctly and according to the instructions of the Supreme Court ? What is being done on behalf of all these thousands of applicants.

You have not addressed the actual question at all. You seem to think that if you are purposefully evasive by answering some other question that has not been asked then the actual question has been addressed.

So what is being done on behalf of all the thousands of patent applicants whose patent applications have been dealt with illegally ? At present it appears that despite thousands of people being affected adversely for years due to the IPO acting illegally that the Parliamentary Ombudsman is doing nothing whatsoever about it.