

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 08 May 2017

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

#### Decision (including any steps ordered)

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1. The complainant has requested information about orders for the audits of records. The Parliamentary and Health Service Ombudsman (PHSO) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that PHSO is not obliged to comply with the request under section 12(1). However the Commissioner is not satisfied that PHSO met its obligation under section 16 to offer advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - PHSO is required to provide appropriate advice and assistance to the complainant pursuant to the duty provided by section 16 of the FOIA. The advice and assistance should be given with a view to determining what, if any, information relevant to the request can be provided within the appropriate costs limit and to allow the complainant to make a new request should this be possible.
4. The public authority must take these steps 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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 4 February 2016 the complainant made the following request for information under the FOIA:

*'The follow quote is from a doctor's Fitness to Practice Hearing. (2016)*

*.....*

*8.. You did not admit that you had altered Patient A's medical records until your letter to the Health Services Ombudsman (HSO) dated 3 January 2003 and only made a full admission to your misconduct to the HSO on 13 June 2003.*

*9. The Panel in 2005 took a serious view of your dishonest and misleading conduct. It found that:*

*'Your dishonesty was compounded by the fact that you continued to maintain that you had prescribed aspirin and a GTN spray. You maintained this on several occasions...*

*The Panel further notes that you only admitted to this dishonest behaviour when you were made aware that at the request of the Ombudsman's office a detailed audit was being carried out of the computer records at your practice , which would inevitably expose the facts, date, and nature of the alteration of [Patient A's] prescription records. This behaviour undermines the trust which the public is entitled to place in the medical profession, and is totally unacceptable.'*

*.....*

*This case of medical note tampering - in 2003 - and is illustrative of other hearings involving note tampering on the site.*

*The Ombudsman followed up an allegation of note tampering ...Presumably becoming involved after a complainant had made his/her representations during an investigation, by ordering a 'detailed audit of computer files'.*

*Therefore the Ombudsman supported complainant's opinion - and took the necessary steps to investigate an accusation of the alteration of records.*

*I would like to know:*

- 1. How many times were detailed audits of PA records /files were carried out ( computer or handwritten) by the PHSO in the past two years ?*
- 2. And which locations, (any Trusts, surgeries or other organisations ..not necessarily medical - but within the remit of the PHSO ).*
- 3. Whether these audits were carried out by PHSO employees - or external companies.*
- 4. In the case of external companies, please provide bills etc.*

*5. If the outcome of these audits is known, please provide details.*

*Please provide all data available under the FOIA.*

*NB If there are time constraints on this request, please limit the scope to health records only.*

*And limit the period to one year only.'*

6. On 12 February PHSO requested clarification of 'PA records/files' and on the same day the complainant explained that it was 'Public Authorities...the organisations which the public can complain about to the PHSO'.
7. On 3 March 2016 the PHSO responded that '*we do not hold a central record of the information you have requested. To be certain about whether we carried out any audits of bodies within our jurisdiction, we would need to manually check every complaint we looked at in the last two years.*'
8. PHSO refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450.
9. On 3 March 2016 the complainant requested an internal review. She argued that 'PHSO seems to be stating that it still cannot track the money it spends on its Audits in a timely and efficient way'.
10. After the intervention of the Commissioner, the PHSO sent the outcome of its internal review on 14 December 2016 upholding its original position.
11. On 28 December 2016, PHSO responded to a further email from the complainant:

*'Your original information request was concerned with audit of patient records undertaken during the course of the Ombudsman's investigations.*

*In your most recent correspondence you appear to refer to issues regarding the Ombudsman's own internal audit function. This is separate to our investigation work.*

*Bearing in mind the terms of your original request, to the extent you sought clarification around audits undertaken by the Ombudsman of patient records during the course of the Ombudsman's investigations we would have to search all of our files to ascertain whether we held such information. There is no way to narrow this bearing in mind the information you have requested.*

*Should you wish to ask for information about our internal audit function then it is open to you to do so by way of a new information request.'*

## Scope of the case

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12. The complainant contacted the Commissioner on 1 January 2017 (received 11 January 2017) to complain about the way her request for information had been handled.
13. The Commissioner's investigation has focussed on whether PHSO correctly applied section 12. She has also considered whether PHSO met its obligation to offer advice and assistance, under section 16.

## Reasons for decision

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### **Section 12 – cost exceeds the appropriate limit**

14. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
  - either comply with the request in its entirety, or
  - confirm or deny whether the requested information is held.
15. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to PHSO. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - (a) determine whether it holds the information
  - (b) locate the information, or a document which may contain the information
  - (c) retrieve the information, or a document which may contain the information, and
  - (d) extract the information from a document containing it.
16. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the

requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

17. In its submission to the Commissioner, PHSO stated that PHSO is an ombudsman service which carries out thousands of investigations each year. For example, it handled 29,046 complaints in 2015/16. Each complaint has a different case file allocated to it on one of the two case management systems, and many contain hundreds of documents, especially where a complaint proceeds to statutory investigation.
18. PHSO stated that potentially, any of these investigations case files could contain evidence of PHSO conducting audits as part of its investigation work. While an audit may arise as part of a statutory investigation, it is not a routine process or one which would normally be recorded separately to the investigation case file itself.
19. PHSO referred to their Service Model, which sets out the processes taken in relation to complaints handling:  
<https://www.ombudsman.org.uk/about-us/corporate-information/freedom-information-and-data-protection/our-publication-scheme/our-service-model>
20. The Commissioner read the summary investigation sheet that shows that an audit of records is not a usual part of the assessment or investigation procedure.  
[https://www.ombudsman.org.uk/sites/default/files/Service\\_model\\_Investigation\\_A3\\_sheet\\_20160919.pdf](https://www.ombudsman.org.uk/sites/default/files/Service_model_Investigation_A3_sheet_20160919.pdf)
21. PHSO also stated that whether an investigated organisation's records were audited is not routinely recorded and is not something which PHSO's systems can extract and report from its case management system. It would therefore require manual checks to determine whether any relevant information was held.
22. In response to the Commissioner's questions PHSO estimated that if it took only five minutes to manually review each of the complaints handled in 2015/16 (29,046 files – half of the request), this would equate to a total of 2420.5 hours.
23. PHSO were convinced that section 12 applies to the request and that there was no way it could meaningfully respond without the request being significantly revised.
24. Given the specific information requested and the volume of records in PHSO's record and case management systems, the Commissioner is prepared to accept that the PHSO would take more than the 18 hour limit to respond to the request. She is therefore satisfied that PHSO is correct to apply section 12(1) to the request.

### **Section 16(1) – The duty to provide advice and assistance**

25. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the “code”)<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
26. The Commissioner notes that PHSO did not offer the complainant any advice or assistance in refining the request.
27. In their submission to the Commissioner, PHSO recognised that Section 16 imposes a duty of advice and assistance but stated that ‘there was no clear way to assist the requestor in refining the request and so no assistance was provided.’
28. Whilst the Commissioner notes the PHSO’s position she considers that the PHSO’s failure to even provide the complainant with an opportunity to refine the request is sufficient for her to conclude that it has not met its section 16 duty.

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<sup>1</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

## Other matters

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29. The Commissioner's guidance explains that when a public authority receives an internal review request, it should ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
30. The Commissioner notes the long delay between the request for an internal review (3 March 2016) and the outcome of the review on 14 December 2016. This was explained to the complainant as 'an administrative error'. The Commissioner has made a record of this delay and this issue may be revisited should evidence from other cases suggest that there are systemic issues preventing PHSO from responding to requests promptly.

## Right of appeal

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31. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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**