

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)

1. The complainant has requested information about the Nolan principles. 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 the PHSO is not obliged to comply with the request under section 12(1) and is satisfied that the PHSO met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 23 September 2016 the complainant made the following request for information under the FOIA:

'I note from Sir Alex Allans recent Review report onto ex. Deputy PHSO Mick Martin that:

'The Ombudsman told me that, as a measure to ensure the continuing good standing of senior PHSO staff, she had now decided that they would be asked to provide information and certify that they were meeting the Nolan Principles of Public Life each year. Any breach of those principles would be dealt with under PH50's disciplinary procedures.

Please advise: as PHSO had 'now decided' what has been in place to ensure fairness by Senior PHSO staff up until 'Now'. As the Nolan

Principles have been in place since 1995 (21 years) How have the Nolan Principles of

Selflessness

Integrity

Objectivity

Accountability

Openness

Honesty

Leadership been met?

I understand the PHSO Principles have been adopted by many too and I assume there are examples of this work?'

4. On 21 October 2016 the PHSO responded that the request was too broad. It 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. It provided links to relevant material including the PHSO Code of Conduct, employment policies and the ICO website for guidance on the wording of FOIA requests.
5. On 21 October 2016 the complainant requested an internal review as the request had asked how the Nolan Principles have been applied to the Deputy Mick Martin.
6. The PHSO sent the outcome of its internal review on 20 December 2016 upholding its original position '*because as framed that request had the potential to refer to the actions of all of the PHSO's staff over a considerable period of time.*'
7. The PHSO also referred to the independent review that concerned the adequacy of the procedures and governance arrangements that the organisation applied to the appointment of Mr Martin and during his employment. (<http://www.ombudsman.org.uk/about-us/news-centre/our-statements/sir-alexallans-independent-review>)

Scope of the case

8. On 20 December 2016, the complainant contacted the Information Commissioner to complain about the way the requests for information had been handled.
9. The Commissioner's investigation has focussed on whether the PHSO correctly applied section 12 to the request. She has also considered whether the PHSO met its obligation to offer advice and assistance, under section 16.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

10. 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.
11. 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.
12. 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.
13. In its submission to the Commissioner, the PHSO stated that the 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.
14. The PHSO stated that potentially, any of these investigations case files could contain evidence of the Nolan principles being demonstrated by a member of staff.
15. The PHSO's own principles are closely aligned to the Nolan Principles, and are available on the website at:

<https://www.ombudsman.org.uk/about-us/our-principles>. Despite this close alignment, it is not information which is routinely recorded – for example, staff are not asked in their end of year reviews to provide evidence of having met the principle of 'selflessness', for example, at least not in such specific terms.

16. The PHSO stated that as this information is not routinely recorded, it would require a manual check *'of all documents originating over the 26-year period would need to be reviewed in order to meet the terms of the request as phrased. This is a task so enormous that section 12 calculations are barely warranted.'*
17. In response to the Commissioner's questions the PHSO estimated that if it took only five minutes to manually review each of the complaints handled in 2015/16 (29,046 files for one year of the 21 years of the request), this would equate to a total of 2420.5 hours.
18. Further, the PHSO argued that *'it is unlikely that the information would be recorded in the way the request sets out. It is likely that it would be a matter of opinion as to whether the Nolan principles had been met and requestors are only entitled to opinions where it comprises recorded information. As PHSO does not make routine assessments of whether the Nolan principles have been met by its staff members, it is very unlikely that we would hold any information relevant to the request. However, to be sure, we would need to review all the potentially relevant information, which is why section 12 applies to the request as phrased.'*
19. Given the specific information requested, the volume of records in PHSO's record and case management systems and the possible opinion needed to consider if the Nolan principles had been met, the Commissioner accepts that the PHSO would take more than the 18 hour limit to respond to the request as phrased. She is therefore satisfied that the PHSO is correct to apply section 12(1) to the request.

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

20. 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")¹ in providing advice and assistance, it will have complied with section 16(1).

21. The Commissioner notes that the PHSO advised the complainant that the request was too broad and in an effort to provide assistance, referred the complainant to a number of links to material that had relevance to the request. Therefore, the Commissioner is satisfied that the PHSO complied with section 16.

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

Right of appeal

22. 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

23. 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.
24. 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
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