

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2018

Public Authority: Parliamentary and Health Service Ombudsman
Address: Citygate
47-51 Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant has requested information from the Parliamentary and Health Service Ombudsman (PHSO) about the 2012 report into the death of the complainant's mother, and in particular whether Barking Havering and Redbridge NHS Trust have confirmed that they will not use the report.
2. The Commissioner's decision is that the PHSO has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the PHSO to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA
4. The PHSO 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

5. On 6 May 2018, the complainant wrote to the PHSO and requested information in the following terms:

"Thank you for letter of 30 April 2018 in which you enclose copies of the letter you sent to Barking Havering and Redbridge NHS Trust and other parties on 15 March 2018.

You advise BHRUT and others that you have quashed the 2012 report into our mother's death and ask them to return copies they have of this report.

In your letter to us of 01 February 2018, you said, "Of course, I cannot compel these organisations to take this action..."

We need to know whether the Trust has accepted that you have quashed the report or whether they will claim that the process is functus officio and that the report cannot be quashed other than by the High Court.

We will be submitting our application to the High Court for a second inquest on 19 May 2018.

So we would be grateful if you could let us know as soon as possible:

- whether Barking Havering and Redbridge NHS Trust have confirmed that they will not use the report*
- whether they have returned copies of the 2012 report to the Ombudsman's office."*

6. The PHSO acknowledged the request on 8 May 2018. As no response was provided within 20 working days, the complainant wrote to the PHSO on 24 May 2018 and on 7 July 2018 to chase a response. The complainant requested an internal review on 3 August 2018 and requested an acknowledgement of this request on 16 August 2018. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 20 August 2018 to complain about the failure by the PHSO to respond to her request.

8. The Commissioner has considered whether the PHSO has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA 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.

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt.”
11. On 12 September 2018 the Commissioner wrote to the PHSO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days.
12. Despite this intervention the PHSO has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the PHSO did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the PHSO has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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

15. 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.
16. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF