

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

Public Authority: Parliamentary and Health Service
Ombudsman

Address: PHSO CityGate
47-51 Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant has requested that the PHSO either confirm or deny whether it commissioned, received or recorded legal advice about the legal status of its review process from external lawyers. The Parliamentary and Health Service Ombudsman ("PHSO") refused to comply with the request, citing section 14(1) as it considered the request to be vexatious.
2. The Commissioner's decision is that the PHSO has correctly applied section 14(1) of the FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 17 February 2019 the complainant made the following request for information under the FOIA -

*"Dear Parliamentary and Health Service Ombudsman,
(1) Please could you either confirm or deny whether the PHSO has ever commissioned (requested and received) legal advice about the legal status of its review process from EXTERNAL lawyers?
(2) If the Ombudsman has ever requested such advice, please could you either confirm or deny whether this advice was provided/received?
(3) If this advice was provided/received could you please either confirm or deny whether this advice was recorded by the Ombudsman?"*

5. The PHSO responded on 8 March 2019 citing section 14(1) and refusing to comply with a request it considered to be vexatious.
6. The complainant asked for a review on the same day.
7. An internal review response was provided by the PHSO on 8 April 2019 which the complainant said breached the legislation. However, the review was conducted within the suggested 20 working days in the Commissioner's guidance for reviews.¹ The PHSO maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 5 April 2019 to complain about the way his request for information had been handled as he believed that the PHSO had been non-compliant because it did not provide him with the information.
9. The Commissioner has considered whether the PHSO was correct to refuse to comply with the request by applying section 14(1).

Reasons for decision

Section 14(1) – vexatious request

¹ <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

10. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

11. The FOIA does not define the term "vexatious". The Upper Tribunal (UT) considered the issue of vexatious requests in *The Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013). The UT decided that the dictionary definition had limited use and that it depended on the circumstances surrounding the request. The UT defined it as a "...*manifestly unjustified, inappropriate or improper use of a formal procedure.*" (paragraph 27). The approach in this case was subsequently upheld in the Court of Appeal.
12. The Dransfield judgment also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: "...*adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests*" (paragraph 45).
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the UT when it defined the purpose of section 14 as follows -
- "...*concerned with the nature of the request and ha[ving] the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...*" (paragraph 10).
14. The Commissioner's guidance² explains that the UT's decision established that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

15. There are also a number of 'indicators' that the Commissioner has identified which are useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. They include (amongst others):
 - the burden on the authority;
 - personal grudges;
 - unreasonable persistence;
 - unfounded accusations;
 - intransigence;
 - frequent or overlapping requests; and
 - deliberate intention to cause annoyance.
16. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
17. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
18. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
19. The PHSO has applied section 14(1) FOIA to this request, the Commissioner has therefore considered whether the request has been correctly categorised as vexatious in line with the above.

The PHSO's view

20. The PHSO submitted a timeline to the Commissioner of the correspondence it had received from the complainant in order to provide context and background to its application of section 14(1). Between 1 March 2018 and 30 April 2019, the complainant had at least one active request being responded to or was going through the internal review process 78% of the time or 334 calendar days.
21. There were only 92 calendar days (62 working days) in which the PHSO were not actively handling an FOI request from him. The requests contained 33 individual questions. The timeline excluded responding to ICO investigations into the PHSO's handling of the complainant's FOI requests and subsequent submissions to the First Tier Information Tribunal. From a potential 297 working days, at least one of the complainant's FOI enquiries was active for 235 working days. In other

words, the PHSO was handling requests about the same issue presented over and over again nearly 80% of all of its working days. The complainant also submitted complaints requiring internal review on the same day as the response had been sent.

22. In addressing itself directly to this request, the PHSO explained that the questions contained within it followed a series of requests that were linked to its review process. The public authority reasoned that any response to the complainant's request would be likely to lead to further related requests as the complainant has stated publicly that the PHSO is "*corrupt*", "*dangerous*" and "*irredeemable*". The PHSO explained that responding would be to signal acceptance of the complainant's personal agenda and lead to further action on his part.
23. The PHSO's view is that the request is of limited value concerning whether it has or has not commissioned external legal advice on the review process. It considers that the public interest is not clear or evidenced and that an internet search cannot display any significant search activity. It suggests that the request is too specific in nature to be of wider public interest. The impact of the request would be unjustified or disproportionate in relation to its inherent purpose or value.
24. The PHSO has pointed out to the Commissioner that the complainant described this request as "*academic*" online on 23 July 2019. He has posted many comments online on the website WhatDoTheyKnow concerning the matter of the PHSO, its internal review and legal advice. His online post on 21 February 2019 made reference to the "*dysfunctional*", "*unfair*", "*illegal*", "*irredeemable*" PHSO and other similarly negative comments. He characterises the PHSO's view of its customers as "*gullible and acquiescent fools*".
25. The PHSO contends that this type of online attack affects staff morale and wellbeing. Constant accusations of being "*dangerous*", "*corrupt*", "*sham*" and so on takes its toll on the FOI and DP team who, it states, respond with politeness. The PHSO argues that continuing to respond sends a signal that it will tolerate its staff being treated discourteously.
26. The PHSO explains that there is a cost to the public purse in responding to FOI requests but that it is committed to transparency and responds to almost 100 per cent of requests it receives within the timescales. It has now reached a point where no amount of disclosure will answer the complainant's queries and that this inevitably impacts on the resources it can allocate to other requesters. The PHSO believes it is now entering the minutiae of the review process and it would cost time and resource to research the response.

27. The PHSO describes the complainant's approach now as a campaign against the PHSO and it underpins that argument by quoting his view that "*Section 14 is used by the establishment to silence those who threaten to reveal its wrongdoings.*"
28. The public authority nonetheless stresses that it assesses each request independently and that it will continue to do so with future requests.

The complainant's view

29. The complainant is so disenchanted with the PHSO and other public authorities that he has not outlined his complaint to the Commissioner other than to provide a link to his online request and the PHSO's responses. It is clear from his postings that he has no faith in either the PHSO or the Information Commissioner's Office and that he looks to the First Tier Tribunal (Information Rights) solely to set matters to rights.
30. The complainant regularly posts online both to make information requests and to add annotations. These postings attract other third parties with similar grievances. The PHSO has highlighted his multiple posts alleging the corruption of public bodies and it points to a posting on 10 February 2019 where he describes the PHSO as "*incompetent and deceitful in almost equal measure*" and ends with, "*I'm never going to stop until I get and expose the truth about this*". The complainant wishes to bring the PHSO to account and he has a strong sense of injustice. He has said that he will not rest until he has brought "*this pernicious organisation to account*".

The Commissioner's view

31. The Commissioner has recently considered a complaint from the same complainant about the PHSO [FS50835684](#) that relates to similar subject matter as this request. The public authority refused the request as vexatious and the Commissioner agreed.
32. In this instance, the Commissioner is not entirely convinced by the PHSO's argument concerning the time and resource it would take to research a response to this request. However, she does accept that any response is more than likely to lead to further correspondence.
33. The complainant clearly believes that he has a genuine grievance. His perception is that he is not being responded to when he makes a request that he considers to be easily answerable. The complainant considers his request to be fundamentally in the public interest whilst the PHSO's assessment is that the request is too narrow for it to be in the wider public interest to respond to it.
34. The PHSO has provided enough evidence to suggest that the balance has tipped over from what may have begun as a desire to uncover

information appropriately into unreasonable persistence and an inappropriate use of the FOIA legislation.

35. The Commissioner is satisfied that the complainant's request is vexatious within the terms of section 14(1) of the FOIA.

Right of appeal

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

37. 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.
38. 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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