

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2022

Public Authority: Parliamentary and Health Service Ombudsman (PHSO)

Address: Citygate
47-51 Mosley Street
Manchester
M2 3HQ

Decision (including any steps ordered)

1. The complainant has requested information about the referral of complaints to PHSO by MPs. PHSO disclosed information it considered to be within scope of the request. The complainant is dissatisfied with the length of time it took PHSO to respond to their request and considers that the information provided to them was misleading.
2. The Commissioner's decision is as follows:
 - PHSO breached section 10(1) of FOIA as it did not provide a response to the complainant's request within the required timescale.
 - PHSO's interpretation of the request was reasonable and it complied with its obligations according to section 16(1) of FOIA, which concerns advice and assistance.
3. The Commissioner does not require PHSO to take any corrective steps.

Request and response

4. On 16 September 2021 the complainant requested information of the following description:

"How many MP's have referred complaints to PHSO from persons other than their own constituents and do you have a list of any such members? I make this as a appropriate request under The Freedom of Information Act. PHSO have twenty days to issue a response.

In the email from Mr Eastwood's office, in his explanation, Mr Gregg refers to "strict parliamentary protocol that Members of Parliament do not seek to intervene in matters raised by the constituents of other Members, which is a long-standing custom of the House of Commons", he does not refer to the legislation from which the Ombudsman draws his powers.

The powers are what exactly? Do you have a copy of such and how do you believe that these powers (which I assume are enacted in law) override the Parliamentary convention to which every MP I have written to has referred?

The response provided on 15.9.21 is wholly inadequate in relation to all of the issues I have raised."

5. On 22 October 2021 PHSO responded. It advised it was only able to provide data from 1 April 2019 and provided the data it held. PHSO acknowledged that it had responded to the request outside the required timescale.
6. The complainant requested an internal review on 13 November 2021. The review request focussed on PHSO's response to the first element of their request.
7. PHSO provided an internal review on 22 November 2021. It advised it had responded to the request as the complainant had framed it and provided the relevant information it holds. PHSO said that, in any case, it does not hold the 'qualifying' information that the complainant had indicated in their review request was covered by the request. PHSO again acknowledged it had not provided its original response to the request within the required timescale.

Scope of the case

8. The complainant contacted the Commissioner on 22 November 2022 to complain about the way their request for information had been handled.
9. The Commissioner initially understood that, in addition to the timeliness of PHSO's response, the focus of the complaint was that the complainant considered that PHSO held further information within scope of the request.

10. However, it subsequently became apparent that the complainant accepted that PHSO did not hold the specific information they are seeking but considered that PHSO had misled them by releasing the information that it did hold, without qualifying that information. This had caused the complainant to pursue a course of action that they considered had been a waste of their time.
11. The Commissioner advised the complainant that he could not consider the accuracy or otherwise of information that a public authority discloses in response to a FOIA request. Nor could he consider whether PHSO **should** hold particular information. The Commissioner confirmed that he could consider the timeliness of PHSO's response. He could also consider PHSO's interpretation of the request and whether it should have offered advice and assistance to the complainant, in line with the duty under section 16(1) of FOIA, by asking them to clarify their request.

Reasons for decision

Section 10 – time for compliance

12. Under section 1(1) of FOIA anyone who requests recorded information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
13. Section 10(1) of FOIA places an obligation on a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
14. In this case, the complainant submitted their request on 16 September 2021 and PHSO did not provide a response until 22 October 2021. PHSO therefore did not comply with section 10(1), which it acknowledged in its response and internal review.

Section 16 – duty to provide advice and assistance

15. Section 16(1) of FOIA says that:

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

16. The section FOIA Code of Practice¹ advises that section 16 is generally relevant in four situations. First, with prospective applicants, for example by providing an address to which prospective applicants can send their request. Second, when a public authority needs to clarify the request with the applicant. Third, when it may be possible for the applicant to reduce the scope of a request so that the authority can comply with it within the cost limit. And finally, in situations where a public authority can transfer the request to another, more appropriate authority to deal with.
17. The second situation may be relevant here.
18. The complainant has told the Commissioner that they had previously been advised by PHSO that, in the complainant's words "... in the past MPs had referred matters to PHSO".
19. The Commissioner has reviewed correspondence from PHSO to the complainant dated 15 September 2021 in which it confirms that:

"... the advice given was correct. The legislation does not specify that a complaint must be referred to us by a complainant's own MP. It is of course up to the individual MP if they wish to refer a complaint from someone that is not within their own constituency.

In the email from Mr Eastwood's office, in his explanation, Mr Gregg refers to "strict parliamentary protocol that Members of Parliament do not seek to intervene in matters raised by the constituents of other Members, which is a long-standing custom of the House of Commons", he does not refer to the legislation from which the Ombudsman draws his powers."
20. This generated the complainant's request of 16 September 2021. The request was for the number of MPs that have referred complaints to PHSO from people other than their own constituents, and a list of those MPs.
21. PHSO had provided the complainant with a list of 224 MPs who had referred complaints to it from individuals with addresses outside the referring MP's constituency, from 1 April 2019.
22. In their request for a review, the complainant noted that they had gone through the list provided and contacted a number of the MPs on that list.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Those that wrote back to the complainant advised that they had supplied documents to PHSO from a person who lived out of their constituency only because they used to live in the constituency or else had a connection with the constituency, such as a second home.

23. The complainant said that the comments PHSO had previously made to them were that "occasionally MPs would refer matters for a non-constituent". Because, the complainant said, PHSO had not qualified that advice with the detail above about non-constituents, PHSO had in effect sent them "on a wild goose chase" and caused them to waste their time writing to MPs.
24. In its internal review response, PHSO advised that it considered that the complainant's request had been clear and specific in that they wanted the number of MPs who had referred non-constituent complaints to PHSO, and the names of these MPs. PHSO confirmed it provided the information they had requested (albeit with explained caveats relating to some individuals no longer acting as MPs).
25. PHSO noted that the complainant had not asked it to qualify this information any further at the time of the request. PHSO also said that it could not see anything to suggest that it should have assumed the complainant wanted further qualifying information to go with this list of MPs. Finally, PHSO confirmed it does not hold this qualifying information in any case.
26. The Commissioner has reviewed and considered the complainant's correspondence with PHSO. They had requested the number of MPs who had referred complaints to PHSO from people other than their own constituents and a list of those MPs. That is the information PHSO had provided. The Commissioner acknowledges the complainant's frustration but agrees with PHSO that its interpretation of the request as it was framed was reasonable. He considers it was therefore reasonable for PHSO to address the request as it was framed without first seeking further clarification from the complainant or providing further explanation about the information it disclosed. PHSO also confirmed at internal review that it does not hold that qualifying information.
27. As such, the Commissioner finds that there was no breach of section 16(1) of FOIA on this occasion.

Right of appeal

28. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.

30. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF