

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested a copy of the Parliamentary and Health Service Ombudsman (PHSO) staff survey carried out in 2021. PHSO withheld the requested information under section 22(1) FOIA as it was intended for future publication.
2. The Commissioner considers that PHSO were correct to apply 22(1) FOIA in this case at the time of the request. However the Commissioner also notes that the information which was withheld under section 22(1) FOIA has now been published.
3. The Commissioner does not require PHSO to take any remedial steps.

Request and response

4. On 28 April 2022 the complainant wrote to PHSO and requested information in the following terms:

"I make a freedom of information request for a copy of the Parliamentary and Health Service Ombudsman's staff survey carried out during 2021.

The staff survey carried out in October 2020 was published on 18th March 2021.

The minutes of the PHSO Board held on 15th December 2021 record, at item 11, that the subject of the staff survey feedback on diversity and disability was 'deferred'. However, the minutes of the January

2022 board meeting make no further reference to the deferred item. It is therefore clear, from the minutes, that the staff survey for 2021 has been carried out.”

5. PHSO responded on 9 May 2022, it applied section 22(1) FOIA to withhold the requested information because the relevant information was intended for future publication, and the balance of the public interest favoured maintaining the exemption. PHSO indicated that it was planning to publish the requested information in June 2022.
6. On 19 July 2022 the complainant requested an internal review as the requested information had still not been published.. On 5 August 2022 PHSO provided the internal review. It upheld its application of section 22(1) FOIA explaining that:

“In order to satisfy the criteria for Section 22(1) there must be an intention to publish the requested information at a future date. However, should the date provided be inaccurate the exemption still applies as long as the information is due to be published at a future date.

I have checked with my colleagues who are in charge of the staff survey and they confirmed there is still an intention to publish the results, but there was a delay because further work was required before it was suitable to publish. They also informed me that the results are due to be published in August.

PHSO considers that its consideration of the balance of the public interest from its response of 9th May 2022 still applies given that the requested information is due to be published in the near future.”

Scope of the case

7. The complainant contacted the Commissioner on 10 August 2022 to complain about the way his request for information had been handled.
8. The Commissioner’s investigation has focussed on whether PHSO was entitled to rely on section 22(1) of the FOIA to withhold the requested information.

Reasons for decision

9. Section 22(1) of the FOIA says that information is exempt information if:

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).

10. Section 22(1) is a qualified exemption which means it is subject to the public interest test.

11. In this case PHSO has clearly explained in its responses to the complainant that it intended to publish the requested information (although PHSO did not publish the information in June 2022 as originally indicated in its initial response).

12. However the Commissioner is aware that the 2021 staff survey has subsequently been published:

<https://www.ombudsman.org.uk/sites/default/files/2021%20Staff%20Survey%20headline%20results.pdf>

13. The Commissioner considers that the requested information was clearly held by PHSO and at the time the request was made PHSO intended to publish this information as communicated to the complainant.

14. PHSO explained that there are reasonable grounds to maintain the orderly publication of information as this enables the results to be collated and reviewed before being shared internally and with the Board Members prior to publication on the website.

15. The Commissioner therefore also accepts that in all the circumstances it was reasonable to withhold the information under section 22(1) FOIA until the wider publication date. The fact that this date moved from June 2022 as PHSO initially indicated does not preclude reliance on the exemption.

16. As the Commissioner is satisfied the exemption was applied correctly in this case he has gone on to consider the balance of the public interest test.

Public interest test

Public interest in disclosing the information

17. PHSO acknowledged that disclosure would improve transparency in the operations of the PHSO.

18. It also recognised that disclosure of the information under FOIA would be consistent with the PHSO's commitment to proactively publish data on matters of a wider public interest.

19. In his complaint to the Commissioner, the complainant has argued that:

"PHSO scrutiny by the Public Administration and Constitutional Affairs Committee will open before the end of the year and failure to publish the results will not enable the public to have sight before making their written submissions to the committee."

Public interest in maintaining the exemption

20. PHSO explained that as the requested information is of interest to the wider public it is important it can be accessed simultaneously by the public rather than piecemeal by disclosure under FOIA. If PHSO were to pause the planned publication to respond to individual requests, this would have been likely to delay the planned publication further. Therefore PHSO considers that it is in the wider interest that the information was made accessible to the wider public via PHSO's website adhering to the publication schedule.

21. PHSO also argued that it is in the public interest that the quality assurance process was allowed to conclude before making the information available to the public.

Balance of the public interest

22. The Commissioner considers that there is strong public interest in PHSO being able to prepare the 2021 survey results to share internally before this information is disclosed into the public domain. Further he accepts that it is in the public interest to allow PHSO to carry out this work to prepare the information for publication without the need to spend time making prior piecemeal disclosures.

23. The Commissioner acknowledges the complainant's argument that the 2021 results required publication before the end of the year so that individuals would have sight of them before making submissions to the Public Administration and Constitutional Affairs Committee. However the 2021 staff survey has now been published before the end of the year.

24. Whilst the Commissioner accepts there is a general public interest in openness and transparency, without any strong countervailing arguments, the Commissioner considers that the balance of the public interest favours maintaining the exemption.

Right of appeal

25. 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

26. 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.
27. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF