

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2023

Public Authority: Care Quality Commission (CQC)
Address: Citygate
Gallowgate
Newcastle-upon-Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has asked for information setting out why the CQC is not allowed to investigate individual complaints. The CQC has stated no recorded information is held.
2. The Commissioner's decision is that the CQC does not hold the information requested and has complied with its obligations under section 1(1) of FOIA.

Request and response

3. On 15 October 2022 the complainant wrote to the CQC and asked for information in the following terms:

"The legislation and Regulation and Act that does not allow the CQC to investigate individual complaints."
4. The CQC responded on the same date and stated, as it had said previously, that it did not hold the information and CQC's powers are contained in the Health and Social Care Act 2008 (HSCA). CQC further explained these powers do not extend to investigating or resolving complaints about care services on behalf of individuals and the power to investigate complaints is held by the Parliamentary and Health Service

Ombudsman (PHSO) in relation to NHS services and the Local Government Ombudsman (LGO) in relation to adult social care services.

5. The complainant requested an internal review on the same date asking again that the CQC state the Regulation that does not allow the CQC to investigate individual concerns.
6. The CQC responded on 3 November 2022 reiterating its position that the information requested was not held.

Reasons for decision

7. Section 1(1) FOIA provides 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."

8. The Commissioner has sought to determine whether, on the balance of probabilities, the CQC holds any recorded information that would answer the complainant's request.
9. The CQC is a public authority, sometimes referred to as an 'arms-length body' of the Department of Health and Social Care (DHSC).
10. As a public authority, the CQC is required to act within the scope of its functions as set down in legislation. These are the functions that have been assigned to CQC by Parliament and for which it is funded via the DHSC or through the collection of fees from registered providers.
11. The CQC explained that it may not take on functions that have not been given to it, nor can it undertake tasks or roles that do not fall within the scope of its functions. The CQC accepts there is not a regulation or section of statute that explicitly prohibits it from investigating individual concerns but, regardless, it has no function assigned to it in legislation relating to investigating individual complaints. The PHSO and LGO have the power to investigate individual complaints.
12. The CQC has further pointed out that the purpose of public law is to ensure that it acts lawfully and does not exceed the functions and powers granted by Parliament. A key concept of public law is that of ultra vires, which is a prohibition on public authorities acting beyond their powers. As such there is no legislation that specifically prohibits

the CQC from handling most types of complaints but where no specific power or function exists to do so, the CQC would be ultra vires and therefore acting unlawfully to take on a role that has not been assigned to it by Parliament.

13. On the balance of probabilities the Commissioner is satisfied the CQC does not hold the requested information. The complainant has asked the CQC to provide information setting out why the CQC does not have the powers to investigate individual complaints – it is clear from the explanations provided by the CQC that it has not been given powers or functions to do this under any legislation or act of Parliament.
14. The Commissioner does not consider it is reasonable to expect there will be legislation or regulations which explicitly set out all the functions that a public authority or regulator cannot undertake; the explanations provided by the CQC explain in sufficient detail why it cannot investigate individual complaints and there is no evidence to suggest any recorded information exists that would set this out and as such the information is not held.
15. The CQC has therefore complied with its obligations under section 1(1)(a) FOIA in this case.

Right of appeal

16. 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

17. 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.
18. 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

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