

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 September 2011

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

Summary

The complainant asked the Parliamentary and Health Service Ombudsman (the PHSO) for a letter it considered when reviewing her case. The PHSO originally refused to provide it, but reconsidered its position on internal review. The complainant referred the case to the Commissioner and explained that she believed that the delay was totally unacceptable.

The Commissioner finds that the delay constituted a breach of section 10(1) of the Freedom of Information Act 2000. He requires no remedial steps to be taken, but has made comments about further delays the complainant experienced during the internal review process.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Requests

2. The Commissioner understands that the complainant has made previous requests to the PHSO for the letter.
3. On 11 April 2010 the complainant made the following request:

'I am still not in receipt of the PHSO letter dated 21 January 2010 to [Trust redacted].... Could I please have a copy of this letter.'

4. On 20 May 2010 the complainant received a letter dated 21 January 2010 that was addressed to her
5. On 21 May 2010 she explained that this was not what she had requested and that for clarity she wanted:

'A copy of your [the PHSO's] letter dated 21 January 2010 [sent] to [Trust redacted]'

On 28 May 2010 the PHSO issued a response. It explained that it held the information requested, but believed that it could withhold it from disclosure. It explained the exemptions it was relying on.

6. On 7 June 2010 the complainant requested an internal review of the PHSO's decision. She explained that she needed the letter to understand what had been investigated. This letter was acknowledged on 10 June 2010.
7. On 27 September 2010 and 22 November 2010 the PHSO issued holding letters explaining that the review was being undertaken.
8. On 10 December 2010 the PHSO communicated the results of its internal review. It provided the disputed letter.

The Investigation

Scope of the case

9. On 20 December 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider the following points:
 - she had received the letter after the PHSO's internal review;
 - she requested a review from the Commissioner 'due to the excessive amount of time this whole matter has taken'; and
 - in particular, the internal review took more than six months.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In

particular, it is not within the Commissioner's remit to consider the way the PHSO handles the complaints that it receives.

Chronology

11. On 4 February 2011 the Commissioner wrote to the complainant to ask for the key documents to enable him to consider her complaint. On 18 February 2011 he received them.
12. On 17 March 2011 the Commissioner wrote to the complainant and the PHSO to explain that he had received an eligible complaint. He asked the PHSO to provide any information that had been withheld.
13. On 4 April 2011 the PHSO explained that it had released the letter to the complainant, albeit late.

Analysis

Procedural Requirements

Section 10(1)

14. The complainant explained that she was unhappy with the time taken by the PHSO and required a formal decision in order to record this failure.
15. Section 10(1) states that:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt'.
16. Section 1(1)(a) imposes an obligation on the public authority to confirm or deny whether it holds relevant recorded information. Section 1(1)(b) requires the provision of that information where it is not exempt.
17. In this case, the PHSO failed to comply with the obligations set by section 1 in 20 working days and therefore breached section 10(1) of the Act.
18. It also failed to provide the complainant with the information she requested in 20 working days in breach of section 10(1) of the Act.

The Decision

19. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. It breached

section 10(1) because it did not provide the complainant the relevant information in 20 working days.

Steps Required

20. The Commissioner requires no steps to be taken. This is because the requested information has already been provided.

Other matters

21. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern.
22. The Act provides no time limit for conducting an internal review. However, the Commissioner has issued guidance that explains his expectation that public authorities should aim to respond fully to all requests for internal reviews in 20 working days. Although it suggested that it may be reasonable to take longer where the public interest considerations are exceptionally complex, the guidance states that in no case should the total time exceed 40 working days. The Commissioner is concerned that, in this case, the PHSO took much longer than 40 working days to conduct the internal review in this case and therefore fell short of what he expects.

Right of Appeal

23. 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: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 22nd day of September 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) 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.”

Time for Compliance

Section 10(1) provides that –

‘Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt’.