



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2014/0092
Appellant: Janet Treharne Oakley
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. About two years ago Ms Oakley made a complaint to the Parliamentary Ombudsman (PHSO) about her dealings with the Information Commissioner (ICO). The PHSO declined to intervene. Ms Oakley's request for a review of that decision was refused somewhat peremptorily. She complained to the PHSO about the actions of the head of the review team. The complaint was belatedly referred to another PHSO employee to act as an "outside reviewer".
2. PHSO now acknowledge that the original refusal to intervene was flawed; indeed, it has now been overturned and in March 2014 the original complaint was allocated to a caseworker. PHSO also accepts that the review team should not have turned down Ms Oakley's request at the outset and that a proper review of the refusal should have started in November 2012; as it was, the review process did not begin until September 2013.
3. Shortly after the review started, Ms Oakley made a request under the Freedom of Information Act (FOIA) to PHSO. She was dissatisfied with the response and complained about it to the ICO. The ICO did not uphold her complaint and she has now appealed to the Tribunal against his decision notice. The ICO has applied for the appeal to be struck out on the ground that it has no reasonable prospect of success. The Tribunal has asked for and received comments from Ms Oakley.

Appellant: Janet Treharne Oakley**Date of decision: 29 May 2014**

4. The request, which is dated 1 October 2013, is in four numbered paragraphs. It is convenient to deal with it in two parts and I take first paragraphs 3 and 4.
5. This part of the request asked whether “all members of the PHSO staff always behaved ethically?” If the answer to that question was “no”, Ms Oakley wanted to know how many employees had not done so in the past three years. The final paragraph of her request involved some duplication. She wanted to know how many PHSO employees have behaved unethically over the past five years on a year by year basis.
6. The PHSO pointed out that FOIA applies to recorded information only and they were not obliged to give an opinion where information was not already recorded. It was pointed out that complaints were not recorded on staff personal files (although any disciplinary action would be). The ICO concluded that PHSO did not hold this part of the requested information.
7. Ms Oakley states that she can’t believe that PHSO’s HR department doesn’t have any records on misbehaving employees at all. She states that PHSO must have a record of the numbers of staff who have been sacked for unethical behaviour.
8. This part of the information request contains loaded questions; these are always likely to run into trouble under FOIA either because the public authority contests that the information is held or because the public authority regards the request as vexatious.
9. The Tribunal does not always accept at face value an assertion from a public authority that information is not held by them. In this case, however, the nature of the request is so broad and ill defined that no one could expect an employer to have a record of the requested information. Simply giving the numbers of staff sacked or disciplined would not meet the request. In my judgement, no reasonable Tribunal could conclude that the ICO decision was flawed in respect of this part of the request.
10. The other part of the request relates to the complaint about the head of the review team. Ms Oakley notes that the person in this post does not have to report any complaint about herself to her line manager and therefore has a special privilege.

Appellant: Janet Treharne Oakley**Date of decision: 29 May 2014**

She asks the PHSO whether this was the only post that does not have to so report a complaint and if not, what other posts are allowed this special favour. Again the language of the request is loaded.

11. PHSO replied to say that all recorded information about its complaints procedures had already been supplied to Ms Oakley in response to previous requests. There was no additional recorded information within its scope. The ICO accepted a submission from PHSO that the request contained some false assumptions and that the answer to the “issues contained within the request” was contained in the general policies which had already been supplied.
12. Ms Oakley’s letter of appeal states that her request was to find out why there was no line manager available to investigate whether the review team had made a mistake in their investigation. In an earlier clarification she said that she was asking why some staff have to refer complaints about themselves to their line managers. She also wanted to know whether some grades were allowed to bypass the line manager process and, if so, why. She wanted to know which staff are not subject to the usual process “since the internal files prove this to be the case”.
13. It is obvious, as the ICO acknowledged in his decision notice, that Ms Oakley is not satisfied that the complaints procedures which have been supplied to her were satisfactorily followed in her case. This, however, cannot justify a conclusion that the information she has been given is incomplete. In my judgement it is inevitable that a Tribunal will conclude that the ICO’s assessment in its decision notice is correct. No other recorded information exists.
14. For these reasons, I conclude that the appeal has no reasonable prospect of success. I would be doing no one any favours by prolonging its existence and I therefore strike it out.

NJ Warren

Chamber President

Dated 29 May 2014

Promulgation Date 4 July 2014