

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2017

Public Authority: Pensions Ombudsman Service
Address: 11 Belgrave Road
London
SW1V 1RB

Decision (including any steps ordered)

1. The complainant requested information on the reasoning behind a decision not to investigate a case. The Pensions Ombudsman Service (POS) confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that the POS does not hold any further information in this case. The Commissioner does not require the POS to take any steps.

Request and response

2. On 30 July 2016 the complainant requested the following information:

'I am requesting copies of the files and notes detailing the reasoning justifying the decision NOT to investigate case [case number redacted] by [redacted name 1]. This is a complaint submitted by myself and a number of fellow complainants. I considered the explanation given in letters and e-mails to me totally inadequate, based on opinions which I challenge.'

3. On 15 August 2016 POS provided a response and forwarded papers by post.

4. The complainant stated his dissatisfaction on 17 August that he had only received a copy of his own correspondence and explained that:

'What I seeking is a copy of her notes and preparative drafts prior to writing her letters and e-mails to me (4/7/2016, 20/7/2016,). [redacted name 2] promised the independent review in her letter to me of 15/12/2015 ...'

5. On 18 August 2016 POS responded that

'The information that you are seeking simply doesn't exist. There are no such documents so please be assured that we have disclosed everything we have. The reasons for [redacted name 1]'s decision are set out in her correspondence to you.'

6. On the same day, the complainant questioned this:

'Surely there must be at least the request from [redacted name 2] for a review? I also find it hard to believe that [redacted name 1] committed her thoughts directly to a letter without any written consideration (for her records). Could you please check internal e-mails.'

7. POS stated that there was nothing further to add.

Scope of the case

8. On 10 September 2016 the complainant contacted the Commissioner as he considered that more information must exist:

'The Pensions Ombudsman have denied the existence of working documents in arriving at the conclusion to decline to investigate my complaint...

The Pensions Ombudsman merely sent me copies of my own correspondence with them, and not the instructions from the Jurisdiction Adjudicator requesting a review by their "independent" legal team; nor of copies of notes justifying the decision NOT to investigate case and preparative drafts prior to writing letters and e-mails to me declining to investigate my complaint. They deny the existence of such documents.'

9. The Commissioner has considered that the scope of the case is whether section 1 of FOIA was applied correctly by the POS.

Reasons for decision

10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead

of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. As is the practice in a case such as this, the Commissioner asked the POS a number of questions to confirm/establish if further information is held.
14. By way of background, the POS explained the process that occurs on the case management system (Navigo) when a jurisdiction review is requested.

'Once requested it gets flagged on Navigo and waits in a queue to be looked at. The reviewer then picks up the file and does a fresh review. There is no communication of the type [the complainant] is seeking between [redacted name 2] and [redacted name 1]. There is no communication required between anyone, it is system driven. I can confirm that there were no preparative drafts or emails by [redacted name 1]. The review letter we sent [the complainant] represents the reasons for [redacted name 1]'s decision – there are no additional documents.'

15. In response to the Commissioner's questions about the location of the information, the POS confirmed that it had not withheld any information. It did not hold any further recorded information falling within the scope of the request:
 - We searched the Navigo case record and corresponding paper files. Searches were carried out on computers used by those involved in the case, including emails. But for the reasons explained above we wouldn't have expected there to be any relevant information to retrieve.
 - Our systems are locked down so we cannot save data locally. All data is saved to the network. Personal computers cannot be used to access our network.
16. The Commissioner asked the POS a number of questions to establish what searches had been carried out for information falling within the scope of the request.
 - Search terms used are selected to obtain the best chance of getting a result - such as the complainant's name and the file name.

17. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. The POS answered:
 - The information hasn't been destroyed it just doesn't exist. Our retention policy states that cases are destroyed 18 months after last contact.
18. Having considered the POS's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the POS does not hold any further recorded information within the scope of the request.
19. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, she cannot require a public authority to create the information under the FOIA.
20. As the Commissioner's decision is that the information is not held, the Commissioner does not require the POS to take any steps.

Right of appeal

21. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF