

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2011

Public Authority: General Medical Council
Address: Regents Place
350 Euston Road
London
NW13JN

Decision (including any steps ordered)

1. The complainant has requested a full set of the medical records for her deceased mother and any information the General Medical Council (GMC) holds on the name of a doctor who prescribed the drug Haloperidol to her late mother. The complainant also requested information on any preventative safety measures that were taken in regard to that prescription.
2. The Commissioner's decision is that the GMC correctly applied section 21(1) of the FOIA to the complainant's deceased mother's medical records and that on the balance of probabilities it does not hold information in respect of the remainder of her request. However, the Commissioner considers that the GMC breached section 1(1)(a) and section 10 of the FOIA by not informing the complainant within 20 working days that it did not hold such information.
3. The Commissioner requires no steps to be taken.

Background

4. The complainant lodged three complaints with the GMC about medical professionals who treated her deceased mother at the end of her life. Two of these complaints related to individual doctors and the third related to an unsigned prescription for the drug Haloperidol.
5. The GMC investigated the two complaints about named doctors but concluded that no further action was required. It did not investigate the

complaint about the prescription of Haloperidol as it did not have the name of any particular doctor to investigate.

Request and response

6. On 7 March 2011, the complainant wrote to the GMC and requested information in the following terms:

"The GMC has informed me that THEY have the full medical notes of my mother, [name redacted] from the start of 2005 to the end of my mother's life. As this purports to be the full documents I wish to be given a set of these medical notes..."

...In my complaint to the GMC I specifically stated the doctor who prescribed the Haloperidol...I need to know SPECIFICALLY who this doctor was, the name of the doctor, and what preventative measures were taken to ensure my mother's safety with this medication..."

7. The GMC responded on 22 March 2011. It informed the complainant that it held a copy of her mother's medical records but it was claiming an exemption under section 21 of FOIA. It explained that it would not release the copy of the medical records that it held because the complainant had already accessed a copy from the relevant NHS Trust under the Access to Health Records Act 1990 (AHRA). The GMC also explained that it itself was not caught by the AHRA.
8. Following an internal review the GMC wrote to the complainant on 10 May 2011. It stated that its initial decision to withhold the medical records under section 21 was accurate and appropriate.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way her request for information had been handled. Specifically, she complained that the GMC should have provided her with the copy of the requested medical records and that it had not answered the entirety of her request.
10. The Commissioner will consider,
- whether the full set of medical records should have been provided to the complainant under the FOIA; and

- whether the GMC held any information in respect of the complainant's request for information surrounding the prescription of Haloperidol outside of the medical records.

Reasons for decision

Medical records

11. Section 21 can be applied when all the relevant recorded information is reasonably accessible to the applicant. It is an absolute exemption and so has no public interest component.
12. The GMC informed the complainant that it was not able to provide the requested medical records because she had already accessed those records under the AHRA.
13. Although the FOIA is designed to be applicant blind, in order to consider whether section 21 applies it is important to take into account the individual circumstances of the applicant, and whether the information requested is reasonably accessible to the applicant.
14. In determining whether information is reasonably accessible to the applicant, a public authority should take into account any legal access schemes or rights which are available to that applicant. In this instance the GMC has taken into account, and cited, the AHRA.
15. Section 3(f) of the AHRA provides that an application for access to a health record, or to any part of a health record may be made by a deceased patient's personal representative and any person who may have a claim arising out of a patient's death. The AHRA requires the relevant authority to disclose documents in certain situations.
16. The GMC noted that the complainant had already obtained a copy of the medical records requested through the AHRA from the relevant NHS Trust. The information can therefore be considered to be reasonably available to her.
17. In these circumstances the Commissioner considers that disclosure of this information is exempt under section 21(1) of the FOIA. This is because it is reasonably accessible to the complainant under a separate access regime, the AHRA.
18. The complainant has informed the Commissioner that she is not satisfied with the sufficiency of the records that were provided to her by the Trust under the AHRA. However, the Commissioner is unable to consider this issue as it does not come within his jurisdiction.

Prescription of Haloperidol

19. Prior to the Commissioner's involvement in this complaint, the GMC had not specifically responded to the complainant's request for the name of the doctor who prescribed Haloperidol to her late mother and any preventative safety measures that were taken in regard to that prescription.
20. The Commissioner therefore investigated whether the GMC held such information.
21. 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 of the description specified in the request, and if that is the case, to have that information communicated to him.
22. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the actions taken by the authority to check that the information was not held and he will consider if the public authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities."¹
23. The Commissioner enquired whether the GMC had held the information requested at the time the request was received. The GMC informed the Commissioner that it did not hold that information.
24. The GMC informed the Commissioner that it uses an electronic records management system and that all documents generated by a complaint are held under a unique reference number within that system. The GMC reviewed all of the data that it held on its electronic records management system under the unique reference number that related to the complainant.
25. As the complainant had made three complaints to the GMC, the GMC clarified that it had stored all three complaints under one unique reference number and that it had searched the data it held in relation to that number.

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/ Environment Agency (31 August 2007) EA/2006/0072

26. The Commissioner considers that the GMC's search was appropriate in the circumstances. As all documents generated on a complaint are stored within the electronic records management system then the most likely place for the requested information to be held, if it were held, would be in that system. Therefore the Commissioner considers the scope, rigour and efficiency of the search adequate enough to be suggestive of that information not being held.
27. Further, the complaint concerning the prescription of Haloperidol was that no doctor had signed the prescription. The GMC did not investigate this complaint because there was no named doctor to which the complaint could be attached.
28. The GMC's purpose in investigating complaints is to establish the fitness to practice of individual registered doctors. It is therefore the Commissioner's view that the GMC has a credible explanation as to why it did not hold the information requested.
29. If the GMC was unable to investigate the prescription of Haloperidol because there was no doctor identified to investigate, then it follows that the GMC would not hold the name of any such doctor. The GMC would also have no business purpose in holding information as to what safety measures were taken with regards to the prescribed medication if it had not investigated the matter.
30. The Commissioner therefore considers that, on the evidence before him, and on the balance of probabilities, the GMC does not hold the information requested in respect of the prescription of Haloperidol.
31. It is noted that the GMC did not specifically take into consideration the complainant's request for information related to the prescription of Haloperidol in its responses to her. Further, it was only when the Commissioner became involved in this case that the GMC confirmed it did not hold such information.
32. Whilst the Commissioner considers that the request for information was not as clear as it might have been, and the GMC may have treated the request in good faith as pertaining to its previous non-FOIA correspondence with the complainant, the Commissioner would expect the GMC to have identified the whole of the request as being a request made under the FOIA. In the event it did not do so.
33. Whilst section 1(1)(a) of the FOIA requires a public authority in receipt of a request to confirm whether it holds the information requested, section 10(1) of the FOIA provides that a public authority should comply with section 1(1) within 20 working days.

34. The request was submitted on 7 March 2011. The GMC did not inform the complainant within 20 working days whether it held the requested information in respect of the prescription of Haloperidol. The Commissioner therefore finds that the GMC failed to comply with section 1(1)(a) and further breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Other matters

35. Although it does not form part of this decision notice the Commissioner wishes to highlight the following.
36. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. As he has made clear in his "Good Practice Guidance No 5", the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case an internal review was requested on 22 March 2011 and it was provided on 10 May 2011. The Commissioner is therefore concerned that it took approximately 32 working days for the review to be completed by the GMC as he does not consider that there were exceptional circumstances to justify this delay.

Right of appeal

37. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. 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

Faye Spencer
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