

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2013

Public Authority: General Medical Council
Address: St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Decision (including any steps ordered)

1. The complainant requested copies of MMR litigation documents that were used in the General Medical Council's (GMC) Fitness to Practice hearings concerning Andrew Wakefield and two others doctors.
2. The Commissioner's decision is that the GMC relied correctly upon the exemption at s44(1) FOIA to withhold the information.

Background

3. MMR is the triple vaccine against measles, mumps and rubella. A research paper by Dr Andrew Wakefield published in the Lancet in 1998 maintained there was a link between MMR and autism. Media coverage of the article caused a fall in vaccination rates. Parents of autistic children began proceedings against the pharmaceutical companies which manufactured the vaccine. The Legal Aid Board (now Legal Services Commission) granted legal aid for the litigation. Andrew Wakefield's research was later discredited. In 2006 documents generated in the course of the MMR litigation were provided by the Legal Services Commission to the General Medical Council for purposes of its Fitness to Practice hearing against Andrew Wakefield and two other doctors. The complainant's request is for disclosure of two of those documents.

Request and response

4. On 19 July 2012 the complainant requested the following documents from the GMC's Fitness to Practice hearing concerning Dr Andrew Wakefield and two others :

" (a) A copy of the "Legal Aid Board Authority to do contract work" dated September 1994 in respect of the MMR litigation referred to and entered into the GMC transcript on day 11, page 2 onwards in the examination of Ms Joanne Cowie by Ms Smith QC.

(b) A copy of the "amended" Legal Aid Board Authority to do contract work" dated 26 September 1994 (details/source as above)."

5. On 1 October 2012 the GMC exempted the information from disclosure under s44(1)(a) FOIA due to the prohibition in s38 of the Legal Aid Act (LAA) 1988.
6. The complainant appealed and on 23 October 2012 the GMC's internal review upheld the decision to withhold the information under s44(1)(a) FOIA.

Scope of the case

7. On 1 November 2012 the complainant contacted the Commissioner to complain about the way her request for information had been handled. She asked the Commissioner to consider the appropriateness of the GMC's refusal to disclose the documents under s44(1)(a) FOIA on the basis of the prohibition in s38(1) LAA.
8. On 22 January 2013 the Commissioner asked the GMC for a copy of the withheld information in order to determine the appropriateness of the exemption that had been applied.
9. The Commissioner ascertained that the document referred to in (b) of the complainant's request is dated 22 August 1996 and not 26 September 1994.
10. He noted a number of redactions within one of the documents. The Commissioner ascertained from the GMC that these redactions were made by the Legal Services Commission (LSC) prior to supplying the documents to the GMC. The redacted parts of the documentation are therefore not held by the GMC.

11. This decision notice addresses the GMC's withholding of the rest of the information under s44(1) FOIA.

Reasons for decision

12. Section 44(1) FOIA states that information is exempt if its disclosure is prohibited under any enactment. The GMC submitted that disclosure in this instance is prohibited by s38 LAA.
13. Subject to certain gateways, s38(1) LAA prohibits disclosure of information that has been furnished to the Legal Aid Board (now Legal Services Commission).
14. Section 38 LAA was repealed by the Access to Justice Act (AJA) 1999, however, s38 remains in force in relation to any legal aid certificate granted before 1 April 2000. This was provided for in AJA (Commencement Order No.3, Transitional Provisions and Savings) Order 2000. The documents requested by the complainant relate to legal aid certificates granted before 1 April 2000.
15. The Commissioner has considered whether the information contained within the documents was furnished to the Legal Aid Board. Whilst the documents themselves were issued by the Board the information they contain is essentially a repetition of the information originally furnished to the Board by the applicants' solicitors. Therefore the information within the documents falls within s38 LAA.
16. The Commissioner has next considered whether any of the gateways that would permit disclosure in s38(1)(a) to (f) LAA apply. The gateways to disclosure in s38(1) are as follows:
 - (a) for the purpose of enabling or assisting the Lord Chancellor to perform his functions under or in relation to this Act
 - (b) for the purpose of enabling the Board to discharge its functions under this Act
 - (c) for the purpose of facilitating the proper performance by any court, tribunal or other person or body of persons of functions under this Act
 - (d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence under this Act
 - (e) in connection with any other proceedings under this Act or
 - (f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions as regards barristers or solicitors.
17. The Commissioner does not consider that any of the gateways in s38(1) (a) to (f) LAA permit disclosure by the GMC. The disclosure in this instance would be to fulfil an FOI request.

18. In light of the above the Commissioner is satisfied that the requested information is exempt from disclosure under s44(1)(a) FOIA by virtue of s38 LAA.
19. The exemption at s44(1) is absolute and so is not subject to the public interest test.

Procedural matters

20. The GMC issued its refusal notice 52 working days after receiving the request. By failing to issue a refusal notice within 20 working days of receiving the request the GMC breached s10(1) FOIA.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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

Rachael Cragg
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