

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2013

Public Authority: General Medical Council ("GMC")
Address: 3 Hardman Street
Manchester
M3 3AW

Decision (including any steps ordered)

1. The complainant has requested the names of personnel involved in dealing with a complaint made to the GMC. The GMC neither confirmed nor denied holding the information.
2. The Commissioner's decision is that confirmation or denial would disclose third party personal data and that disclosure of this personal data would be in breach of the first data protection principle. His decision is therefore that the GMC correctly refused the request for information under section 40(5)(b)(i) of the FOIA.

Request and response

3. On 9 June 2012, the complainant wrote to the GMC and requested information in the following terms:

"[1] Seeing as the registrar (assistant registrar) in respect of the recent GMC rule 4 decision not to move [name redacted] past Rule 4 in respect of our case, hold such a publicly facing position so to speak, can you please provide me with their name/names.

[2] Seeing as the legal personnel in respect of the recent GMC rule 4 decision not to move [name redacted] past Rule 4 in respect of our case, hold such a publicly facing position so to speak, can you please provide me with their name/names.

[3] Seeing as the GMC personnel in respect of the recent GMC rule 4 decision not to move [name redacted] past Rule 4 in respect of our

case, hold such a publicly facing position so to speak, can you please provide me with all the names of GMC personnel involved in the mentioned rule 4 decision."

4. The GMC responded on 6 July 2012. It stated that to respond to the request and either provide the information or state it is not held would be a disclosure of personal data. As such the GMC refused the request on the basis of section 40(5)(a) and 40(5)(b)(i).
5. Following further communications with the complainant, the GMC responded again on 14 September 2012 and specifically referenced the Data Protection Act 1998 ("DPA") but did not seem to address the freedom of information elements of the request.
6. The complainant submitted a number of complaints to the Commissioner and after evaluating each one the Commissioner asked the GMC to conduct an internal review in relation to this request. This was done and the outcome communicated to the complainant on 21 March 2013. It stated that it upheld the original decision to refuse to provide the information, if held, on the basis of section 40(5)(a) and 40(5)(b)(i).

Scope of the case

7. The complainant contacted the Commissioner initially on 14 September 2012 and later on 19 February 2013 to confirm he wanted to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if the GMC has correctly refused to respond to this request on the basis of section 40(5) of the FOIA.

Background

9. When the GMC receives a complaint about a doctor an initial decision is made by its Fitness to Practice Directorate as to whether an investigation should be conducted. If an investigation takes place, on completion of the investigation, the complaint will be considered by two senior GMC staff (one medical and one non-medical). There are a number of possible outcomes, including concluding the matter, issuing a warning or referring the case to a Fitness to Practice (FTP) Panel.
10. FTP panel hearings are usually held in public although they may be held in private if discussing a doctor's health or any other confidential matter. It is at the hearing stage that details regarding the case may be made

publicly available. Following this the outcomes of FTP panel hearings are published on the GMC's website.

Reasons for decision

11. Section 40(5) of FOIA states that a public authority is not obliged to confirm or deny whether information is held if to do so would constitute a disclosure of personal data and this disclosure would breach any of the data protection principles. The Commissioner has therefore considered those points in turn when determining if the exemption has been correctly applied in this case.

Would confirming or denying that the information is held constitute a disclosure of personal data?

12. *The DPA defines personal information as:*

"data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller"

13. The Commissioner is satisfied that the information requested by the complainant, that being the identities of individuals involved in dealing with a complaint about a named doctor, would be personal data if it were held.

Would confirming or denying that the requested information is held breach a data protection principle?

14. In cases such as this the most likely data protection principle is the first principle which requires that personal data is processed fairly and lawfully.
15. Following the internal review the GMC informed the complainant that confirming whether the information was held would confirm that a complaint existed which would be unfair to specific individuals. The GMC considered whether there would be any expectations from individuals involved in complaints that information would be published and concluded, in line with other decisions¹, that there was no expectation by individuals involved in the process that information would be

¹ ICO decision notice FS50476630

published before it reached the point it would normally be put in the public domain.

16. In this case the information requested, if it were held, would be likely to be information about individuals involved in a complaint that has not yet reached the point where it would be put into the public domain. The GMC does not consider it reasonable therefore to confirm or deny if the requested information is held as to do so would put personal information into the public domain.
17. Disclosure of the information under the FOIA constitutes disclosure to the world at large and the Commissioner therefore accepts that it would be unfair in the circumstances for the GMC to confirm or deny whether it holds information within the scope of the request.
18. In view of the above, the Commissioner finds that confirming or denying whether the GMC holds information within the scope of the request would contravene the first data protection principle. The GMC was therefore correct to apply section 40(5) of the FOIA in this case.

Right of appeal

19. 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

20. 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.
21. 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
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SK9 5AF