

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 February 2013

**Public Authority:** General Medical Council  
**Address:** 3 Hardman Street,  
Manchester  
M3 3AW

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to a barrister that provided advice to the General Medical Council (GMC).
2. The Commissioner's decision is that the GMC has correctly applied section 40(5)(b)(i) of the FOIA. The Commissioner does not require the GMC to take any steps.

#### **Background**

---

3. The complainant has made a number of requests to the GMC which are also being considered by the Commissioner.
4. The GMC has explained that when it receives a complaint about a doctor an initial decision is made by its Fitness to Practise 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). They can conclude the case, issue a warning, agree undertakings with the doctor or refer the case to a Fitness to Practise (FTP) Panel.
5. 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.
6. Outcomes of FTP Panel hearings are published on its website. Details of any current restrictions on a doctor's practise are also made publicly available. The expectation of all parties involved in the GMC's complaint

process is that information will only be published in line with these disclosure points.

## **Request and response**

---

7. On 15 September 2012, the complainant wrote to the GMC and requested information in the following terms:
  - a) *The name of the Barristers chambers for which the external barrister mentioned by [GMC employee] in his email to me dated 19/9/12 (4:09pm) was working from when he/she provided legal advice in regard to the unreasonable GMC [named individual] Rule 4/Triage decision.*
  - b) *The town/city of the mentioned Barrister's chambers in at request a) above.*
8. The GMC responded on 12 October 2012. It stated that it was refusing to provide the requested information as it was exempt under section 40(5)(b)(i) of the FOIA.
9. Following an internal review the GMC wrote to the complainant on 6 December 2012. It maintained its original position.

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 7 December 2012 to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the GMC has correctly applied section 40(5)(b)(i) of the FOIA to the requested information.

## **Reasons for decision**

---

12. Section 40(5) of FOIA provides that a public authority is not obliged to confirm or deny whether information is held if to do so would:
  - a) constitute a disclosure of personal data, and
  - b) this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

13. The GMC has stated that if the information requested (if held) was provided, the complainant would be able to use that information to identify an individual.

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

14. 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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual'.*

15. The Commissioner is satisfied that the information requested by the complainant would (if it were held) be considered personal data relating to the Barrister.

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

16. The first data protection principle says that personal data must be processed fairly and lawfully.

17. Following the internal review, the GMC told the complainant that confirming the information was held would confirm that a complaint existed and that would be unfair to a specific individual.

18. An important consideration when assessing whether it would be fair to process personal data, is the data subject's expectation of disclosure. As outlined above, the expectation of all parties involved in the GMC's complaint process is that information will only be published when the complaint is in the public domain.

19. Disclosure of information under the FOIA constitutes disclosure to the world at large. 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.

20. In view of the above, the Commissioner finds that confirming or denying that the GMC holds information within the scope of the request would contravene the first data protection principle. The GMC was therefore entitled to rely on the exclusion at section 40(5)(b)(i) of the 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://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 .....**

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