

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 7 August 2014

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 the communications of two individuals.
2. The Commissioner's decision is that the General Medical Council (GMC) has correctly applied section 14(1) of the FOIA to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 12 December 2013, the complainant wrote to the GMC and requested information in the following terms:
 - i. *Copy of conversation between [redacted] of Heywood, Middleton and Rochdale PCT to [redacted] of the GMC.*
 - ii. *Copy of the advice given by [redacted] to [redacted].*
 - iii. *Job Title and Job description of [redacted]*
 - iv. *How many advises [sic] [redacted] has given to the Primary Care Trusts in the last 10 years about the doctors?*
 - v. *Ethnicity or origin and age of those doctors about whom he gave the advices."*

5. The GMC responded on 30 January 2014. It stated that it had previously considered the items at i. and ii. under the DPA and referred the complainant to a response issued on 24 August 2012. It also confirmed that the information requested at points iii – v did not contain the complainant's personal data. The GMC therefore considered the request under the FOIA.
6. The GMC refused to provide the requested information citing section 14(1) of the FOIA as its basis for doing so.
7. Following an internal review the GMC wrote to the complainant on 1 May 2014 and maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 2 April 2014 to complain about the way her request for information had been handled. The Commissioner contacted the complainant to advise that as no internal review had been carried out he would contact the GMC and request this was done.
9. As stated above in paragraph 7, an internal review was provided on 1 May 2014. The Commissioner considers the scope of this case to be to determine if the GMC has correctly applied section 14(1) of the FOIA to the request.

Reasons for decision

Section 14(1) – vexatious requests

10. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner has issued guidance on his approach to deciding when a request can be considered vexatious¹. This follows the decision of the Upper Tribunal in *Information Commissioner and Devon County Council v Dransfield*² In the Dransfield case, the Upper Tribunal also found it

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

11. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests³. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner has considered the arguments put forward by the GMC in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request. Further information relating to the context and history of the request are provided in a confidential annex, which is only to be shared with the complainant and the GMC.

Is the request obsessive?

³http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

14. The Commissioner would characterise an obsessive request as one where the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
15. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence then it may form part of a wider pattern of behaviour that makes it vexatious.
16. The Commissioner accepts that at times there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
17. The GMC explained that the complainant has made numerous FOIA and DPA requests to the GMC since 2009. These are usually sent in list form and consist of multiple questions. At the point of the response dated 30 January 2014 the Information Access Team had dealt with in excess of 100 individual questions from the complainant.
18. The GMC provided a table detailing the number of requests received from the complainant since 2009 at the point of response on 30 January 2014. It clearly shows there is a marked increase in the number of requests and appeals received subsequent to the GMC communicating the findings of its external review in 2012.

Year	FOIA Requests	DPA Requests	Appeals
2009	1	1	0
2010	1	0	0
2011	0	1	0
2012	4	5	2
2013	8	5	2

19. The GMC further explained that the requests routinely ask for statistics regarding complaints about doctors received from the PCT, information

in connection with the referral of him by the PCT and race/ethnicity information for doctors and GMC staff. At times the complainant will submit a request with multiple components before a response to his previous request has been sent. FOIA and DPA responses provided to him are almost invariably followed with further requests for information within short periods of time.

20. It also argued that the complainant persistently requested information which the GMC has explained on numerous occasions is not held, such as details of doctors' religion and race. The GMC provided copies of its responses to the complainant dated 27 September 2010, 14 August 2012, 30 November 2012, 10 May 2013 and 26 November 2013.
21. In addition, the GMC stated that the complainant made repeated requests with similar themes; much of his correspondence centres around requests in connection with the PCT and questions surrounding ethnicity, race and religion. For example his letters dated 20 April 2009, 19 November 2009, 18 August 2010, 28 April 2013, 24 July 2013.
22. Additional requests for further information being made before a response to a previous request has been provided. The GMC referred to its request references F13/5606/EH and 13/11929/EH as well as F12/4786/CB and 12/11579/CB.
23. Repeating requests for the same/similar information which has already been previously provided to him. For example the similarity in the information requested within request references F12/4786/CB and F13/5842/JM.

Is the request designed to cause disruption or annoyance?

24. The GMC considered the requests are submitted in order to cause annoyance and disruption to the GMC and to continue to retaliate against decisions with which the complainant does not agree. It considered that providing a response to him on points 3-5 would serve only to lead to further correspondence being received from him in an attempt to raise unsupported concerns concerning its handling of his cases and complaints.

Value and purpose of the request

25. In relation to the FOI aspects of the request (questions 3-5) the GMC does not consider these requests have any serious purpose or value. It considered that the complainant is requesting this information to try and further his claims of discriminatory behaviour by the GMC when dealing with his referrals and complaints. This matter has previously been specifically addressed in the external review carried out by its legal

advisors and communicated to the complainant in a letter of 29 February 2012.

26. The GMC also considered that there was no wider value or public interest in making the requested information available. For example when viewing the request for the number of pieces of advice that an individual has given within their role over a 10 year period in isolation (question 4), the GMC stated that it did not understand how such a request could have sufficient purpose and value to justify the burdensome nature of the request in terms of the time to collate such information.
27. It was also of the view, in line with previous behaviour demonstrated by the complainant, that providing additional information in respect of the role and job description of [redacted] (question 3) would result in the complainant attempting to contact [redacted] directly to try and enter into a dialogue with him about his closed cases.
28. In summary the GMC considered that the complainant has no intention of ceasing his correspondence with the GMC and is using the FOIA as a vehicle to continue engagement with the GMC despite the conclusion of his complaints which are now several years old.

Does it have the effect of harassing the public authority?

29. In conclusion with reference to the 13 indicators that are listed in the ICO guidance the GMC considered that the request of 12 December 2013 displayed:
30. *Unreasonable persistence* - The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
31. *Frequent or overlapping requests* - The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries. The short periods of time between FOIA and DPA responses being received by the complainant and receipt of further requests from him. For example, a response to the complainant was sent on 16 August 2013, two days later the GMC received a fax with further requests. Similarly, a response was sent to the complainant on 26 November 2013 and again two days the GMC received further requests.
32. *Disproportionate effort* - The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet the request.

33. *No obvious intent to obtain information* - Vague or incomprehensible requests for general information for example his request for his questions 6 and 7 of his letter dated 29 October 2013 "How is minimum standard assessed?" and "Are these standard credited? If credited who credited those standard". The complainant sought to provide clarification on this point in his letter of 28 November 2013 but again the request was difficult to interpret "The Standards are set by whom regarding the doctors for minimum standard, which the Expert Witness and all others decide, is credited by which college or organisation".
34. The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.
35. *Futile requests* - The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.
36. The GMC considered that a distinct analogy can be drawn between the case of Dransfield and this, in the sense that prima facie the complainant's request of 12 December 2013 was short, relatively focussed, and caused no apparent harassment or distress. However, viewed in the light of previous dealings between the complainant and the GMC, the historical burden these have placed on the authority and the likely future burden that would be created in responding to this request, together with an apparent lack of any public interest in providing a response, it was satisfied the request was vexatious in that it was a "manifestly unjustified, inappropriate or improper use of FOIA".

The Commissioner's decision

37. The Commissioner has reviewed the information provided by the GMC, and notes that there is a significant amount of correspondence.
38. The Commissioner acknowledges that the GMC has carried out an external review of its decision relating to its handling of the complainant's case.
39. However, he also acknowledges the complainant's position. The decisions taken by the GMC have had a significant impact on him personally.
40. Although the complainant feels there is a value and purpose to his requests, the Commissioner considers that there is nothing to be gained by making further requests. The GMC had, up until January 2014, corresponded with the complainant, providing information and

clarification where possible. The complainant appears determined to re-visit matters which have already been addressed and dealt with.

41. Taking into consideration the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of section 14(1), the Commissioner has decided that the GMC was correct to find the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the public authority and is satisfied that the request is obsessive and has the effect of harassing the public authority. Accordingly, the Commissioner finds that section 14(1) has been applied appropriately in this instance.

Right of appeal

42. 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: GRC@hmcts.gsi.gov.uk

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

43. 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.
44. 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