

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2015

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

Decision (including any steps ordered)

1. The complainant has requested information on the recovery of legal costs by the General Medical Council (GMC). The GMC refused to comply with the request under section 14(1) of FOIA on the basis that it was vexatious.
2. The Commissioner's decision is that the GMC was entitled to find the request was vexatious.
3. He does not require the GMC to take any further action in this matter.

Request and response

4. The GMC had previously provided the complainant with information on its sources of income in response to an earlier request. One item shown under the heading of 'Other Income' was the 'Recovery of Legal Costs'. The complainant sent a letter dated 30 September 2014 to the GMC by fax in which he requested information in the following terms:

"1: From whom were these legal costs recovered?
Please provide the names and address from whom the legal costs were recovered.

2: The reasons for recovering the legal costs.

3: Rules and Regulations of the GMC for the recovery of those legal costs."

5. Although the letter was dated 30 September 2014 the GMC's records show that the fax was only received on the 20 October 2014. This is evidenced by the header automatically produced on the document when transmitted by fax. This shows the date it was received as the 20 October 2014. The GMC has no record of receiving the request earlier than that date. The Commissioner therefore accepts the request was first received by the GMC on 20 October 2014. On the 17 November 2014 the GMC responded. It refused to comply with the request under section 14(1) on the basis that it was vexatious.
6. Following an internal review the GMC wrote to the complainant on 16 March 2015. It maintained its position that the request was vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 13 April 2015 to complain about the way his request for information had been handled. However it was not until 2 May 2015 that the complainant provided copies of all the documentation necessary in order for the investigation to commence.
8. The complainant expressed concern over both the refusal of his request and the length of time the GMC took to conduct the internal review.
9. The Commissioner considers that the matter to be decided is whether the GMC was correct to refuse to comply with the request under section 14(1) on the basis that it was vexatious.
10. The complainant's concerns over the internal review will be considered under 'Other matters'. This is because there is no statutory time limit on such reviews under FOIA and therefore this is not a matter which can be considered within the main body of this notice.

Reasons for decision

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. Section 14(1) is concerned with the nature of the request itself rather than the consequences of releasing the requested information. The Act does not contain a definition of what constitutes a vexatious request however based on decisions by the Upper Tribunal the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

13. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious and therefore it is necessary to set out the wider circumstances in which this particular request was made before looking in detail at the GMC's grounds for applying section 14(1).
14. The complainant has been in dispute with the GMC for a number of years. This relates to how the GMC conducted investigations into his fitness to practise. The complainant has exhausted the GMC's complaints procedures regarding that matter which included a full investigation by independent external solicitors.
15. The complainant has submitted requests on 22 separate occasions over the last six years many of which had multiple parts equating to over 100 separate requests for information. This particular request is one of three which the GMC refused in late 2014. The GMC maintained its reliance on section 14(1) in respect of all three requests following internal reviews which were all completed on 16 March 2015. The other two requests are now the subject of separate decision notices.
16. This specific request flowed from the responses provided to two earlier requests. On 30 May 2014 the complainant made a request which sought information on the amount of money the GMC received from named NHS organisations. The GMC responded on 6 June 2015 explaining that it did not receive any money from those organisations. This led to a further request being made on 8 June 2014 which asked for information on the sources of income received by the GMC in the way of donations and gifts. The GMC responded to that request on 23 June 2014 explaining that the GMC is not permitted to accept gifts from individuals or organisations with which staff have official dealings. To help clarify how it was funded, the GMC went on to provide a link to its most recent set of accounts published on the internet. This spawned a further request on the 24 June for more detailed information. In particular he asked for the details of any income received by the GMC, other than the fees from doctors. This resulted in the GMC providing the complainant with an annexe to the Chief Executive's Report containing the revenue budget for year ending March 2014. Included on the income side of that budget was an item shown as 'Other income'. On the 8 July the complainant wrote to the GMC arguing that he had not received all the information he had requested. He asked for a breakdown of that 'Other income' including the names and addresses of the other sources of income. This was treated by the GMC as a request to review its response to his previous request. On 12 September 2014 it provided a detailed breakdown of 'Other income' that breakdown showed that £220,772 of the income came from the recovery of legal costs. The GMC refused to provide the names and addresses of individuals who provided

the other sources of income on the basis that it was personal data. This response led directly to the request which is the subject of this notice.

17. It is against this background that the Commissioner will consider whether the request is vexatious. The GMC has argued that in common with the other two requests which it refused on the basis they were vexatious, this request is an attempt by the complainant to use FOIA as a vehicle to continue engagement with the GMC despite the conclusion of his own complaint regarding the GMC's investigation into his fitness to practise.
18. There are a number of factors which may indicate that a request is vexatious. One such indicator is that the request demonstrates a 'scattergun approach' in that the request appears to be part of a completely random approach, lacks any clear focus, and seems to be designed for the purpose of fishing for information without any idea what might be revealed. The GMC has argued this applies to the complainant's request.
19. The Commissioner notes that the request originates from an earlier one in which the complainant sought information about whether the GMC received any funding from specific NHS bodies. Following subsequent requests, the GMC volunteered information from its most recent accounts to try and clarify how it was funded. This only led to further requests which asked for increasingly detailed information relating to those accounts. It does not appear therefore that the complainant initially had any specific interest in the circumstances in which the GMC sought to recover its legal costs. This supports the GMC's contention that this particular request was simply a fishing exercise rather than being a genuine attempt to obtain information that was of interest to the complainant.
20. This leads on to another of the indicators which the GMC considers is relevant here. It argues that in making his request the complainant does not have any obvious intention of obtaining information. The GMC argues that when seen in the broader context of the complainant's dealings with the GMC the complainant is making the request as a means of venting his anger regarding the GMC's investigations into his fitness to practice, or as a means of annoying and harassing the authority.
21. Clearly this is a matter of judgement. The Commissioner agrees that it is difficult to see the request for information on the recovery of legal costs as a serious attempt to access information. He also considers that the request appears to form part of pattern where by the response to one request is swiftly followed by a new request, in this case seeking continually more detailed information based on the previous responses.

The Commissioner considers it likely that on receipt of the complainant's request relating to the recovery of legal costs, staff dealing with it would have reasonably anticipated that any response they provided would simply spawn a fresh request. Although there will be many cases where one response legitimately leads to other requests being made as an applicant genuinely seeks to explore a particular subject through making well targeted requests, when set against the context of the complainant's previous request making history, the Commissioner considers that this request is more likely to be means of the complainant expressing his dissatisfaction with the GMC rather than to obtain information of value to the complainant. This would have the effect of harassing the GMC.

22. The GMC has also argued that the request is frivolous. This can apply to requests which are inane or extremely trivial or appear to lack any serious purpose such as requests made for the sole purpose of amusement. The Commissioner is cautious of accepting this argument. The request may lack any serious purpose as discussed above, however public authorities have to be careful not to try and double count this factor by using it to support arguments that the request is vexatious on a number of grounds which do not necessarily apply. The Commissioner does not accept the request was made for the amusement of the complainant. As discussed above, he considers it more likely to be an expression of his dissatisfaction and anger with the GMC.
23. In conclusion the request does not appear to represent a methodical attempt to access particular information, but rather was triggered by the GMC volunteering the disclosure of information on its sources of 'Other income'. It therefore appears to be part of a fishing exercise rather than a genuine attempt to obtain information of value to the complainant. In addition the request appears to be part of a pattern of relentless request making by the complainant, which seems more an expression of anger with the GMC rather than an attempt to obtain information. For these reasons the Commissioner finds that the request is vexatious and that the GMC was entitled to refuse it under section 14(1). The Commissioner does not require the GMC to take any further action in this matter.

Other matters

24. The complainant has raised concerns over the time the GMC took to deal with his request. Based on the Commissioner's finding that the request was first received by the GMC on 20 October 2014 there is no issue around the time taken by the GMC to provide its initial response. However the Commissioner does have concerns over the length of time

that the GMC took to conduct the internal review of its handling of this request.

25. Although there is no statutory time limit for conducting such reviews the Commissioner has issued guidance on the subject. He considers that in most cases a public authority should complete its reconsideration of a request within 20 working days of a review being requested, and in no circumstances should a review take longer than 40 working days to complete.
26. The complainant asked for a review to be conducted on 23 November 2014. The GMC finally provided him with the outcome of that review on 16 March 2015, three and a half months later. This is clearly well over the time that the Commissioner would expect a public authority to take.
27. The Commissioner would remind the GMC of the need to conduct such reviews in a timely manner.

Right of appeal

28. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

29. 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.
30. 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