

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2017

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

Decision (including any steps ordered)

1. The complainant has requested biographical information relating to case examiners. The General Medical Council (GMC) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the GMC has correctly applied section 40(2) of FOIA to the withheld information.
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 13 September 2016 the complainant made the following request for information:

'Panel members' Bibliographical details

Kindly provide the above in relation to sessions dealing with a complaint made to the GMC on 1 August 2013 by [redacted name and place of Doctor 1] and [redacted name 2] which is appended for ease of reference.

We also enclose copy documentation from the GMC dated 5 December 2014 (referenced [case name redacted]) and request bibliographical details of the "case examiners" referred to therein.'

5. On 27 September 2016 the GMC refused to provide the requested information and cited the exemption section 40(2) of the FOIA.

6. On 3 October the biographies of the panel members were provided. On 4 October 2016 the complainant requested a review as the 'response only addresses part of the response' and 'kindly confirm that the GMC is legally bound to withhold the bibliographical details of the expert case examiners as per our request'.
7. On 2 November 2016 the GMC provided the outcome of the internal review. It upheld the application of section 40(2) of the FOIA to the biographical details of the case examiners.
8. GMC explained that

'We consider there to be a significant difference between providing you with details of the MPT members and those of the Case Examiners who considered your case. The MPT members have an expectation that their information will be published on the MPTS website via the 'register of interests'. The Case Examiners have no such expectation and this is a key consideration in relation to the Data Protection Act 1998 (DPA).'

Background

9. The GMC explained the difference between the two roles.
10. Case examiners are members of GMC staff who are responsible for making decisions within the investigation stage of complaints. GMC does hold information regarding the case examiner's background and qualifications within their personnel file. However, the GMC does not have a summary available for each case examiner.
11. A Medical Practitioners Tribunal (MPT) usually takes place in public unless considering confidential matters; decides whether a doctor's fitness to practise is impaired and whether any action should be taken on their registration. Tribunal members' interests are published on the Medical Practitioners Tribunal Service website and are provided to doctors before the hearing.
12. As the doctor in this case was referred for a public hearing GMC is able to confirm the existence of this case against the doctor. It therefore follows that two case examiners (one medical and one lay) will have made the decision to refer the case for an MPT hearing. It is the personal data of these case examiners that is the withheld information.
13. The GMC summarised the role of the case examiners. Each case is considered by two case examiners and both need to agree on the decision. Where allegations are raised that relate to a specialist area of

medicine (as in this case) an external expert opinion is sought to inform the decision making.

14. At the end of an investigation there are a number of options open to the case examiners:
 - refer the case to a medical practitioners tribunal
 - agree undertakings
 - issue a warning (or refer the matter to the Investigation Committee for a hearing regarding whether to issue a warning)
 - conclude the case with no further action.

Scope of the case

15. On 20 November 2016 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled and after providing more documents, the case was accepted on 26 January 2017.
16. The Commissioner considers the scope of this case to be to determine if GMC has correctly applied section 40(2) FOIA to the withheld information.

Reasons for decision

Section 40(2) – Third party personal data

17. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

18. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
19. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
20. GMC stated that 'information from their personnel files will be sufficiently detailed to allow them to be publicly identified. In addition,

we have previously disclosed under the FOIA a list of case examiners' names, and for medical case examiners, their registration numbers, which allows them to be located on the medical register.'

21. The Commissioner considers that the information withheld under section 40(2) is biographical information from which living data subjects would be identifiable.

Would disclosure breach the Data Protection Principles?

22. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
23. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

24. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
25. The GMC have explained that appointment to the role of case examiner is carried out on a competency basis which is designed to assess the decision making skills of the applicants. A medical case examiner is required to have a licence to practise medicine. There is no expectation on the part of the case examiners that information provided in their applications would be placed into the public domain.
26. GMC also stated that '*there is no expectation that we would publicly identify which case examiners have considered a particular case.*' The case examiner role is not the same as a tribunal member as it relates to the private investigation phase of the work whilst the Tribunal is public-facing.
27. The Commissioner understands that the GMC would not routinely make public such information.

Consequences of disclosure/Damage and distress

28. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individuals.
29. GMC stated that 'releasing information on the case examiners which would allow them to be publicly identified in relation to specific cases (which may have attracted press and public interest), and would provide details of past and, in some cases, other ongoing employment, ... may lead to them being contacted ... we believe this would be an unwarranted invasion of their privacy... and as such may cause distress and would be unfair.'
30. The Commissioner accepts that disclosure would potentially be an invasion of their privacy and could be distressing for the named individuals.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

31. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
32. GMC acknowledge that there is a legitimate public interest in ensuring the transparency and accountability of decision making. GMC state that this is covered by the publication of the MPT decision and the summaries of the Tribunal member's interests.
33. GMC also acknowledge that there is a legitimate interest in the public being confident that the case examiners are suitably qualified to carry out their role and believe this is met: case examiners are appointed based on competency based criteria, expert opinion is sought where required, decisions are made by a lay and a medical case examiner and both must agree on the outcome.
34. GMC do not consider that there is sufficient public interest in the disclosure of the case examiners' personal information to override their privacy rights.
35. The complainant has argued that 'the "individuals" whose details I require are professionals and experts from whom the GMC sought and received advice on specific clinical matters. Experts give opinions. The GMC have published guidance on what they expect of professional witnesses and expert witnesses in Medical Practice, my area of work.'

36. In this case, the Commissioner is not convinced that the specific biographical information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned. It adds nothing to the transparency or accountability of the GMC as the requested information does not form part of the decision making process.
37. In a similar case, <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624923/fs50625470.pdf> the Commissioner considered the employment background information of Health and Care Professions Council Panel Members and concluded that section 40 was cited correctly. The Commissioner is satisfied that the same rationale applies in this case.
38. Having considered both GMC's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that GMC has put forward for protecting the individuals' personal data, namely:
- the individuals' likely expectation about how their personal data will be managed
 - the individuals' lack of consent to its release; and
 - the possible negative consequences to the individuals of releasing the information.
39. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individual case examiners and that it would not be fair to disclose the requested information in this case.

Conclusions

40. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds GMC's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

41. 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

42. 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.
43. 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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