

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 October 2020

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

#### Decision (including any steps ordered)

---

1. The complainant has requested registration information about a named doctor. The General Medical Council (GMC) has withheld the information under section 40(2) of the FOIA as it considers it to be the personal data of third persons.
2. The Commissioner's decision is as follows:
  - The GMC is entitled to withhold the information the complainant has requested under section 40(2) of the FOIA as it is the personal data of a third person and disclosing it would be unlawful.
3. The Commissioner does not require the GMC to take any remedial steps.

#### Request and response

---

4. On 23 February 2020 the complainant wrote to the GMC and requested information in the following terms:

*"Information request RE: [Redacted]"*

*Please provide the following information in respect of this doctor which is not on the medical register:*

*1. Names of Designated body and / or Annual Appraisal Doctor / Responsible officer for last five years: 2019, 2018, 2017, 2016, 2015*

2. *Year or date of last revalidation*
3. *Year or date of next revalidation*

*General queries:*

*Can a doctor acquire practising privileges at a designated body (non NHS) and then not actually work there but run his/her own private practice instead ?*

*Would this be regarded as having a 'connection'?*

*Would the designated body where there are only practising privileges but not any employment or contracts be regarded as having an appropriate connection for appraisal and/or revalidation requirements?*

*Under what circumstances might a psychiatrist have a responsible officer who is not also a psychiatrist?"*

5. The Commissioner has redacted the name of the doctor and their GMC registration number from the above request.
6. The GMC responded on 24 March 2020. With regard to questions 1 to 3, the GMC advised that it was withholding the requested information under section 40(2) of the FOIA as it is the named doctor's personal data.
7. With regard to his general queries, the GMC explained that a Designated Body is an organisation that helps a doctor with their appraisals and revalidation while the Responsible Officer makes the recommendation for the revalidation. It appeared to the GMC that the complainant's queries were founded on misunderstandings and invited him to clarify his queries.
8. The complainant wrote to the GMC on 2 April 2020. With regard to his request for information - questions 1 to 3 - he noted that information about the doctor's current Designated Body and Responsible Officer were published on the GMC's website, but that these were not the same as had been published in 2019. In the complainant's view information within the scope of question 1 – for the years 2019 to 2015 - had previously been in the public domain and he therefore queried the GMC's position with regard to question 1.
9. The complainant disputed that the information within the scope of questions 2 and 3 could be categorised as personal data.
10. In correspondence to the complainant dated 6 April 2020, the GMC explained the operation of Designated Bodies and Responsible Officers, as follows. A Responsible Officer is appointed directly by the Designated Body. There is only one per organisation and this person can be replaced

for a variety of reasons (eg retirement). A doctor can only be attached to one Designated Body at a given time and this does not necessarily reflect their place of work, for instance, many locum agencies are Designated Bodies. The GMC noted an organisation can have a Designated Body status but that this does not necessarily mean it is the Designated Body of all doctors who work there. Unless there are specific restrictions on their registration not to do so, a doctor can work for multiple employers and/or practise medicine without being attached to a Designated Body. The GMC said it was aware, for example, that many doctors balance their work between the NHS and private clinics – quite often NHS is the Designated Body in this scenario, but this does not necessarily have to be the case. The GMC confirmed, for the avoidance of doubt, that a doctor can have practising privileges at a clinic which is not their Designated Body.

11. The complainant formally requested an internal review on 8 April 2020. In this correspondence the complainant noted the GMC's position that information that is no longer current reacquires a private status. He argued that this reduces transparency and contravenes the revalidation process's publicly stated aim to ensure a doctor is safe [to practice].
12. Following an internal review, the GMC wrote to the complainant on 1 July 2020. It upheld its original position; that the information the complainant has requested is the personal data of the doctor named in the request.

### **Scope of the case**

---

13. The complainant contacted the Commissioner on 21 July 2020 to complain about the way his request for information had been handled.
14. The Commissioner's initial assessment of the complaint, which she communicated to the complainant, was that the section 40(2) exemption is engaged. Her assessment was based on her decisions in a number of similar cases involving the GMC and she directed the complainant to where those decisions are published. The Commissioner invited the complainant to withdraw his complaint, but he preferred to conclude it formally, through a decision notice.
15. The Commissioner has therefore considered whether the GMC is correct to rely on section 40(2) of the FOIA to withhold the information the complainant has requested.
16. Given the detail in the GMC's correspondence with the complainant, and the nature of the information being withheld, it has not been necessary for the Commissioner to receive a separate submission from the GMC or

to view the withheld information. The GMC has, however, addressed specific queries that the Commissioner put to it about its position.

## Reasons for decision

---

### Section 40 – personal data

17. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.
18. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
19. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
20. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

### Is the information personal data?

21. Section 3(2) of the DPA defines personal data as:  
*"any information relating to an identified or identifiable living individual".*
22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
23. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or

---

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

24. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
25. In this case, the complainant has requested: the names of a named doctor's Designated Body and Responsible Officer for last five years; the date of the named doctor's last revalidation; and the date of their next revalidation. The doctor is named in the request.
26. The Commissioner is satisfied that all the requested information relates to the doctor named in the request, including the past and future revalidation dates. She is satisfied that the information both relates to and identifies the doctor concerned. This is because the doctor is named in the request and their name forms part of the request; the request is meaningless without the doctor's name. The requested information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
27. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
28. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

29. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

30. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
31. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the GDPR**

32. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

33. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*<sup>2</sup>.

34. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:

**Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information

**Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question

**Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject

35. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

36. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and

---

<sup>2</sup> Article 6(1) goes on to state that: -

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that: -

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

37. The complainant has an interest in the doctor he has named in his request. In his complaint to the Commissioner the complainant said that he wants evidence that the doctor in question is complying with, and has complied with, the regulations. His request for dates and Designated Bodies/Responsible Officers would provide evidence that the doctor has been subject to appraisals and revalidation. In the same complaint correspondence, the complainant has referred to a second doctor (unnamed) who may have been "in breach of the regulations" by "mistakenly" connecting to the wrong Designated Body and Responsible Officer. This investigation concerns only the information about the doctor named in the request and the Commissioner has therefore disregarded any matters about a second doctor.
38. The complainant subsequently told the Commissioner in a further submission to her that he is concerned that the doctor named in his request may not have a Designated Body (and therefore no Responsible Officer) and may not be safe. He is concerned that there may have been no supervisory bodies or employers checking the doctor's suitability. Whether or not those are valid concerns, the Commissioner accepts that the complainant's interest, that the doctor concerned is safe to practice, is a legitimate interest for him to have.
39. In his correspondence with the GMC the complainant also argued that there is public interest in the GMC demonstrating it is accountable and transparent about doctors' registration. And in his further submission to the Commissioner the complainant has also discussed the revalidation process more generally, and concerns he has about that process. Again, these are legitimate interest for the complainant to have.

*Is disclosure necessary?*

40. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

41. In its internal review response, the GMC agreed with the complainant that there is a public interest in transparency and public confidence in relation to a doctor's revalidation. The GMC said it did not believe, however, that it was necessary to disclose the doctor's Designated Body history for the past five years or their previous or future revalidation dates in order to meet that interest.
42. This was because information about the doctor's registration is already publicly available. This includes the status of their licence to practise, confirmation of whether they are subject to revalidation, and their Designated Body connection details. The GMC said it also published detailed information about its processes in relation to the requirements of revalidation.
43. To a very large degree, the Commissioner considers that, for the reasons the GMC has given, disclosing the requested information is not necessary to meet the complainant's legitimate interests. The information currently in the public domain about the doctor in question addresses the interests about safety and transparency that the complainant has. And disclosing the withheld information about one doctor would not, in the Commissioner's view, address the complainant's more general concerns about the revalidation process. For the sake of completeness, however, the Commissioner has gone on to consider the balancing test.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

44. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
45. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause
  - whether the information is already in the public domain
  - whether the information is already known to some individuals
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
46. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not



be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

47. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
48. The complainant provided the Commissioner with a lengthy submission with arguments to support his position that the information he has requested should be released, some of which have been referred to earlier in this notice. The complainant's main points are broadly summarised below.
49. First, the complainant has noted that certain information had been published previously and was removed from publication. The complainant considers that information may already be known to some individuals and that the doctor cannot therefore have a reasonable expectation that that information would not be disclosed now. Unless the GMC has specifically given the doctor assurance that the information will not be published, the doctor could, in the complainant's view, reasonably expect the information to be published now.
50. In correspondence to the Commissioner dated 21 October 2020, the GMC provided the Commissioner with a context to the request. It has explained that revalidation is the process by which the GMC confirms the continuation of a doctor's licence to practise in the UK. All doctors who wish to retain their licence to practise need to participate in revalidation. It involves a yearly appraisal and, if a doctor has a Responsible Officer, they will make a revalidation recommendation to the GMC every five years.
51. The GMC says it is also important to understand that doctors can also comply with revalidation without having a Responsible Officer. For example, by having a 'Suitable Person' instead, who acts like a Responsible Officer and provides a recommendation to the GMC. They can also go through the GMC's Annual Returns process in which they gather their own evidence, have an appraisal with an agreed appraiser and pass an Assessment. All are equally acceptable, and none should carry any negative connotations. Furthermore, all Responsible Officers and Designated Bodies are equally acceptable and switching from one method to the other is also perfectly acceptable.
52. The GMC clarified that that it has only published revalidation information regarding specific doctors on the Public Register since 18 January 2016. It confirms if a doctor is subject to revalidation and provides the name of a doctor's current Responsible Officer and Designated Body or

Suitable Person. If a doctor does not have a Responsible Officer and Designated Body or Suitable Person, the GMC says they do not have a connection to a designated body. It does not publish the names of agreed appraisers for those in the Annual Return Process.

53. The GMC provided some background on why it decided to publish some revalidation information such as the Responsible Officer and Designated Body for doctors. Partly, the decision was taken in recognition that the social, technological and political environment in which GMC operates had changed significantly since the online Register was created. What was published had not kept up with an increase in the GMC's regulatory role, such as reflecting the introduction of revalidation. Furthermore, other regulators had started to go further in publishing information and the GMC recognised that there was an increased expectation of openness and transparency.
54. Research was commissioned on how the Register was used and how different groups of people thought it needed to evolve. A paper presented to GMC Council in April 2015 noted that the research found that there '*was significant consensus that the register should include more information on the revalidation status of doctors; location of work; scope of practice; and employment history.*' This was the basis on which Designated Bodies and Responsible Officers (or equivalent) were added to a doctor's entry on the List of Registered Medical Practitioners. A paper from February 2016 reflected on the changes made and considered further changes.
55. Regarding this case, in correspondence dated 16 October 2020, the GMC explained to the Commissioner the situation with regard to the information that was previously published. It has confirmed that the current Designated Body and Responsible Officer of the doctor in question are in the public domain. The complainant has requested the information from 2015 to 2019. The GMC says that in 2015-2019 it published the position with regard to the doctor's Designated Body and Responsible Officer as it was at the time and that when information is no longer current it is removed. This is because the GMC considers that the most important thing for public safety and confidence is for knowledge of the situation as it stands today to be public, rather than historical information. The GMC considers that to be the proportionate stance. The GMC also confirmed that it does not and never has published revalidation dates on the List of Registered Medical Practitioners.
56. In its 21 October 2020 correspondence, the GMC noted that in the complainant's internal review request, he indicated that providing the information would demonstrate that the doctor was 'safe' to practice and that it would give confidence that the GMC was ensuring the doctor was 'safe' to practice. The GMC disputes this. As it has previously

explained, no Designated Body is better or worse than any other and all mechanisms of revalidation (ie recommendation from the Responsible Officer of a Designated Body, recommendation from a Suitable Person or provision of an Annual Return to the GMC) are all equally acceptable.

57. The GMC considers the information is too far removed to offer any insight into the concept of safety of a particular doctor. However, providing current information assists the public because it shows that a doctor is subject to revalidation and who is answerable for the process (where applicable). Finally, the GMC has noted that if there are historical concerns raised, it is the current Responsible Officer who would discuss them with the doctor.
58. In the Commissioner's view, the fact is that the disputed information about the particular doctor is either no longer in the public domain or, with regard to validation dates, has never been in the public domain and will not be published in the future. While the information would appear to be innocuous, she is nonetheless satisfied that the doctor concerned *would* have the reasonable expectation that it would not be put back in the public domain in response to a FOI request.
59. The doctor would be aware of the type of information that the GMC routinely publishes. The Commissioner considers that they would therefore not expect to receive specific assurance from the GMC that particular information would not be published, as they would naturally expect that it would not be.
60. Second, the matter of transparency. The complainant argues that not releasing the requested information creates an impression of excessive and undue secrecy on the part of the GMC, whose duty is to protect the public. Releasing the requested information would facilitate the better operation of the duties of Responsible Officers and improve doctors' accountability.
61. In the context described at paragraphs 50-54, the GMC considers that providing the up to date revalidation details for doctors is a reasonable means of meeting the desired ends; balancing openness and transparency against a doctor's data rights. In the GMC's view, providing historical Responsible Officer and Designated Body data would provide a notable historical record of a doctor's working life for very little public benefit.
62. The GMC notes that the Commissioner widely accepts time limited publications of information as part of reaching the right balance between providing personal information and upholding the public interest in a wide variety of contexts. The GMC considers that doctors generally would be concerned if it provided information going beyond its current

practice. The GMC says it has reviewed the online registers of the Solicitors Regulation Authority, the Nursing and Midwifery Council and the General Dental Council. None appear to show historical information tying a practitioner to a specific geographic location on their registers.

63. The Commissioner has considered both parties' arguments. She is satisfied that the relevant information that the GMC routinely publishes, including about the doctor named in the request, and the general information it has published about Designated Bodies and Responsible Officers, meets the requirement for openness and transparency. The Commissioner is not persuaded by the complainant's argument that publishing one doctor's previous Responsible Officer(s) would facilitate the operation of the duties of Responsible Officers generally or improve doctors' accountability, generally. The Commissioner also considers the published information addresses the complainant's interest in safety and notes that he has not provided her with any evidence to suggest the doctor in question is not 'safe'.
64. The requested information is associated with an individual in their professional capacity. However, the Commissioner is satisfied that the individual concerned would have the reasonable expectation that their personal data - that is, historical information about their Responsible Officer, Designated Body and validation (and future information about validation) - would not be disclosed to the world at large in response to a FOI request from a member of the public.
65. It may be to a large extent or it may only be to a minimal extent, but the Commissioner considers it likely that disclosing this information would therefore cause that individual a degree of damage or distress.
66. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the doctor's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
67. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

### **The Commissioner's view**

68. The Commissioner has therefore decided that the GMC is entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Right of appeal

---

69. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

70. 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.
71. 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**