

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2021

Public Authority: General Dental Council
Address: 37 Wimpole Street
London
W1G 8DQ

Decision (including any steps ordered)

1. The complainant has requested financial information about under-guise investigations from the General Dental Council (GDC). The GDC released information it holds and has advised it does not hold some of the information the complainant has requested.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the GDC has released all the relevant information it holds and has complied with section 1(1) of the FOIA.
3. The Commissioner does not require the GDC to take any remedial steps.

Background and context

4. In its submission to the Commissioner, the GDC has provided the following background.
5. The GDC is the UK-wide statutory regulator of around 114,000 dental professionals, consisting of approximately 42,000 dentists and 72,000 dental care professionals (i.e. dental nurses, clinical dental technicians, dental hygienists, dental technicians, dental therapists and orthodontic therapists). In accordance with the Dentists Act 1984 which defines the GDC's statutory function and powers, it registers qualified dental professionals, sets and enforces standards of dental practice and

conduct, protects the public from illegal practice, assures the quality of dental education and investigates concerns.

6. The GDC is primarily funded through the Annual Retention Fee (ARF), which accounted for over 98% of funding in 2020. This is the fee all registered dentists and dental care professionals must pay each year to remain on the Dentists Register or Dental Care Professionals Register. The other sources of funding include examination fees and miscellaneous income such as bank interest, dividend payments and sales of assets.
7. In the event there are concerns that shortcomings in a dental professional's conduct or competence that are serious enough to put patients at risk, or damage public confidence in dentistry, the GDC will investigate. When appropriate it will take action to mitigate that risk. Concerns may arise directly (from a patient or another dental professional), by referral from another body (for example, a police notification of a criminal caution or conviction), or from other sources.

The Fitness to Practice process

8. A registrant being 'fit to practise' ('FtP') indicates they have the appropriate skills, knowledge, character and health to practise their profession safely and effectively. However, this is not just about a practitioner's clinical performance or health. It may also include any actions they have taken which affect public confidence in dentistry outside professional practice, for example, committing a criminal act.
9. The FtP process also includes any actions which may have been taken which affect public confidence in dental professionals and their regulation.
10. There are four stages within the GDC's FtP process. The first stage is the initial assessment of a concern about a registrant to determine whether the information received meets the threshold of an FtP concern. Following this assessment, the concern will either progress to the next stage, or the GDC will not proceed and explain to the complainant why it is not progressing any further.
11. At the next stage (casework), GDC notifies the registrant and collect further information relevant to the concerns under investigation. This may include information from various parties, such as the registrant for clinical cases (patient records, etc.) or in relation to criminal cases, police reports or certificates of conviction. Further consideration will be given to information gathered at this stage to determine if there is sufficient evidence to raise an allegation that a registrant's FtP is impaired. If not, the GDC will close the case with no further action. If there is sufficient evidence, it will proceed to the next stage.

12. In the rare occasions where under-guise investigations are being considered, the registrant is not notified at the casework stage as this would undermine any under-guise investigation which was to follow.
13. At the next stage (case examiners), any allegations referred are considered by a case examiner along with any comments provided by the registrant and any further comments from the informant(s) who raised the initial concern. All parties involved will receive a copy of the paperwork with the exception of sensitive health or information pertaining to the private life of the registrant. Upon reviewing the case papers, the case examiner may determine to take no further action, provide a letter of advice, issue the registrant with a warning, propose a set of undertakings for which the registrant must agree to abide by, or refer the case to a practice committee for a substantive hearing.
14. The final stage of the process involves a hearing before an independent practice committee. These are generally public hearings where an independent committee hears evidence and submissions from all parties and makes a determination on whether a registrant's FtP is impaired. If so, the Committee may determine to take no further action, impose conditions of practice on a registrant, suspend their registration or, in the most serious of cases (where their conduct is fundamentally incompatible with registration), erase the registrant from the register, removing the right to practise dentistry. A registrant can appeal this decision.

The GDC use of under-guise investigations

15. Under-guise investigations are a legitimate means of investigating serious complaints when used properly. In very rare circumstances, the GDC may use under-guise investigators to investigate concerns where there is a potentially serious risk to the public, when there is no other way to investigate the concerns made against a registrant and it is both reasonable and proportionate to do so. The GDC wrote in December 2019¹ that over the previous three years there had been only 12 undercover visits which equated then to 0.2% of new FtP concerns raised over the same period. Since then, there have been no undercover visits.
16. The GDC says that the complainant submitted three separate requests on 8 April 2021 and that the requests followed the publication of various published articles at that point in 2021 relating to the outcome of a particular under-guise investigation This had been determined by a

¹ , <https://www.gdc-uk.org/news-blogs/blog/detail/blogs/2019/12/02/how-the-gdc-uses-undercover-investigators>

Practice Committee not to be proportionate or justified in the circumstances. The Committee considered that if it had been properly considered, the visit would not have taken place. In consequence of that, the GDC compensated the registrant and met their legal costs.

17. The complainant submitted three complaints to the Commissioner. The remaining two have been considered under IC-107649-S2G4 and IC-115123-T1Z4.

Request and response

18. On 8 April 2021 the complainant wrote to the GDC and requested information in the following terms:

“1 - By year, from and including the date of sanction of under-guise investigations/operations by the GDC. Please give the financial cost incurred directly from under-guise investigations/operations instigated by the GDC, or on its behalf.

2 - By year, as above, please give the indirect costs incurred by the GDC, to include, costs of compensation payments to registered dental professionals, legal costs and all other costs, as a result of the use of under-guise investigations/operations.

3 - Please tell me whether monies from the ARFs paid to the GDC by registered dental professionals, or registered bodies, were used for any of the direct/indirect costs mentioned in questions 1 and 2, above. If so, please divulge the percentage of the totally incurred costs used from this source, and any minutes regarding GDC senior team discussions regarding the use of ARF monies for these purposes.”

19. On 27 April 2021 the GDC asked the complainant to clarify an element of the second part of his request, to do with costs, which he did the same day.
20. On 7 May 2021 the GDC responded to the request. It released information that it holds within scope of part 1 of the request: costs for the years 2013 to 2019.
21. With regard to part 2 of the request, the GDC noted that the complainant had clarified that the indirect costs he had requested should include the hourly rate for its legal team and other staff costs. The GDC advised that it does not record these costs in a way that they can be reported from the system, and that it does not record time spent on activities. The GDC said that, as such, the requested information is not held. The GDC did note, however, that in relation to a fitness to practise

investigation in which an undercover visit took place (referred to above), it recognised that an error was made. In consequence of that, it had recently reached a settlement with the registrant concerned. The settlement included compensation and covered their legal costs; a figure the GDC disclosed to the complainant. The GDC confirmed this is the only instance where a payment of that nature had been made.

22. The GDC advised that it does not hold the information within scope of part 3 and explained that it was not held because the GDC does not ringfence or apportion income by expenditure activity type.
23. The complainant requested an internal review on 8 May 2021. He was not satisfied that the GDC had not disclosed "the start date" of under-guise investigations. The complainant also referred to the GDC having advised that it would need to "trawl through 3,000 boxes of files" and disputed this was necessary. In fact, the GDC had not made such a reference in its response to this particular request.
24. The GDC provided an internal review on 20 May 2021. It advised that it understood that the complainant was not satisfied that the GDC had been unable to provide him with information prior to 2013, with regard to part 1 of the request. It suggested that the second element of his internal review request was a reference to GDC's response to his separate request for information. In that response, the GDC had explained that it had been unable to identify the point prior to 2013 when the use of under-guise investigations began and that a review of information held in offsite storage would be necessary. The Commissioner has considered that matter under IC-115123-T1Z4.
25. In its review response, the GDC then clarified that it does not hold any further information relevant to the current request - that is, financial records relating to the period prior to 2013 - in offsite storage. This is because such information would have been destroyed in line with its retention schedule.

Scope of the case

26. The complainant contacted the Commissioner on 20 May 2021 to complain about the way his request for information had been handled.
27. Having confirmed its scope with the complainant, the Commissioner's investigation has focussed on whether, on the balance of probabilities, the GDC holds certain information the complainant has requested, namely the financial records requested in part 1 of the request for the period prior to 2013.

Reasons for decision

28. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
29. In his complaint to the Commissioner, the complainant has said that he is dissatisfied that the GDC had suggested that information on the financial costs of under-guise investigations that it approved prior to 2013 could not be found, as it has securely destroyed those records. He said he did not accept that a decision of such importance, with associated discussion and approval required at the highest level, would not have a data trail which could result in him being provided with more information.
30. In its submission to the Commissioner the GDC has described the searches it undertook for any relevant information. It says it had received requests previously about the use of under-guise investigations and had already undertaken extensive work to identify which cases involved this process from 2013 when the current customer relationship management system was introduced. Information from these searches were used to answer the first part of the complainant's request – the direct costs from 2013 to 2019.
31. The GDC has gone on to say that, with regards to part 3 of the complainant's request - for monies from the ARF and the percentage used to fund under-guise investigations – the GDC asked its Finance team if any relevant information is held. The Finance team advised that the GDC does not ring-fence or apportion its income to activity type other than for examinations, so the information was not held. It had advised the complainant accordingly in its response of 7 May 2021.
32. The focus of this investigation is part 1 of the request. In a telephone conversation with the Commissioner on 8 December 2021, the GDC confirmed that it does not hold financial information for the period before 2013; its retention period for that type of material is six years. Neither would the GDC have boxed any such material and put it into storage as it has no business reason to do this.
33. The Commissioner has considered the complainant's argument and the GDC's submission. The Commissioner is persuaded by the submission and the GDC's reasoning and considers that the searches it undertook were adequate. He has therefore decided that, on the balance of probabilities, the GDC holds no further information within scope of part 1 of the complainant's request and has complied with section 1(1) of the FOIA.

Right of appeal

34. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Cressida Woodall
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