

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 May 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested the General Medical Council (GMC) to disclose the legal advice that it received on the matter of definition(s) to be used by the GMC in response to allegations of antisemitism by UK registered doctors. The GMC refused to disclose the information, citing section 42 of FOIA.
2. The Commissioner's decision is that the GMC is entitled to refuse to disclose the withheld information in accordance with section 42 of FOIA. He does not require any further action to be taken.

#### **Request and response**

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3. On, 2 May 2022, the complainant requested the GMC to provide the following information:  
  
"for sight in full of the Legal advice that was both requested and received on the matter of the definition/s to be used by the GMC in response to allegations of antisemitism by UK registered doctors."
4. The GMC responded on 25 May 2022, refusing to disclose the requested information citing section 42 of FOIA.
5. The complainant requested an internal review on 21 July 2022. They then followed this up with further correspondence on 29 July 2022.

6. The GMC carried out an internal review and notified the complainant of its findings on 6 October 2022. It upheld its previous application of section 42 of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 29 November 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to establish whether or not the GMC is entitled to withhold the requested information in accordance with section 42 of FOIA.

### **Reasons for decision**

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9. Section 42 of FOIA states that a public authority may refuse to disclose information which is subject to legal professional privilege (LPP). It is a qualified exemption, so it is also subject to the public interest test.
10. There are two types of LPP – litigation privilege and advice privilege. The GMC has claimed that the withheld information is subject to advice privilege, as it is a confidential communication between client and lawyer, made for the dominant purpose of seeking or giving of legal advice.
11. The Commissioner has reviewed the withheld information and he is satisfied that it is a confidential communication between client and lawyer for the dominant purpose of seeking and giving of legal advice. It falls within the definition of advice privilege and is therefore subject to LPP.
12. This is a class based exemption, so there is no need for a public authority to demonstrate any prejudice or adverse effect. It is however qualified by the public interest test.

### **Public interest test**

13. The GMC recognises the public interest in openness and transparency. It also acknowledges that the complainant is also specifically interested in how the advice applied to specific complaints and more widely public policy. It understands that access to this information would provide more information about its decisions and assist the complainant in understanding more closely how the specific decisions were made in respect of the particular complaints they are interested in.

14. However, it makes the point that it has shared as much information as it is able with the complainant over the decisions it made through its normal processes. It considers this is sufficient for debate about the issues to be furthered and feels the necessity for the disclosure of the withheld information is doubtful.
15. The GMC also said that it considers the public interest rests in maintaining the exemption, due to the substantial public interest inherent in LPP and in allowing a safe space for a legal adviser to provide full and frank legal advice to their client.
16. The Commissioner has considered the arguments for and against disclosure and taken note of the specific arguments the complainant put forward at the internal review stage. He acknowledges the public interest in openness, transparency and accountability. He also accepts that disclosure may assist the complainant and other interested members of the public in understanding more clearly how the particular complaints brought to the GMC were handled and what legal advice it was provided with and potentially relied on. He also understands that the complainant considers the decisions reached in these complaints and their concerns over the Jerusalem Declaration have a wider impact on Jewish doctors, medical students and patients.
17. However, in this case the Commissioner considers the public interest rests in maintaining the exemption. He notes that the GMC has shared what information it believes it can in respect of the complaints and the decisions it reached. This goes some way to meeting the public interest in disclosure.
18. The Commissioner considers the public interest lies in protecting the GMC's ability to seek and obtain candid, free and frank legal advice and use this information to consider the options available to it. Disclosure would damage the long standing principle of LPP and reduce the quality of legal advice the GMC is able to obtain in the future as a result of public disclosure. He considers there needs to be a very substantial public interest in disclosure that warrants, in a given case, going against this principle. In this case, the Commissioner does not consider this threshold is met.
19. For these reasons, the Commissioner has decided that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.

## Right of appeal

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

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

21. 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.
22. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**