

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 May 2024

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

Decision (including any steps ordered)

1. The complainant has requested correspondence from and to the General Medical Council (GMC) relating to the regulation of several groups of medical professionals. The GMC refused to provide the requested information as to do so would exceed the appropriate limit at section 12(1) FOIA.
2. The Commissioner's decision is that the GMC was correct in its reliance on section 12(1) to refuse the request. The Commissioner also finds that the GMC did not comply with its section 16(1) obligation to offer advice and assistance but it has now provided advice on how to narrow the request and no further steps are therefore required.

Request and response

3. On 27 October 2023, the complainant wrote to the GMC and requested information in the following terms:

"I request, under Freedom of Information Act, any correspondence by, or to the General Medical Council (GMC) and by, to, or between GMC staff in relation to the regulation of medical associate professions/physician associates/anaesthesia associates (referred to below collectively as MAPs) between 1st February 2023 and 27th October 2023.

For the avoidance of doubt, this should include:

- Emails and letters between GMC staffs and between the GMC/GMC staff and third-party stakeholders which included discussion about the regulation of MAPs
 - GMC internal communications, for example, web pages, briefing notes, about the regulation of MAPs"
4. The GMC responded on 23 November 2023 refusing the request under section 12 FOIA as it would exceed the cost limit to comply.
 5. The complainant requested an internal review of this decision on 29 November 2023. Despite chasing this and receiving assurances the internal review would be done, the GMC did not complete an internal review and the Commissioner agreed to accept the complaint for investigation without it.

Scope of the case

6. The complainant contacted the Commissioner on 28 January 2024 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to determine if the GMC has correctly refused the request under section 12 FOIA and complied with its obligation to provide advice and assistance under section 16 FOIA.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
9. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the GMC is £450.

10. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.
11. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
12. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
13. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
14. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
15. The initial response from the GMC explained that the request was wide ranging as it covered internal and external communications relating to the regulation of MAPs. The GMC considered information in scope of the request would be held across the organisation and searches would need to be done across the GMC's central document management system and many of the terms such as "medical associate professions" are likely to be abbreviated.
16. Preliminary searches by the GMC returned approximately 16,000 results and, although the GMC, acknowledged some of these results could be quickly discounted it considered it may need an average of 30 seconds to review each item and collate relevant information. The GMC therefore

concluded it would far exceed the cost limit of £450 to comply with the request.

17. The complainant considered that searching using abbreviated terms was unnecessary as they would expect that where an abbreviation is used the full phrase or title would be used somewhere else in the document. The complainant also argued that the number of results stated by the GMC (16,000) was not explained and it was not clear if this was the number of unique documents or the number of instances the terms were found in the documents returned.
18. The complainant further queried whether the search had included instances where the abbreviations MAP/PA/AP had occurred within another word eg PA*tients. They also raised concerns the information was not more accessible given the process of regulating MAPs was ongoing and processes being designed at the time of the request. The complainant was surprised there was not a dedicated folder or folder in the GMC's electronic records management system for stakeholders input to be placed and to make the retrieval of information more straightforward.
19. The Commissioner asked the GMC for further details of the searches it would need to do to comply with the request and also to comment on whether advice and assistance could be offered to narrow the scope of the request.
20. The GMC explained the searches it had described to the complainant were not the only searches it would need to conduct. These initial searches only covered information on the GMC's electronic document management system. Additional searches would have to be done of emails to capture any information not uploaded to the document management system. The GMC considers it almost certainly will hold emails between staff which have not been saved to the document management system.
21. The GMC also explained they did not use the term 'regulation' in their searches so any results obtained were not likely to include all the information in scope of the request. Staff working on actual regulations may not need to use the word "regulation" as they know that is what they are dealing with. Other terms may be used such as "legislation", "law", "guidance" or "AAPAO" (Anaesthesia Associates and Physician Associates Order).
22. The GMC conducted a further search for any of MAP/PA/AA without adding a search for "regulation" and identified 12,000 returns. Adding in MAPs/Pas/AAs increased the returns to 19,000 records. The 16,000 number quoted in the internal review response was the number of

returns when a search was conducted for MAP/PA/AA/MAPs/PAs/AAs without adding in the word "regulation".

23. The GMC explained to the Commissioner that even if it took only five seconds on average to review each item and collate any relevant information it would still exceed the cost limit and, realistically five seconds is unlikely to be sufficient time to look at all of the records returned to determine if they are in scope of the request and extract/collate any relevant information.
24. In the GMC's response to the Commissioner they addressed the points made by the complainant in the internal review request and their submissions to the Commissioner. The GMC firstly confirmed the numbers referred to in their responses were not the number of search terms returned in the documents but the number of documents returned by the search. The searches did not include words such as "PA*tients", "PA*ragraphs", "MAP*ping" but the GMC did acknowledge the search results may include reference to Personal Assistants as this is commonly abbreviated to PA, anyone with the initials PA or AA who is referred to in this abbreviated format and references to maps giving directions. This is part of the GMC's reasoning for needing to review each document returned to check what's in scope of the request.
25. The complainant had suggested that where abbreviations are used they would expect the full term to be mentioned in the same document, so it would not be necessary to conduct a search using the abbreviations and use the full terms instead to reduce the number of returns. On this point the GMC has stated that the complainant's assumption is not correct. The full terms Physician Associate(s), Anaesthesia Associates(s) and Medical Associate Professions do not routinely appear in documents that are about the regulation of those professionals. As an example, the GMC stated that the phrase Medical Associate Profession does not appear in any of six program board minutes recently disclosed in response to another FOIA request, in fact even the title of the minutes is abbreviated to "Minutes of the MAPs Programme Board". Physician Associate also does not appear in these minutes and Anaesthesia Associate only appears in one of the six sets of minutes.
26. In terms of whether a global search was necessary, the GMC argues the way the request was worded made it necessary. The request asked for "any correspondence by, or to the GMC and by, to, or between GMC staff" which captures correspondence in a large range of settings.
27. The Commissioner is satisfied that complying with the request would exceed the appropriate limit.

28. The request, as worded, is wide in scope. It ask for any correspondence relating to the regulation of MAPs/PAs/AAs. This is limited by a time frame and the request does go on to list the correspondence the complainant expected to be included but this is still a very wide request that would require wide searches to ensure that any relevant information in scope of the request is captured. The GMC has provided the Commissioner with detailed explanations of the searches it would need to conduct and why they would need to be conducted in the way they suggest. The complainant's concerns about the searches have been addressed by the GMC and the Commissioner agrees that abbreviations would need to be used given the facts presented by the GMC about the use of these internally rather than full terms.
29. The GMC has explained the number it gave in the internal review and why so many results were returned. It is clear to the Commissioner not all information will be in scope of the request and there will be a need to manually review each record.
30. The Commissioner is satisfied that the GMC has set out a reasonable estimate and supported it with appropriate evidence. As the work involved in complying with the request would be significant, the Commissioner considers that the cost of complying with the request would exceed the appropriate limit.
31. Therefore, the Commissioner's decision is that the GMC was entitled to rely on section 12(1) of FOIA to refuse the request.

Section 16 – advice and assistance

32. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request.
33. The complainant has suggested ways in which they may have been able to refine their request, stating that if the number of returns was higher for one month than another they may be able to refine their request to a shorter time period. Similarly if there is less information on the process of creating policies in regulation of MAPs than in other areas there may be scope to refine the request.
34. The GMC did not respond to these suggestions by the complainant but has addressed this in its submissions to the Commissioner. The GMC has suggested that the request could be narrowed by naming parties of interest such as correspondence between the GMC and specific royal colleges or government departments. The GMC states it did direct the complainant to publicly available material about the issue to assist them in narrowing the request themselves. The GMC has now stated it could provide the complainant with some other publicly available information

such as the MAPS program board minutes which were disclosed in response to another FOIA request – the content of these minutes may assist the complainant in re-focussing their request.

35. The Commissioner does not consider that the GMC complied with its obligations under section 16 to provide adequate advice and assistance during its handling of the complaint, as evidenced by the more specific advice it has suggested to the Commissioner. However, as the GMC has now suggested ways the complainant could narrow their request the Commissioner does not consider that any further steps need to be taken by the GMC.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF