

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2014

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of doctors referred to the General Medical Council by a particular Trust.
2. The Commissioner's decision is that the General Medical Council (GMC) has correctly applied section 40(2) of the 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 29 October 2013, the complainant wrote to the GMC and requested information in the following terms:

"Please provide the following information under the FOIA and Data Protection Act.

1. *How many doctors were referred to the GMC by Heywood, Middleton and Rochdale Primary Care Trust in the last 10 (ten) years?*
2. *The dates when those doctors were referred*
3. *Ethnicity of origin, race and religion of those doctors*
4. *How many times each of those doctors were referred to the GMC?*
5. *Please provide the list of Witness experts on the panel of the GMC*

- a) *Ethnicity of origin, race and religion of those doctors*
- b) *Method of selection of those doctors*
- c) *Guide lines for the Witness statements*

6. *How is the minimum standard assessed?*

7. *Are these standard credited? If credited who credited those standard?*

5. The GMC responded on 26 November 2013. It provided the following information:

- i. *The statistics I can provide relate to the period from 1 April 2006 which is when we launched our electronic fitness to practise database.*

Between 1 April 2006 and 31 October 2013 10 doctors have been referred to the GMC by Heywood, Middleton and Rochdale Primary Care Trust or successor organisations (Heywood Middleton and Rochdale Clinical Commissioner Group and NHS Heywood Middleton and Rochdale).

- ii. *Please refer to the table below for the year of referral for these doctors.*

One doctor was referred to the GMC by the trust three times during 1 April 2006 – 31 October 2013. This is why the total number of referrals in the table below is higher than the number of doctors referred.

Year	Number of referrals
2006	2
2008	1
2009	3
2011	1
2013	5

- iii. *Please see the table below for the ethnicity of the doctors referred.*

We do not hold information about the race or religion of the doctors.

Ethnic Origin	Number of doctors
Asian or Asian British	3
Mixed	1
Unspecified	3
White	3

- iv. *One doctor was referred three times during the period 1 April 2006 to 31 October 2013; the remaining doctors were referred once.*
- v. *The GMC specifically cited section 31(1)(g) by virtue of section 31(2)(d) and section 40(2) by virtue of section 40(3)(a)(i) with regard to the list of witness experts on the panel. It also refused to provide the information requested at 5a) citing section 12(1).*
6. The GMC provided a response to parts 5c), 6) and 7) of the request.
7. On 28 November 2013 the complainant wrote to the GMC again stating that he had not been provided with all the information requested, namely:
2. *The dates when the doctors were referred. There are only years of referral, no date of referral.*
 3. *Ethnicity of origin, race and religion of those doctors.*
 5. *Why is the List of Expert Witnesses of the Panel of the GMC confidential? The GMC is fair and transparent organisation.*
 6. *How is the minimum standard of a Doctor assessed?*

Please provide in detail how an expert witness or case examiner assesses that the standard of the doctor is below the minimum standard

What are these standards and how these are measured?

What feedback is gathered from the members of the GMC Legal Team?

Who are the managers are who review the feedback. Are the medically qualified?

Who are the decision makers? On what criteria they make the decision.

7. *The Standards are set by whom regarding the doctors for minimum standard, which the Expert Witness and all others decide, is credited by which college or organisation.*

Please provide the details of the minimum standard based on which the Expert witness and the GMC manager decides that the doctor is below the minimum standard.

8. On 30 November 2013 the complainant wrote to the GMC again asking for additional information.
 - *Regarding Ethnicity of origin:
Please provide ethnicity of origin like British, Indian, Pakistani, Bangladeshi etc*
 - *Age of the doctors who were referred to the GMC by Heywood, Middleton and Rochdale Primary Care Trust and the CCG*
9. On 21 January 2014 the GMC responded. It determined that a request for an internal review of its decision not to provide some of the information requested on 28 November 2013 had been made. Therefore it limited its review to those items.
10. With regard to the dates when the doctors were referred and the ethnicity of those doctors, the GMC stated that this was exempt under section 40(2) by virtue of section 40(3)(a)(i).
11. With regard to item 5, it maintained its original position.
12. Following correspondence with the Commissioner, the GMC advised that it had not received the further request of 30 November 2013 and requested time to respond to that request.
13. The Commissioner granted an extension to the GMC to consider the further request. The GMC provided a response to the complainant on 17 April 2014.
14. The complainant wrote to the GMC on 19 April 2014 requesting an internal review. He also contacted the Commissioner the same day regarding the response.
15. The GMC's response provided two tables of information. It stated that a further breakdown of the ethnicity of the doctors referred to the GMC was exempt by virtue of section 40(2) of the FOIA.
16. In addition, it stated that section 40(2) also applied to the exact ages of the doctors. However, it did provide a table with the number of doctors in particular age ranges.

17. The Commissioner took the view that as the requests were linked it would be practical to consider them all in one decision notice. He therefore contacted the GMC to advise that, if they were content, he would continue with the case without an internal review being carried out on the response to the request of 30 November 2013. The GMC confirmed that it had no objection.

Scope of the case

18. The complainant first contacted the Commissioner on 23 January 2014 to complain about the way his request for information had been handled.
19. The Commissioner considers the scope of this case to be to determine if the GMC correctly applied the exemptions it has cited to the withheld information. The Commissioner has followed the approach of the GMC in restricting his consideration of the complaint to the specific items highlighted by the complainant in his letter of 30 November 2013. The withheld information relating to the request of 29 October 2013 is:
2. *The dates when the doctors were referred;*
 3. *The ethnicity of origin, race and religion of those doctors; and*
 - 5a. *The list of Witness experts on the panel of the GMC - Ethnicity of origin, race and religion of those doctors*
20. The withheld information relating to the request of 30 November 2013 is:
- *Regarding Ethnicity of origin:
Please provide ethnicity of origin like British, Indian, Pakistani, Bangladeshi etc*
 - *Age of the doctors who were referred to the GMC by Heywood, Middleton and Rochdale Primary Care Trust and the CCG*
21. For clarity the withheld information is:
- | | | |
|-----------------|--------|--|
| 29 October 2013 | Part 1 | <i>The dates when the doctors were referred</i> |
| 29 October 2013 | Part 2 | <i>The ethnicity of origin, race and religion of those doctors</i> |
| 29 October 2013 | Part 3 | <i>The list of Witness experts on the panel of the GMC - Ethnicity of origin, race and religion of those doctors</i> |

- 30 November 2013 Part 4 *Regarding Ethnicity of origin:
Please provide ethnicity of origin like British,
Indian, Pakistani, Bangladeshi etc*
- 30 November 2013 Part 5 *Age of the doctors who were referred to the
GMC by Heywood, Middleton and Rochdale
Primary Care Trust and the CCG*

Reasons for decision

22. The GMC has applied section 40(2) to all the withheld information by virtue of section 40(3)(a)(i). The Commissioner has therefore considered this exemption first.

Section 40(2)

23. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
24. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as
- "data which relate to a living individual who can be identified –
(i) From those data, or
(ii) From those data and other information which is in possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*
25. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable.
26. The information contained in the withheld list in relation to part 3 of the request is, at a minimum, the name, address, telephone numbers and job title of the witness experts. 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, had them as its main focus or impacts on them in any way.
27. This withheld information clearly relates to living individuals from which they could be identified. It therefore follows this is personal data as defined under the DPA.

28. With regard to the information withheld relating to parts 1 and 2 of the request, the GMC explained that it had been asked to provide the dates of referral and link it explicitly with the ethnic origin of the doctors concerned.
29. The GMC has provided some information in response to parts 4 and 5 of the request. However, it is apparent that if the information was disclosed at the level of detail requested, it would be highly likely, given the information already disclosed, that individuals would be identifiable.
30. With regard to the ethnicity of the doctors referred to the GMC, this would be considered to be sensitive personal data under the DPA. This therefore means that a condition in Schedule 3 would also need to be met.
31. The Commissioner considers that all the information requested is personal data, and some is sensitive personal data, as defined under the DPA.
32. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

The Commissioner's approach to fairness

33. The Commissioner has first gone onto consider whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information; and
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned.
 - balance the rights and freedoms of the data subject with the legitimate interests of the public.

Reasonable expectation of the data subjects

34. The GMC explained that if the expert witness list was disclosed it would be clear to those directly involved in its fitness to practise investigation process, which expert would be likely to be asked to provide an expert view on the circumstances of the complaint.
35. Furthermore, the GMC considered this would be unfair to those experts in that this would leave open the potential for that expert to be contacted and pressurised prior to being requested to consider the matter by the GMC.
36. Giving consideration now to the remaining withheld information, the GMC has not provided any further arguments specific to sensitive personal data. However, given the above, and that a further condition in Schedule 3 would be required, the Commissioner accepts that the witness panel experts and doctors would not expect the information to be released into the public domain.

Would disclosure cause damage and distress to the data subjects?

37. The Commissioner notes that some of the information in this case relates to referrals of doctors to the GMC. The GMC is responsible for regulating doctors in the UK. Its regulatory powers in respect of assessing a doctor's fitness or competence in relation to their profession are set out specifically at section 35 of the Medical Act 1983.
38. These powers allow the GMC to initiate an investigation into the fitness to practise of a particular doctor. The GMC publishes details of fitness to practise hearings that have taken place, on its website. However, not all complaints or referrals result in such a hearing. Therefore, the Commissioner considers that the doctors concerned (i.e. the data subjects) would be likely to be caused some degree of distress if this information was disclosed. It should be highlighted that a disclosure under the FOIA is, in effect, a disclosure to the world, and not just to one individual.

The legitimate public interest

39. The Commissioner considers that there is a legitimate public interest in disclosure of information which demonstrates that the regulation of doctors by the GMC is operating effectively. In this case he notes that outcomes of fitness to practise hearings are put into the public domain by the GMC, and he considers that this goes some way to meeting the legitimate public interest in this case.
40. Taking into account the reasonable expectations of the doctors and witness experts, and the potential impact on the data subjects if the

information were to be disclosed, the Commissioner considers that it would be unfair to disclose the outstanding requested information.

41. Whilst he accepts that there is a legitimate interest in the disclosure of information relating to doctors' and their fitness to practise, he does not consider that this outweighs the other factors detailed above. Therefore it is his decision that section 40(2) by virtue of section 40(3)(a)(i) FOIA was applied correctly in this case.
42. As all the information has been withheld under section 40(2), the Commissioner has not gone on to consider the application of section 31 and section 12.

Right of appeal

43. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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

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