

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 March 2016

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

#### Decision (including any steps ordered)

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1. The complainant has requested the name of the medically qualified case examiner who provided advice in relation to his complaint about a number of doctors.
2. The GMC refused to confirm or deny whether the requested information was held under section 40(5) of the Freedom of Information Act 2000 (FOIA).
3. The Commissioner's decision is that the GMC was correct to neither confirm nor deny whether the requested information was held under section 40(5) FOIA.
4. The Commissioner requires no steps to be taken.

#### Request and response

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5. On 2 June 2015 the complainant made the following request for information under the FOIA for:

"Who are re-opening enquiries into this Murder.

So I will need the name of this medically qualified colleague.

Aiding and abetting a Murder if proved carries a jail term of 1 -5 years.

Chichester Police have at least another dozen

Suspicious deaths at St Wilfrids Chichester.

Why would you prescribe drugs to an elderly Patient

Which are used for the Execution of Prisoners in the USA ??

And how can a Doctor make that Decision without even seeing the Patient ??"

6. On 28 July 2015 the GMC responded. It said that the name of the medically qualified Case Examiner who provided advice in this matter was being withheld as it is third party personal data. 7. The complainant requested an internal review on 29 July 2015. The GMC sent the outcome of its internal review on 26 August 2015. It upheld its original position.

## **Background**

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7. Case examiners are senior GMC staff who can make a decision on the outcome of a complaint after investigation (with regard to whether the doctor should be referred to a panel, accept undertakings or a warning on their registration, or that the case should be closed with no action). The GMC employs both medically qualified and non-medical case examiners. Case examiners may also provide advice during the investigation of a case or in relation to the initial 'triage' of a complaint. This is the point at which a decision is made about whether a complaint should be investigated. The triage decision is made by an Assistant Registrar, an experienced member of the investigation team.

## **Reasons for decision**

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### **Section 40(5) – neither confirm nor deny**

8. The GMC has argued that it would not be appropriate to confirm or deny whether or not it holds the identity of the case examiner who considered the complainant's alleged complaints about a number of named doctors as to do so would be to confirm or deny whether complaints had been made about those doctors. It said that to confirm or deny whether this information is held would breach the first principle of the DPA, which requires that the processing of personal data is fair and lawful. It does not believe that any of the conditions in schedule 2 are met and therefore confirming whether or not the information is held would be unlawful.

9. Section 1 of the FOIA provides two distinct, but related rights of access to information that impose corresponding duties on public authorities:
  - a) the duty to inform the applicant whether or not requested information is held and, if so
  - b) the duty to communicate that information to the applicant.
10. However, in relation to personal information, section 40(5)(b)(i) of the FOIA says that a public authority is not obliged to confirm or deny that it holds information if, by confirming or denying that it is held, the authority would breach one of the data protection principles.
11. This subsection is about the consequences of confirming or denying whether the information is held, and not about the content of the information. The criterion for engaging it is not whether disclosing the information would contravene data protection principles, but whether the simple action of confirming or denying that it is held would do so.
12. The Commissioner's guidance on section 40(5) explains how there may be circumstances, for example requests for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that information about an individual can itself reveal something about that individual. To either confirm or deny that the information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process.
13. For the GMC to have correctly relied on section 40(5)(b)(i) the following conditions must be met:
  - confirming or denying whether information is held would reveal personal data of a third party; and
  - confirming or denying whether information is held would contravene one of the data protection principles.
14. In order to reach a view regarding the application of this exemption, the Commissioner has first considered whether confirming or denying relevant information exists does, in fact, constitute personal data as defined by the DPA.

*Is the requested information personal data?*

15. In this case the GMC has argued that confirming or denying whether it holds the name of the case examiner, in the context of this request, would be the personal data of any doctors concerned.

16. The Commissioner also considers that it could be argued that this information (if held) could also constitute the personal data of the complainant. After consideration, he does not consider that the name of the case examiner (if held) is information from which the complainant would be identifiable in this case. The case examiner may have investigated a complaint made by the complainant but the investigation was launched to consider the doctor's fitness to practice in relation to the treatment of patients. The complainant was not one of those patients.
17. The Commissioner does however consider that the name of the case examiner would be considered the personal data of the doctor's in this case because to confirm or deny the name of the case examiner would be to confirm or deny whether a complaint had in fact been made about those doctors. Whilst the doctors aren't specifically named in the request, it does refer to the hospital the complaint relates to and it is likely that individuals with some localised knowledge are likely to be able to identify the doctors the request relates to.
18. The Commissioner therefore considers that the requested information, if held, would be the personal data of the doctors.

*Would confirming or denying whether the information is held contravene one of the data protection principles?*

19. The first data protection principle says that personal data must be processed fairly and lawfully.

*What reasonable expectation does the individual have about what will happen to their personal data?*

20. The GMC said that when it receives a complaint about a doctor an initial decision is made as to whether an investigation should be conducted. On completion of an investigation, a complaint will be considered by two case examiners (one medical and one non-medical). They can conclude the case, issue a warning, agree undertakings with the doctor or refer the case to a Fitness to Practise (FTP) Panel for a hearing. FTP Panel hearings are usually held in public, although they may be held in private if discussing a doctor's health or any other confidential matter. It is at this hearing stage that details about the nature of the case may be made publicly available. Outcomes of FTP Panel hearings are also published on the GMC's website. Details of any current restrictions or warnings on a doctor's registration are also made publicly available. Therefore, the GMC will only publicly disclose the existence of a complaint if a doctor has any current warnings or restrictions on his registration, or if the complaint has progressed to a FTP Panel hearing. The expectation of all parties involved in the GMC's complaint process is

that information will only be published in line with these disclosure points.

21. It confirmed that if a complaint was made by the complainant, no information has been made publicly available. On that basis (and considering the applicant-blindness of the FOIA) it considers that it is appropriate to neither confirm nor deny whether the information is held under the FOIA.
22. The GMC referred to arguments published in previous decision notices, references FS50277585 dated 25 May 2010, and FS50477181 dated 27 June 2013 in respect of the GMC, as those same arguments apply here. In particular, it referred to paragraphs 30 to 33 the Decision Notice dated 27 June 2013:

*'30. The GMC maintained that it believed the exemption applied as to confirm where or not it held any information in a FOIA context would confirm that it held, and was considering, a complaint about identifiable registered doctors. It was their view that this would not be fair or lawful and therefore in breach of the first data protection principle.*

*31. Disclosure of information under the FOIA constitutes disclosure to the world at large. The Commissioner therefore accepts that, if such information exists, it would be unfair in the circumstances for the GMC to confirm or deny whether it held information within the scope of the request.*

*32. As the Commissioner has determined that it would be unfair to disclose the requested information if it was held, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met.*

*33. In view of the above, the Commissioner finds that confirming or denying that the GMC holds information within the scope of the request would contravene the first data protection principle. The GMC was therefore entitled to rely on the exclusion at section 40(5)(b)(i) of the FOIA.'*

*What might be the likely consequences resulting from confirming or denying any information is held?*

23. Based on the GMC's submission, the Commissioner is prepared to accept that any doctors relevant to this request would not expect the GMC to confirm or deny it holds information on any complaints about them. The

Commissioner also considers that the doctors may well be distressed if this information was confirmed or denied. He therefore considers that the GMC is correct when it says that it would be unfair to confirm or deny the existence of this information, and a breach of the first data protection principle.

*Balancing the individual's rights and freedoms against the legitimate interest in confirming or denying information is held*

24. The Commissioner notes that there is a legitimate public interest in disclosing information that demonstrates that the GMC's regulation of doctors is operating effectively.
25. Taking into account the doctor's reasonable expectations, and the potential impact on them if the existence of complaints was confirmed or denied, the Commissioner is satisfied that confirming or denying whether the requested information is held would be unfair. He accepts that there is legitimate interest in this information but considers that this is outweighed by these other factors. The Commissioner's decision is therefore that the GMC correctly applied section 40(5)(b)(i).

## Right of appeal

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26. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

27. 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.
28. 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** .....

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