

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2016

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

Decision (including any steps ordered)

1. The complainant has requested information about whether the GMC had received complaints about a particular doctor.
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

5. On 1 March 2016 the complainant requested information of the following description:

"What I would like to ask you is whether the Dr that I have mentioned has been reported to the GMC?

I would also like to know if there have ever been any other complaints against him."
6. On 8 March 2016 the GMC responded. It refused to confirm or deny whether the requested information was held under section 40(5) FOIA.

7. The complainant requested an internal review on 11 March 2016. The GMC sent the outcome of its internal review on 30 March 2016. It upheld its original position.

Reasons for decision

Section 40(5) – neither confirm nor deny

8. The GMC has argued that it would not be appropriate to confirm or deny whether the requested information is held as it would breach the first principle of the DPA, which requires that the processing of personal data is fair and lawful.
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 (if held) would contravene data protection principles, but whether the simple action of confirming or denying whether 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 or not complaints had been made about a particular doctor, would be the personal data of that doctor. The Commissioner considers that this is information from which the data subject (the doctor) would be identifiable and would be classed as personal data.

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

16. 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?

17. The GMC explained that that it confirmed to the complainant that the doctor who is the subject of his request has not been the subject of a Medical Practitioners Tribunal (MPT) hearing. It has also confirmed that his registration is not subject to any current restrictions. However, it does not consider that it is obliged to confirm under the FOIA whether or not any complaints, not resulting in this action, are held.

18. It went on to explain that when the GMC 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 the Medical Practitioners Tribunal Service (MPTS) for a hearing. MPT hearings are usually held in public, although 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 case may be made publicly available. Outcomes of MPT hearings are also published on the MPTS website. Details of any warnings or current restrictions on a doctor's registration are also made publicly available.

19. Therefore it summarised that 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 an MPT 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.

20. It concluded that as the doctor who is the subject of this request has not been the subject of any complaints which have progressed to an MPT hearing and is not subject to any current restrictions or warnings, he would not expect the GMC to confirm or deny under FOIA whether or not any complaints had been made against him.

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

21. The Commissioner notes that there is a legitimate public interest in information that demonstrates that the GMC's regulation of doctors is operating effectively.
22. Taking into account the doctor's reasonable expectations, because he has not had a complaint against him that has progressed to an MPT hearing or which has led to restrictions or current warnings on his registration, the Commissioner is satisfied that confirming or denying whether the requested information is held would be unfair. The Commissioner's decision is therefore that the GMC correctly applied section 40(5)(b)(i) FOIA.

Right of appeal

23. 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

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

24. 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.
25. 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

Pamela Clements
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