

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2016

Public Authority: General Dental Council
Address: 37 Wimpole Street
London
W1G 8DQ

Decision (including any steps ordered)

1. The complainant has requested the insurance/indemnity arrangements of a particular dentist for specific years. The General Dental Council (GDC) has refused to confirm or deny that it holds this information under section 40(5)(b)(i) of the FOIA, as to do so would release the personal data of a third person and so breach the Data Protection Act.
2. The Commissioner's decision is that GDC is correct to neither confirm nor deny it holds the requested information. The Commissioner does not require GDC to take any steps.

Request and response

3. On 24 February 2016, the complainant wrote to GDC and requested information in the following terms:

"In order to assist with our investigations please would you provide complete details of [Named Dentist's] insurance/indemnity arrangements for the entirety of 2013 and 2014 including indemnifying organisation or insurance company, relevant Defence Organisation membership number of [Named Dentist], or insurance contract details including reference numbers."

4. GDC responded on 18 March 2016. It refused to confirm or deny that it holds the information the complainant has requested, under section 40(5)(b)(i) of the FOIA, because to do so would release the personal data of a third person.
5. The complainant requested an internal review on 23 March 2016 and provided GDC with details of an NHS England case. GDC provided the outcome of its internal review on 6 May 2016. GDC upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 11 July 2016 to complain about the way his request for information had been handled. The complainant is pursuing a dental negligence claim against the individual concerned and says he needs the requested information in order to pursue this claim. The complainant considers that various conditions of the Data Protection Act (DPA) permit the disclosure of this information.
7. The Commissioner's investigation has focussed on GDC's reliance on section 40(5)(i)(b) of the FOIA.

Reasons for decision

Section 40(5) – neither confirm nor deny information is held

8. 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.
9. 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.
10. 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.

11. The Commissioner's guidance on section 40(5) explains that 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 information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process.
12. For GDC 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 person; and
 - confirming or denying whether information is held would contravene one of the data protection principles.
13. In order to reach a view regarding the application of this exemption, the Commissioner has first considered whether confirming or denying relevant information is held would reveal personal data of a third person as defined by the DPA.

Is the information personal data?

14. The DPA says that for data to constitute personal data, it must relate to a living individual and that individual must be identifiable from it.
15. The GDC has explained to the Commissioner that it is not currently required to hold a copy of a registrant's indemnity information as a matter of course. It says this information would ordinarily be requested from the individual registrants if it received a complaint and decided there was a case to answer about their fitness to practice. Therefore, to confirm or deny that it holds the requested information in this case would indicate whether the registrant in question has been, or is currently, the subject of a disciplinary process.
16. GDC's disciplinary process has four stages. At the second stage, GDC caseworkers decide whether a complaint submitted to it should progress to the next stage, or be closed. At stage 3 of the process, an Investigating Committee considers the allegation and decides whether to refer the allegation to a Practice Committee for a full public inquiry. Stage 4 is a fully public inquiry before the Practice Committee.
17. As far as the Commissioner is aware, the registrant in question is alive. The Commissioner considers that whether that registrant is the subject,

or has been the subject, of a complaint relates to that registrant and that he or she could be identified from that information. Consequently, the Commissioner is satisfied that the information that would be revealed if GDC confirmed or denied that it holds the requested information, namely whether the dentist is, or has been the subject of a complaint, is the personal data of a third person. She has gone on to consider the conditions under section 40(3) of the FOIA, which concern the release of personal data.

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

18. The first condition under section 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA.
19. The Commissioner has considered whether GDC is correct when it argues that confirming whether or not it holds the requested information would breach the first data protection principle: that personal data '*shall be processed fairly and lawfully...*'. When assessing whether disclosure, or confirming or denying information is held, would be unfair and so constitute a breach of the first data protection principle, the Commissioner takes into account factors such as whether the information relates to the individual's public or private life, what their reasonable expectations might be and whether or not the individual has consented to the disclosure of the personal data, or the authority confirming or denying that it is held.
20. The Commissioner has noted that the information, if held, concerns the individual's public life ie their role as a dentist. GDC has told the Commissioner that it does not have the individual's consent to disclose the information, or to confirm or deny that it is held.
21. GDC has told the Commissioner that there is no expectation on the part of dental professionals that GDC will disclose or confirm or deny it holds information about their fitness to practice history outside of the fitness to practice or disciplinary process. Nor would a dental professional expect that GDC would disclose this information for a reason other than for the purpose of GDC performing its regulatory function; that is, the fitness to practice or disciplinary function. GDC says that assisting members of the public in bringing civil claims against dentists is not part of its regulatory function as set out in the Dentists Act 1984.

22. The sixth condition in Schedule 2 of the DPA says that the processing of personal data must be necessary for the purpose of legitimate interests pursued by the data controller or the third party to whom data is disclosed, except where the processing is unwarranted because it would prejudice the rights and freedoms or legitimate interests of the data subject. GDC says that in this case, the rights and freedoms of the registrant in question would be prejudiced because he or she has not consented to the disclosure of their personal data and has no expectation that confidential information relating to any fitness to practice history with GDC would be disclosed, where a complaint has not progressed to the public hearing referred to at paragraph 16.

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

23. Despite the factors above, the GDC may still confirm or deny it holds the requested information if there is compelling public interest in doing so that would outweigh the legitimate interests of the particular dentist. Although the Commissioner recognizes that the information is of interest to the complainant, confirming or denying the information is held under the FOIA would effectively disclose the dentist's personal data to the world at large.
24. The Commissioner considers that there is a legitimate public interest in openness and transparency. However she has also considered the nature of the requested information, the fact that, if held, the dentist concerned would not expect their personal data to be disclosed and that, if held, disclosure could cause damage and distress to that dentist.
25. The Commissioner has also noted GDC's argument that confirming or denying the requested information is held would be likely to prejudice GDC's relationship with registrants more generally when they learn that, despite their expectation of confidence, it has disclosed personal information to the wider world, under the FOIA.
26. The Commissioner acknowledges that the requested information is of interest to the complainant but does not consider it is of sufficient wider public interest such that it would outweigh the dentist's legitimate interests.
27. The Commissioner is therefore satisfied that the GDC has correctly applied the exemption under section 40(5)(b)(i) of the FOIA to the request, because to confirm or deny it holds relevant information would release the personal data of a third person and would contravene the DPA.

Right of appeal

28. 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

29. 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.
30. 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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