

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 May 2017

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to a named dentist's address. The General Dental Council (GDC) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the GDC has correctly applied section 40(2) of 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

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4. On 13 December 2016 the complainant made the following request for information:  
  
*"the registrant's [name of dentist redacted] up to date address as held on your system."*
5. On 23 December 2016 GDC refused to provide the requested information citing the exemption section 40(2) and 40(3)(a)(i) of the FOIA. GDC explained that it had recently reviewed its approach to publishing the registered address information on its online register, concluding that this information should no longer be made publicly available.
6. On 10 January 2017 the complainant requested an internal review. He argued that the decision was wrong because the purpose of the request is both 'fair and lawful.'

7. On 6 February 2017 GDC provided the outcome of the internal review. It upheld the decision to refuse the registrant's address and cited section 40(2) (Personal Information) of the FOIA.
8. GDC explained that 'the sole reason address information is obtained from registrants is so that the GDC can contact them, in a regulatory capacity, about issues affecting them. Registrants have no expectation that contact details provided to the GDC for a regulatory purpose will be disclosed more widely or to third parties looking to issue a claim against them.'

## Background

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9. GDC have explained to the complainant that GDC carried out a public consultation on publishing address information on their public register. A registrant's contact address does not need to be their place of work, and many choose to give GDC their home contact details. On the basis of the responses received from registrants and other stakeholders, the GDC decided that publication should stop in October 2016.
10. This brought the GDC in line with other regulators and ensured that  
*'Removing all address details from the register brings the GDC in line with other professional healthcare regulators, balancing our role in patient safety and ensuring the public have confidence in dental services, with the need to treat dental professionals fairly by not disclosing their personal information. "We want to work with the profession to encourage them to display and use their registration number so that when patients visit them they are confident that they are being treated by someone who is registered with the GDC.'*

## Scope of the case

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11. On 7 February 2017 the complainant contacted the Information Commissioner.
12. The Commissioner invited the complainant to withdraw his case on 24 March 2017 as it was her initial view that the GDC was correct in its refusal to disclose this information. However, the complainant declined to withdraw his case.
13. The Commissioner considers the scope of this case to be to determine if the GDC has correctly applied section 40(2) FOIA to the withheld information.

## Reasons for decision

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### Section 40(2) – Third party personal data

14. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

#### **Is the withheld information personal data**

15. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. 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, has them as its main focus or impacts on them in any way.
17. The GDC have confirmed that it holds the named registrant's address.
18. The Commissioner considers that the information withheld under section 40(2) is personal information from which a living data subject would be identifiable.

#### **Would disclosure breach the Data Protection Principles?**

19. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
20. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

#### **Reasonable expectations**

21. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.

22. The GDC have explained to the complainant and the Commissioner that registrants provide the contact address to the GDC for limited purposes and 'assisting with a civil negligence claim is not part of the GDC's regulatory role or function...disclosure...would constitute processing personal data outside of the limited purpose for which it was provided. Doing so would breach the second data protection principle.'
23. The Commissioner understands that since October 2016 the GDC would not routinely make public such information.

### **Consequences of disclosure/Damage and distress**

24. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individuals.
25. The GDC argued that disclosure of the registrant's address would be distressing:

*'The registrant has no expectation that their contact address would be made public and they would be surprised, distressed, and angry if it were to be. This is especially so as it is reasonable to foresee that disclosure of the registrant's address information would lead to unsolicited contact from third parties....'*

26. The Commissioner accepts that disclosure would be distressing for the named individual.

### **Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

27. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
28. The GDC considered the registrant's rights under Article 8 (respect for private and family life) of the European Convention on Human Rights ('ECHR'), as implemented into UK law through the Human Rights Act 1998.
29. The GDC weighed these factors against general principles of transparency, their responsibility for public safety and the factors specifically underpinning the request - a civil claim against the registrant. GDC noted that there is an established process for bringing a claim i.e. the Civil Procedure Rules, under which the court has power to

order disclosure of information held by a non-party to the claim (eg GDC) where that is considered necessary and relevant.

30. In her preliminary view, the Commissioner has already referred the complainant to a number of cases in which a request was made for personal contact details. ([FS50534959](#) names and professional addresses of all doctors licensed to prescribe certain substances, [FS50585183](#) name and address of a private landlord and [FS50619908](#) admission details of specific children to a school.) The Commissioner concluded in all these cases that section 40(2) of the FOIA had been cited correctly.
31. The complainant has argued that the purpose for requesting the registrant's address is both fair and lawful and was freely available until October 2016. *'The reason for the initial request to the GDC was so that proper service of legal documents could be made upon the correct address for a dentist as held by that dentists governing body. This is in the legitimate interest of the public... I would draw a comparison with the Solicitors Regulation Authority which holds practising details for solicitors and this information is made publicly available.'*
32. Although the complainant states that the purpose of the request was fair and lawful, this is not for the Commissioner to consider. The Commissioner must consider if disclosure of the requested personal information would be fair and lawful.
33. In this case, the Commissioner notes the particular purpose behind the request and is not convinced that the information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data.
34. Having considered the GDC's submission and all of the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that the GDC has put forward for protecting the individuals' personal data, namely:
  - the individuals' likely expectation about how their personal data will be managed
  - the individuals' lack of consent to its release; and
  - the possible negative consequences to the individuals of releasing the information.
35. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the named registrant and that it would not be fair to disclose the requested information in this case.

## **Conclusion**

36. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner upholds GDC's application of the exemption provided at section 40(2) of the FOIA.

## Right of appeal

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37. 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)

38. 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.
39. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**