

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: Health and Care Professions Council

Address: 184 Kennington Park Road
Kennington
London SE11 4BU

Decision (including any steps ordered)

1. The Commissioner's decision is that under section 40(5B)(a)(i) of FOIA the Health and Care Professions Council (HCPC) is entitled to neither confirm nor deny it holds the requested information about a named doctor. This is because confirmation or denial would disclose the doctor's personal data, and this would be unlawful. It is not necessary for HCPC to take any corrective steps.

Request and response

2. The complainant made the following information request to HCPC on 13 January 2023:

"The information that I request is regarding Dr [redacted].

Dr [redacted] is registered with you under registration number [redacted], location [redacted].

Could you please provide the following information :

1. How many complaints have been made against Dr [redacted] in total.
2. The dates of each of these complaints against Dr [redacted].
3. How many of these complaints against Dr [redacted] were investigated.
4. Of the number investigated against Dr [redacted], how many of these complaints were upheld, and how many were dismissed.

5. How many active complaints against Dr [redacted] there currently are.
 6. Whether Dr [redacted] is currently under investigation for 'Fitness to Practice' at all.
 7. Has any disciplinary action been taken against Dr [redacted] at any time.
 8. If the answer to 7 is yes, when was this and what action was taken."
3. The HCPC's final position was to neither confirm nor deny it holds the requested information under section 40(5B)(a)(i) of FOIA. HCPC directed the complainant to the Commissioner's decision in a similar case¹ in which he had upheld the application of this exemption.

Reasons for decision

4. This reasoning is focused on HCPC's application of section 40(5B)(a)(i) to the complainant's request.
5. Section 1(1)(a) of FOIA obliges a public authority to confirm whether or not it holds information that has been requested – this is known as 'the duty to confirm or deny'.
6. However, under section 40(5B)(a)(i) of FOIA a public authority is not obliged to comply with section 1(1)(a) if simply confirming whether or not it holds the requested information would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
7. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed, or a public authority can only confirm whether or not it holds the information, if to do so would be lawful, fair and transparent.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023029/ic-168818-c5m4.pdf>

9. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
10. In this case, if HCPC were to comply with section 1(1)(a) it would, in effect, be confirming, amongst other things: whether or not complaints had been made against the named doctor; if so, whether complaints had been upheld; and whether or not any disciplinary action had been taken against the doctor.
11. The doctor is named in the request. The Commissioner is satisfied that whether or not the doctor has any complaints and investigations associated with them is that doctor's personal data; that matter relates to the doctor, and they can be identified from it.
12. In their complaint to the Commissioner, the complainant said that, "When you are working/have worked with a psychologist, particularly if they are going to be interacting with your children or have done, without you present, you should be able to check whether they have had any complaints made against them, and whether any were upheld. When considering the public interest test, as the psychologist I enquired about is currently practicing, it is reasonable to ask if [redacted] has previously been or is currently under any investigation against [redacted], or had any complaints made, particularly when [redacted] works with children and vulnerable people. I don't think that the exemption they mention should apply because I'm not asking for any information which shouldn't be readily available for someone to check when instructing a professional."
13. The Commissioner appreciates that the complainant has an interest in the doctor in question. In its correspondence to the complainant, HCPC also acknowledged that there is a legitimate interest in releasing whether it had received any Fitness to Practice complaints about a registered clinical psychologist as this support openness about the complaints received, if any, about a healthcare professional. The Commissioner is satisfied that there is a legitimate interest in the information and confirming whether or not any such information is held, as a first step, would be necessary to meet that legitimate interest.
14. It is then necessary to balance the legitimate interest in confirming or denying the information is held against the doctor's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of confirming or denying. For example, if the doctor would not reasonably expect that their personal data would be disclosed to the public under FOIA in response to the request, or if the confirmation or denial would cause unjustified harm, their interests or rights are likely to override legitimate interest in confirmation or denial.

15. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that confirmation or denial may cause
 - whether related information is already in the public domain
 - whether some individuals already know whether or not the information is held
 - whether the doctor expressed concern about confirming or denying the information is held; and
 - the reasonable expectations of the doctor.
16. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their personal data will not be disclosed. These expectations can be shaped by factors such as the individual's general expectation of privacy, whether the information relates to the individual as an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
17. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
18. HCPC advised the complainant that the doctor would not reasonably expect that it would release confidential information about their HCPC registration to the public at large. Confirming or denying the existence of any Fitness to Practice (FTP) complaints received about the doctor would cause unnecessary distress to that individual.
19. In its submission to the Commissioner, HCPC has said that if an HCPC registrant is referred to a FTP final hearing or has interim sanctions² placed on their registration, it will make these details publicly available by publishing details on the HCPC website. The information it makes publicly available about FTP cases is done in accordance with its Fitness to Practice publications policy³.
20. HCPC has gone on to say that that the doctor in this case has no FTP information in the public domain. As such, to confirm or deny the existence of any FTP complaints received would cause them unnecessary distress. HCPC considers that the doctor's rights and freedoms outweigh

² <https://www.hcpc-uk.org/concerns/how-we-investigate/interim-orders/>

³ <https://www.hcpc-uk.org/resources/policy/fitness-to-practise-publications-policy/>

the legitimate interests of the public to know whether or not the requested information is held.

21. The Commissioner agrees with HCPC. Although the information, if held, relates to the doctor in their professional capacity, he considers that, in the circumstances, the doctor would have the reasonable expectation that their personal data would not be disclosed to the public in response to a FOIA request. Confirming or denying the information is held would therefore cause that doctor distress and interfere with the doctor's rights and freedoms. The legitimate interest in doctors' fitness to practice is met through the information HCPC proactively publishes.
22. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the doctor in this case. The Commissioner therefore considers that there is no Article 6 basis for processing and so confirming or denying the information is held would not be lawful.
23. The Commissioner has therefore decided that HCPC was entitled to neither confirm nor deny it holds the information the complainant has requested under section 40(5B)(a)(i) of FOIA.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

25. 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.
26. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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