

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 September 2023

**Public Authority:** Dr Amy Rowan, Dr Hazel Dendle, Dr Tom Rowley, Dr Helen Farrar, Dr Orla Whitehead, Dr Kate Thomas and Dr Jenny Smith – Partners of the Weardale Practice

**Address:** Stanhope Health Centre  
Dales Street  
Stanhope  
DL13 2XD

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to complaints about GPs. The Practice withheld the requested information under section 40(2) (personal information).
2. The Commissioner's decision is that the requested information engages section 40(2) as to disclose it would breach the data protection principles. However, in disclosing information outside of the statutory timeframe, the Practice breached section 10 (time limits for compliance) of FOIA.
3. The Commissioner doesn't require the Practice to take any steps.

## **Request and response**

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4. On 28 February 2023 the complainant made the following request:

"In accordance with the Freedom of Information Act 2000 I request and require the under-listed information. In each of the complete calendar years 2018, 2019, 2020, 2021 and 2022 (save that in respect of the definition of calendar year 2022 extending into 2023 an incomplete year will be accepted) please provide:

1. The number of complaints made against the Practice in respect of medical care;
  2. The number of complaints within that total directed towards GP Partners and GPs combined;
  3. The number of complaints within that total directed towards Trainee GPs (of whatever nomenclature);
  4. The number of complaints within that total directed towards other medical staff;
  5. The number of FTE Partners;
  6. The number of FTE Trainee GPs (of whatever nomenclature);
  7. The number of FTE medical staff."
5. On 29 March 2023 the Practice responded and disclosed information in response to the request, except parts 5 and 7. It explained that it wouldn't be able to provide the information requested in parts 5 and 7 until 27 April 2023, due to the absence of a specific member of staff.
6. The complainant requested an internal review on 5 April 2023, they raised concerns that the Practice had disclosed the total of complaints received against GPs at all levels, rather than the breakdown of GP partners versus trainees as requested in parts 2 and 3 of the request.
7. The Practice provided its internal review outcome on 17 April 2023. It disclosed the information it previously explained it couldn't provide until 27 April 2023. It didn't address the complainant's specific concerns about parts 2 and 3 of the request.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 8 June 2023 to complain about the way their request for information had been handled.

They remained concerned that the complaints information disclosed to them didn't break down the complaints received against GP partners and GPs versus trainee GPs.

9. In the Practice's refusal notice of 29 March 2023, it explained that 'There is no requirement for practices to collect data and report the number of complaints by Partner, GP or Trainee GPs', implying it didn't hold the breakdown being requested.
10. The Commissioner queried this position with the Practice, which then changed its position. It confirmed that the breakdown was held but would be exempt under section 40(2) (personal information) of FOIA.
11. Therefore, the scope of this investigation is to consider whether that is the case.

## **Reasons for decision**

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### **Section 40 – personal information**

12. Section 40(2) of FOIA states:

"Any information to which a request for information relates is also exempt information if-

- (a) It constitutes personal data which does not fall within subsection (1), and
- (b) The first, second or third condition below is satisfied."

13. In this instance the relevant condition is contained in section 40(3A)(a) which states:

"The first condition is that the disclosure of the information to a member of the public otherwise than under this Act-

- (a) Would contravene any of the data protection principles."

14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.
15. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, he must establish whether disclosure of that information would breach any of the data protection principles.

### **Is the requested information personal data?**

16. The Commissioner has seen the information being withheld in this instance. However, he relies upon the Practice to explain why this numerical data represents personal data.
17. The Practice has explained 'The information is exempt as publishing the information could lead to the public being able to identify the individual that the complaint had been raised against or who had been involved in the complaint.'
18. It has gone onto say 'The complainant specifically asked for the number of complaints directed towards GP Registrars, this information was withheld. The information sent to the complainant was the total number of complaints directed towards GP Partners and GPs combined (including GP Registrars).'
19. For clarity, the Commissioner understands that a GP Registrar is a fully qualified and registered doctor who is training to become a GP and represents the group the complainant is referring to in part 3 of their request.
20. So, the Practice is concerned that if it breaks down the total complaints, per year, into trainee GPs versus registered GPs, this could lead to the identification of not only the doctor involved, but also the individual who was involved in the complaint.
21. On the surface, the complainant has requested complaints data about GP trainees and registered GPs, not personal data. However, the Commissioner must consider whether any individual (in this case either the doctor or the individual who made the complaint) could be identifiable, either directly or indirectly, from this information.
22. The Commissioner's anonymisation code<sup>1</sup>, discusses the considerations that need to be taken into account when considering whether anonymised data can be traced back to any of the individuals involved and therefore turned back into personal data. This is known as reidentification.

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<sup>1</sup> [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk/your-data-matters/understanding-our-approach-to-data-protection/2018/03/2018-03-20-anonymisation-managing-data-protection-risk-code-of-practice)

23. Furthermore, disclosure under FOIA is disclosure to the world at large. Whether or not the complainant can, or its their intention, to identify any of the individuals involved from the withheld information; the test is whether any member of the public could.
24. When it comes to reidentification, a public authority must consider the possibility that anonymised data can be combined with information either known to other individuals or in the public domain, to turn anonymised data into personal data.
25. The anonymisation code asks public authorities to consider which types of information will be the most attractive to any motivated intruder, who would wish to reidentify the data subjects involved. Also, the consequences of this reidentification may be more consequential for the data subject depending on the type of information that is revealed. The Commissioner believes the remaining withheld information, which concerns complaints about the doctors, falls into these two categories.
26. Two factors that make reidentification more likely to occur are when the withheld information is a small number and relates to a small geographical area. The Commissioner has seen the withheld information and compared it to the number of full-time equivalent staff working (and in which role) for the practice in each year. The smallest total (for GP trainees and registered GPs) is 3 and the largest is 11; even recognising that one doctor might have multiple complaints made against them and some might have none, these are small numbers and the Practice is based in a small town.
27. From a quick internet search, the Commissioner can see that the names of staff are listed on the Practice's website. Furthermore, there are several online reviews and ratings on various websites that relate to specific doctors. Again, this information is anonymised but it does persuade the Commissioner that a more rigorous risk analysis needs to be adopted when dealing with this type of data – especially when the data subject doesn't necessarily need to be named to be identified, it can be enough to be able to establish a reliable connection between particular data and a known individual.<sup>2</sup>
28. To reiterate, the Practice has already disclosed the total number of complaints about GP trainees and registered GPs. Therefore, it can't disclose the breakdown (for years where there are GP registrar complaints) for one without disclosing the other and in doing so, decreasing these small numbers even further and increasing the risk of

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<sup>2</sup> [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk)

identification. With all of the above in mind, the Commissioner is satisfied that the requested breakdown in question is personal data.

29. During this investigation, the complainant explained to the Commissioner 'Were the Weardale Practice to provide me with the total number of complaints against trainee GPs in the period 2017/2023 as a single number then the possibility of personal identification does not exist.'
30. The Commissioner notes that this isn't what the original request of 28 February 2023 asks for and therefore, falls outside of the scope of the request. However, he has used his discretion to consider this matter and is satisfied that this information would also represent personal data, for all of the same reasons listed above.
31. Furthermore, the complainant is in possession of knowledge (that the Commissioner doesn't seem it appropriate to replicate in this notice) that may enable them, in combination with the withheld information, to learn something new about specific registrars at the Practice, not only which doctors had a complaint made against them but also the ones which didn't. Even though a doctor may be happy to have this confirmed, it's still their personal data which would be disclosed to the world at large under FOIA.
32. Just because information constitutes personal data does not automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would any of the data protection principles.
33. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"<sup>3</sup>. In this case, the data subject's would be the individuals involved in the complaint.
34. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.

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<sup>3</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data \(United Kingdom General Data Protection Regulation\)\(Text with EEA relevance\) \(legislation.gov.uk\)](#)

35. In order to be lawful, one of the lawful bases listed in Article 6(1)<sup>4</sup> of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

36. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.”

37. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under FOIA, it is necessary to consider the following three-part test:

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

38. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester’s own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA or may represent the private concerns of the requestor.

39. It’s important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that,

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<sup>4</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data \(United Kingdom General Data Protection Regulation\)\(Text with EEA relevance\) \(legislation.gov.uk\)](#)

if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

40. Even though FOIA is purpose blind, during the course of this investigation the complainant explained to the Commissioner the reasoning behind the request. The Commissioner is satisfied that the complainant has a valid legitimate interest in the requested information.
41. There's also the general legitimate interest in accountability and transparency. Disclosure would provide a snapshot of complaints data in relation to trainee GPs versus registered GPs across a five-year period, albeit for a very small sample of one practice.
42. The Commissioner is satisfied that there is both a private and wider legitimate interest in disclosure.
43. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
44. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
45. The complainant can pursue any individual complaint that they might have with either the Practice or the GMC, therefore the Commissioner isn't wholly satisfied that disclosure of this information is necessary.
46. However, the complainant has their reasons for wanting this breakdown, which are valid, and the Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public. Therefore, there are no less intrusive means of the complainant receiving this breakdown and therefore the Commissioner's gone onto look at the balancing test for completeness. He will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
47. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.



48. In performing this balancing test, the Commissioner has considered the following:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

49. The Practice has explained:

"All complaints are dealt with confidentially within the practice and those individuals involved would not expect their names to be associated with the discussion of complaints within the practice. Individuals would not give their consent to any information to be published that could lead to them being publicly identified. Publishing information could lead to a misrepresentation of the clinician as there would be no context to support the data published – ie the nature of the complaint or if they were upheld or not."

50. The Commissioner is not convinced that either the individual or the doctor involved in the complaint, would expect that their personal data would be disclosed to the world at large via FOIA. That is a reasonable expectation to have and so disclosure would be contrary to the data subjects' reasonable expectations and therefore would cause a certain amount of damage and distress.

51. The Commissioner accepts that the complainant considers the withheld information is necessary to help pursue their own cause. However, the Commissioner doesn't believe that continued suppression of the withheld information prevents the complainant from pursuing any matter with the Practice, or the GMC or their local representative. Furthermore, it doesn't affect the standard of healthcare that the complainant, or any other patients at the Practice, receive.

52. Having considered the likelihood of identification due to the small numbers involved, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals in this specific case. He considers that the Practice has been as transparent as possible in providing the total number of complaints but there is no legal basis for the Practice to disclose the breakdown in specific years as requested as to do so would be in breach of principle (a). The Practice is therefore entitled to rely on section 40(2) of FOIA to refuse to provide the information.

## **Procedural matters**

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53. Section 10 of FOIA states that all non-exempt information must be disclosed within twenty working days of the request. Though the Commissioner accepts the Practice couldn't provide specific information due to a staff absence, this remains a section 10 breach under FOIA.

## Right of appeal

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54. 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](mailto:grc@justice.gov.uk)

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

55. 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.
56. 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

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