

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 October 2024

**Public Authority:** General Dental Council  
**Address:** 1 Colmore Square  
Birmingham  
B4 6AJ

#### Decision (including any steps ordered)

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1. The complainant has requested information about a court case. The above public authority ("the public authority") provided some information but claimed not to hold the remainder.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold further information within the scope of the request.
3. The Commissioner does not require further steps to be taken.

#### Background

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4. This request relates to an [appeal brought in the High Court](#) by a dentist who had been removed from the register of dentists. She had been removed because the public authority had determined that she submitted fraudulent documentation.
5. The High Court allowed the appeal and set aside the decision to remove the dentist from the register. It found that the public authority had not demonstrated that any records were fraudulently submitted because the evidence for that finding was inadequate.
6. Among other things, the court found that the dentist had submitted original copies of the documents in 2017. These documents were

scanned inadequately by a contractor working on behalf of NHS England (NHSE) and the originals destroyed. The judge commented that:

“Underlying all of the concerns I have over the [public authority]’s findings is the loss or destruction of the original notes by Capita as agents of NHSE and the absence of any witness evidence from Capita about their scanning protocol. There was no witness evidence from the employee who scanned the notes or any manager there. The [public authority] did not consider the destruction in their decision. They merely noted that the originals were “unavailable”. This made the hearing much longer and more difficult. Lots of witnesses gave evidence about when sets of copies were received, returned and copied. The [public authority] were assessing 5-6 sets of photocopies. Some were poor copies. This deprived the Appellant of the ability to instruct a handwriting and authenticity expert to report on the original Brown Cards...In my judgment the destruction of the originals probably prejudiced the Appellant’s ability to defend herself against allegations of fraudulent note making through expert evidence on handwriting and authenticity and the [public authority] did not make any proper allowances for that but simply recorded that the originals were unavailable. I find that the [public authority] failed adequately to take this properly into account.”

## Request and response

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7. On 1 February 2024, the complainant wrote to the public authority and, referring to the above case, requested information in the following terms:
  - “[1] Please let me know the total cost on external legal representation that the GDC have incurred to date regarding this case heard by Justice Ritchie.
  - “[2] Regarding the mishandling/shredding and reliance on poorly printed copies of documents critical to the PCC hearing, subsequently highlighted by Justice Ritchie, what steps have the GDC taken to prevent a recurrence?
  - “[3] Have the GDC had formal meetings with Capsticks regarding the above point? If so, please let me see redacted minutes of said meeting/s.
  - “[4] Regarding the two expert witnesses criticised in this case, will the GDC be using them again? Have the GDC performed an audit of all other PCC cases when either/or gentlemen were used as

independent experts? If not, why not? If an audit has occurred, please let me see full details of it. Redaction is acceptable.”

8. After seeking some clarification about part [1], the public authority responded on 29 February 2024. It provided information within the scope of parts [1] and [3], but denied holding any further information within the scope of any part of the request.
9. The complainant sought a review in respect of parts [2] and [3], arguing that further information should be held. The public authority wrote to the complainant on 21 June 2024. It upheld its original position.

### **Reasons for decision**

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10. Section 1 of FOIA requires a public authority to tell a requester whether the information they have requested is held and, if it is, to communicate that information – unless an exemption applies.
11. Where there is a dispute over the extent to which information is held, the Commissioner is required to determine whether the public authority is more likely than not to hold further information.
12. The complainant is “convinced” that the public authority holds information within the scope of both parts 2 and 3. He has offered no evidence to support such a view.
13. In respect of part 2, the Commissioner notes that the destruction of documents was done by a contractor working on behalf of NHSE. The High Court’s judgement notes that NHSE no longer contracts out its correspondence-handling.
14. As the action in dispute was not carried out by or on behalf of the public authority and was carried out under a contract no longer in place, the Commissioner struggles to see why the public authority would hold information about this arrangement.
15. The complainant appears to be arguing that the public authority ought to hold information because these are the actions (in his view) that a responsible public authority should take in such a scenario.
16. It is not clear how typical the specific circumstances of the case were. No evidence has been put before the Commissioner that would suggest that this is an issue likely to affect many decisions currently or recently before the public authority.

17. It is not for the Commissioner to determine how the public authority ought to have responded to the court judgement or what information it ought to hold. He is only responsible for determining the information that it does, as a matter of fact hold.
18. The public authority has stated that it holds no information. The complainant may well believe that it ought to hold some information, but no evidence has been put forward to suggest that it does.
19. In respect of part 3, the complainant has argued that the meeting in question was recorded. He has offered no evidence to support this assertion and the public authority has stated that it was not recorded, nor is any other recorded information held.
20. It is not clear to the Commissioner why the public authority would want or need to record such a meeting. Nor is it clear why the meeting would require minutes.
21. Once again, the complainant may feel that the public authority ought to hold such information, but there is no compelling evidence to demonstrate that it does.
22. The Commissioner is therefore satisfied, on the balance of probabilities, that the public authority holds no further information within the scope of the request.

### **Other matters**

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23. The [FOIA Code of Practice](#) states that internal reviews should normally be carried out within 40 working days of the requester seeking one.
24. The Commissioner notes that the public authority took more than three months to complete its internal review. He considers this to be poor practice.

## Right of appeal

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25. 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)

26. 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.
27. 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

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