

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2014

Public Authority: General Medical Council
Address: 3 Hardman Street
Manchester
M3 3AW

Decision (including any steps ordered)

1. The complainant has requested the name of a barrister's chambers which has been involved in a particular matter and where it is situated. The General Medical Council (GMC) refused to confirm or deny whether the requested information was held under section 40(5) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the GMC was correct to neither confirm nor deny whether the requested information was held under section 40(5) FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 April 2013 the complainant requested information of the following description:

"Under the provisions of FOI/DPA protocols can you please provide the below thus:

[1] The name of the barristers chambers involved in advice provided in respect of GMC Rule 4 letter sent to me dated 6 June 2012.

[2] The town/city of which the barristers chambers mentioned in request [1] above is situated."

5. On 3 June 2013 the GMC responded. It refused to confirm or deny whether the requested information is held under section 40(5) FOIA.
6. The complainant requested an internal review on 2 November 2013. The GMC sent the outcome of its internal review on 28 November 2013. It upheld its original position but added that if the information were held it would be exempt from disclosure under section 40(2) FOIA.

Reasons for decision

7. Section 40(2) of FOIA provides an exemption for information that constitutes the personal data of third parties:

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

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied."

Section 40(3)(a)(i) of the Act states that:

"The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"

8. Section 40(5) provides that:

"The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

ii. the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or

ii. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

9. The GMC explained that this request relates to the Decision Notice issued under reference FS50476335. It explained to the complainant that it had read the request in this case in conjunction with the reference to the rule 4 letter of 6 June 2012 (referred to in this request). It said that effectively this request is to seek confirmation or denial as to whether a fitness to practice complaint had been made about a particular doctor. It said that in this case the complainant had not quoted the name of the doctor in the request but read in conjunction with the letter he refers to, confirming or denying whether the requested information was held would confirm or deny whether a fitness to practice complaint had been made about a particular doctor. It said that this issue had been considered in case reference FS50476335, in relation to this particular doctor, and both the ICO and the First Tier Tribunal upheld the GMC's application of section 40(5) FOIA.
10. The Commissioner therefore considers that the GMC was correct to apply section 40(5) FOIA again in this case for the same reasons as set out in the Decision Notice issued under case reference FS50476335.

Right of appeal

11. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

12. 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.
13. 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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Wycliffe House
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SK9 5AF