

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2013

Public Authority: The General Medical Council ("the GMC")

Address: 3 Hardman Street
Manchester
M3 3AW

Decision (including any steps ordered)

1. The complainant has requested information about any investigations the GMC have carried out and subsequent action it may have taken against the named doctor. The GMC confirmed that the doctor had conditions placed on his registration by an Interim Orders Panel and had not been subject to any public Fitness to Practise Panel hearings. The GMC went on to refuse to provide further information regarding its investigation and the doctor's employment details citing the personal information exemption at section 40(2) by virtue of section 40(3)(a)(i) FOIA. The GMC subsequently disclosed information about the doctor's employment details to the complainant.
2. The Commissioner's decision is that the GMC correctly withheld the outstanding requested information under section 40(2) by virtue of section 40(3)(a)(i) FOIA.
3. The Commissioner requires no steps to be taken.

Background

4. By way of background the request in this case focuses on a named doctor who had had conditions placed on his registration by the GMC's

Interim Orders Panel (the "IOP"), shortly before the request was made. The GMC has explained that the function of the IOP is to consider whether a doctor's registration should be temporarily restricted while allegations about their conduct are investigated.¹ At the stage that the complainant requested information there were no further details publicly available as the case had not progressed to a public hearing.

Request and response

5. On 21 December 2011 the complainant wrote to the GMC and requested information in the following terms:

"We should be grateful if you would provide any information to assist us in relation to any investigations you have carried out and subsequent action you may have taken against [named doctor]."

Further, we should be grateful if you would provide us with any information as to whether [named doctor] still practices at the Treatment Centre.

Finally please advise when you were alerted to any concerns in relation to [named doctor's] treatment of patients at the Treatment Centre."

6. The GMC responded on 27 January 2012. It confirmed that the named doctor was registered and had conditions on his registration. It also confirmed that no complaints had been heard against the doctor at a GMC Fitness to Practice hearing. It provided a limited amount of information about the IOP hearing on 16 December 2011 against this doctor. However the GMC withheld further information about the IOP hearing and information about the doctor's employment, under sections 40(2) and 40(3)(a)(i) of the FOIA.

¹ http://www.gmc-uk.org/concerns/hearings_and_decisions/interim_order_panel_referrals.asp

7. Following an internal review the GMC wrote to the complainant on 4 December 2012 and upheld its original position in relation to the first part of the request. The GMC did, however, provide updated details relating to the conditions placed on the doctor by the IOP. It also confirmed when the doctor had first been registered by the GMC. Finally, it provided the date on which concerns were first raised to it in relation to the doctor's treatment of patients at the Treatment Centre (which answered the third part of the request).

Scope of the case

8. The complainant contacted the Commissioner on 2 January 2013 to complain about the way his request for information had been handled, in particular that the information he had requested had been withheld.
9. During the investigation of this case the GMC disclosed information to the complainant in response to the second part of the request. Therefore the only requested information that is outstanding is any information held in relation to the first part of the request.
10. Therefore the scope of this case is to consider whether the GMC was correct to withhold the outstanding requested information under section 40(2) by virtue of section 40(3)(a)(i) of the FOIA.

Reasons for decision

11. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
12. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as
"data which relate to a living individual who can be identified –
 - (i) From those data, or
 - (ii) From those data and other information which is in possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."
13. 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, had them as its main focus or impacts on them in any way.

14. The withheld information clearly relates to the named doctor. This is information which relates to a living individual from which they could be identified.
15. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

The Commissioner's approach to fairness

16. The Commissioner has first gone onto consider whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information; and
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned.
 - Balance the rights and freedoms of the data subject with the legitimate interests of the public.

Reasonable expectation of the data subject

17. The GMC explained that at the time of the request it would have been clear to the public that the named doctor had conditions placed on his registration. This information would have been contained on the List of Registered Medical Practitioners (LRMP) which is available on the GMC's website. The GMC had applied the personal data exemption in relation to the information which had been gathered for consideration by the Panel.
18. The GMC clarified the function of the IOP is to look at whether a doctor's registration should be restricted while allegations about their conduct are resolved. It stated that the process followed by the IOP is governed

by the GMC (Fitness to Practise) Rules 2004 and it made clear that the IOP meets in private unless the doctor wishes otherwise.

19. The GMC provided the complainant with a copy of its Publication and Disclosure Policy (in place at the time of the request) sent on 27 January 2012. It refers to point 14 of the policy which clarifies that minutes from IOP hearings are not published. By inference those documents considered by an IOP would also not be publicly available.
20. Therefore the expectations of all those involved at the IOP, especially the doctor, had been set. The GMC explained that there would be no expectation on their part that information held in relation to that hearing would be made publicly available either at the time or subsequently.
21. The GMC informed the ICO that it had not sought consent from the doctor as it felt it was unnecessary to do so. The doctor's expectations have been set by both the GMC's disclosure policy and the legislation that led to the setting of the IOP's functions.
22. The GMC submitted to the ICO a copy of the bundle of documents made available to the Panel, which met on 16 December 2011 to consider the concerns which were raised about the doctor. These documents contained the withheld information which consisted of the personal data of the doctor.
23. The Commissioner accepts that the doctor would not expect information relating to the parts of the hearing that were held in private, would be disclosed into the public domain.

Would disclosure cause damage and distress to the data subject?

24. The Commissioner notes that the information in this case is an investigation into a complaint against a doctor. This investigation was clearly a live issue at the time, as the request was made only five days after the IOP hearing on 16 December 2011. Given that at the time of the request no final conclusion or decision had been reached by the GMC into this complaint, the Commissioner is satisfied that the disclosure of this information at the time of the request would cause damage and distress to the doctor.

The legitimate public interest

25. The GMC referred to a previous Tribunal decision in relation to which this issue had been considered, *Francis v ICO (EA/2008/0028)*. At paragraph 32 of this judgement, "*The Tribunal noted that it would be odd indeed if the GMC were enabled under its own legislation to hold private hearings only to have the transcripts made available on demand to the public under FOIA.*"

26. The Commissioner considers that there is a legitimate public interest in disclosure of information which demonstrates that the regulation of doctors by the GMC is operating effectively. In this case he notes that some details of the actions taken by the IOP had been put into the public domain by the GMC (in relation to the conditions put on the doctor's registration), and he considers that this goes some way to meeting the legitimate public interest in this case.
27. Taking into account the reasonable expectations of the doctor, and the potential impact on the doctor if the information were to be disclosed at the time of the request, the Commissioner considers that it would be unfair to disclose the outstanding requested information. Whilst he accepts that there is a legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. Therefore it is his decision that section 40(2) by virtue of section 40(3)(a)(i) FOIA was applied correctly in this case.

Right of appeal

28. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.

30. 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

Rachael Cragg
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