

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 23<sup>rd</sup> November 2006

**Public Authority:** British Council  
**Address:** 10 Spring Gardens  
London  
SW1A 2BN

#### Summary

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The complainant requested information from the public authority related to two schemes for sponsoring overseas doctors for medical training in the United Kingdom. The complainant was not satisfied with the information he received. After investigating the complaint the Commissioner is satisfied that the public authority has not withheld any information from the complainant and consequently does not require the public authority to take any further action. However, the Commissioner recognises that the public authority breached section 10 of the Act by failing to respond to the request within 20 working days.

#### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

#### The Request

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2. On 24 March 2006 the complainant wrote to the public authority to request information related to two schemes for sponsoring overseas doctors for medical training in the United Kingdom which were administered by the public authority. The two schemes were the Client Funded Training scheme (CFT) and its successor the Postgraduate Medical Education scheme (PGME). The complainant had initially requested information regarding these two schemes on 15 February 2006 and the complainant's request of 24 March was for additional information and clarification on the information he had already been sent. On 24 March 2006 the complainant requested:

- i. Minutes of the meeting in which new guidelines were introduced for the PGME scheme. Including guidelines excluding doctors who are British or EEC citizens and doctors who qualified over 10 years ago.
  - ii. Clarification of when the public authority received advice from the General Medical Council (GMC) on the issue of the validity of doctors with EU enforceable rights being asked to take the IELTS (International English Language Testing System) exam.
  - iii. Minutes of the meeting in which the decision was taken to close the PGME scheme.
3. The public authority responded to this request on 8 May 2006 by explaining that the information was not held.
  4. In response to part i of the request the public authority explained that all doctors practising in the UK must be registered with the GMC and that British and EEA citizens are entitled to apply for "full" or "provisional" registration whereas doctors from other countries apply for "limited" registration. The public authority explained that the sponsorship schemes are for applications for "limited" registration only and therefore by definition exclude British and EEA citizens. In respect of doctors who qualified and worked in the EEA and doctors who qualified more than 10 years ago, the public authority explained that all criteria for applicants to be sponsored under the PGME scheme were set by the GMC and that the public authority "merely acts as an intermediary between the applicants and the GMC". The public authority said that no additional guidelines were formulated and consequently it did not hold the information the complainant had requested.
  5. In response to part ii of the complainant's request the public authority stated that an IELTS test was still a requirement for applications for sponsorship via the PGME scheme. The public authority explained that the issue of EU enforceable rights was not relevant to the overall administration of the PGME scheme and therefore no information existed regarding advice on EU enforceable rights received from the GMC.
  6. In response to part iii of the request the public authority explained that its involvement in the PGME scheme was wound down over a number of years and that there was no one meeting in which a decision was made to end involvement in the scheme.

## **The Investigation**

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### **Scope of the case**

7. On 15 June 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's explanation that it did not hold any further information other than what had already been supplied to the complainant.

8. The complainant also said that under the CFT scheme naturalised British citizens could apply for sponsorship but that under the PGME scheme naturalised British citizens were excluded from applying. The complainant suggested that this was evidence that the British Council had formulated extra guidelines for overseas doctors wishing to apply for sponsorship via the PGME scheme.

## Chronology

9. On 5 July 2006 the Commissioner contacted the public authority to seek clarification as to why it did not hold the information requested by the complainant. In particular the Commissioner asked that the public authority clarify why citizens from the UK / EEA could not apply to these schemes. The Commissioner also asked the public authority to elaborate on its statement that there was no one meeting at which a decision to close the PGME scheme was made. The Commissioner asked the public authority to confirm whether there was one meeting or series of meetings in which the closure of this scheme was formally recorded.
10. On 6 September 2006 the public authority responded to the Commissioner by providing further information on the application criteria for the sponsorship schemes. The public authority asserted that, in respect of part i of the complainant's request, there had not been any changes to the eligibility criteria regarding UK/EEA citizens (whom are not eligible to apply to the scheme) and therefore there had been no changes to any of the guidelines issued.
11. In respect of part ii of the complainant's request the public authority stated that it only became aware of the issue of EU enforceable rights through dealing with a case involving the complainant's wife which concerned the issue of EU enforceable rights. The public authority stated that a valid IELTS pass certificate was always a requirement for sponsorship via the PGME scheme.
12. In response to part iii of the complainant's request the public authority confirmed that the department responsible for managing the PGME scheme has now closed and that the staff involved have been transferred to other projects within the organisation. It has also confirmed that as a result of this a decision was taken to only retain information which it had a legal obligation to keep, for example individual doctors' files. The public authority also supplied the Commissioner with the explanation, which it had previously supplied to the complainant, as to why its involvement in the PGME scheme came to an end. The public authority had explained to the complainant that its involvement in the scheme increasingly no longer met its own strategic objectives and therefore became untenable in the long term.
13. The complainant argued that the public authority's assertion that there had not been any changes to the guidelines regarding the eligibility of British and EEA citizens was not accurate. He supported his contention that the guidelines had been changed through the example of his wife's case. The complainant asserted that his wife was a British national when she was accepted onto the CFT scheme.

The complainant produced a copy of the PGME scheme which included under the heading *Exclusions to the British Council sponsorship scheme*, “doctors who are nationals or who have right of residency of any EEA member state, including the UK”. The CFT scheme did not include a similar exclusion in its scheme. The complainant suggested that this demonstrated that the public authority had changed the guidelines for applications to the PGME scheme.

14. The Commissioner presented the complainant's arguments to the public authority and invited it to respond. The Commissioner also asked the public authority to account for the differences in wording between the two schemes and in particular why the PGME scheme appeared to be more prescriptive in describing exclusions to the scheme as opposed to the CFT scheme.
15. The public authority said that the PGME scheme is more prescriptive than the CFT scheme in outlining the exclusions to the scheme because documents relating to the CFT scheme were only ever distributed to the public authority's offices in countries whose residents were eligible for the scheme. The public authority said that with the onset of the internet and the “digital age” these documents increasingly became available to a global audience and therefore it became necessary to be explicit about the residency and the nationality criteria which have always been in place and which have never changed.
16. At this point the complainant also provided the Commissioner with information demonstrating that doctor's with EU enforceable rights with EU cannot be made to take compulsory language testing. The complainant presented this as evidence that the public authority had received advice from the GMC on the issue of doctors with EU enforceable rights being asked to take the IELTS exam.

### **Findings of fact**

17. The complainant sent his clarified request via email on 24 March 2006. The public authority did not respond to the request until 8 May 2006.
18. The public authority has demonstrated that when the complainant's wife was accepted onto the CFT scheme she had dual nationality and that it had recorded her primary nationality as Pakistani. She was not resident in the UK/EEA at the time of her application.
19. The public authority clarified its earlier position that it had never accepted applications from UK/EEA applicants onto either scheme. It explained that in circumstances, such as that of the complainant's wife, where an applicant holds dual nationality; their primary nationality being defined as their country of birth/origin and, their second nationality being British (by way of them holding a British passport), if they are not resident in the UK/EEA and if they have obtained their medical qualifications from a country outside of the UK/EEA then they would be able to apply for sponsorship for either scheme. The public authority has confirmed that when the PGME scheme says that “doctors who are nationals...of any EEA member state, including the UK” should not apply, it is the common usage of the word “national” that is being applied in so far as it refers to a person's country of birth or origin.

20. The public authority has demonstrated that the schemes were only open to those doctors applying for sponsorship for limited registration which excludes UK/EU doctors who are eligible for full or provisional registration. The public authority has shown that doctors who qualified in the UK/EEA would apply for either full or provisional registration with the GMC.
21. The public authority has said that the selection criteria for accepting doctors for sponsorship, for example excluding doctors who had qualified more than 10 years ago, had always been in place since the scheme started and had never changed.
22. The complainant has said that doctors with EU enforceable rights cannot be made to take the IELTS exam. The complainant demonstrated that this view is shared by the GMC.

## Analysis

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### Procedural matters

23. Section 1(1) of the Act states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
24. The Commissioner is satisfied with the public authority's assertion that, in respect of part i of the complainant's request, the guidelines for accepting applications for sponsorship have not changed from the CFT scheme to the PGME scheme. The Commissioner recognises that the British Council's selection criteria for accepting applicants for sponsorship have been in place since the schemes started and have not changed. In particular the Commissioner is mindful of the fact that the issue of EU enforceable rights was not considered to be relevant to the PGME scheme. The Commissioner also recognises that any differences between the CFT and PGME scheme are a reflection of the increasing availability of documents relating to these schemes via electronic means such as the internet rather than a change in the eligibility criteria governing the schemes. Consequently the Commissioner accepts that there are no minutes of meetings in which extra guidelines, excluding British and EEC doctors and doctors who qualified more than ten years ago, exist.
  25. The complainant is of the opinion that doctors with EU enforceable rights can not be forced to take the IELTS exam and has provided various pieces of evidence to support this view. However, the Commissioner is not considering the validity of

- doctors with EU enforceable rights being asked to undertake language testing. The Commissioner is considering the public authority's response to part ii of the complainant's request, namely, when did the public authority receive advice on this issue? The Commissioner accepts that doctors with EU enforceable rights are not eligible to take part in this scheme, and therefore it follows that no guidelines in relation to this matter would have been issued by the GMC and received by the public authority.
26. The Commissioner is not obliged to make a decision in respect of what information a public authority should hold. Under the Act the Commissioner is obliged to consider whether a public authority holds recorded information and whether it is required to provide it to a complainant. On the basis of these facts, in this case the Commissioner is satisfied that the public authority does not hold information of the description outlined in part ii of the request, other than the information already supplied to the complainant.
27. The Commissioner is satisfied that there was no formal decision by the public authority to end its involvement in the PGME scheme. Furthermore, the Commissioner recognises that the public authority does not hold any information of this sort because at the time the complainant made his request the public authority had taken the decision only to retain information related to the PGME scheme that it had a legal obligation to keep. The Commissioner is satisfied that none of the records retained by the public authority fall within the scope of this request. The Commissioner also recognises that the public authority had previously supplied the complainant with information regarding the reasons for it ending its involvement in the PGME scheme. The Commissioner is satisfied that the public authority does not hold any information, other than that already disclosed to the applicant, that falls within the scope of part iii of the request.
28. Section 10 of the Act provides that:
- “...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”
29. By not responding to the request until 8 May 2006 the public authority failed to comply with section 10 of the Act.

## The Decision

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30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with section 1 of the Act but breached section 10 of the Act by failing to respond to the request within 20 working days.

## Steps Required

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31. The Commissioner requires no steps to be taken.

## Failure to comply

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32. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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33. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 23<sup>rd</sup> day of November 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**