

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

### **Decision notice**

**Date:** 6 February 2013

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

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

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1. The complainant has requested copies of the transcripts of those parts of the [named doctor] hearing that were held in private. The General Medical Council (GMC) refused to provide the requested information under section 40(2) of the Freedom of Information Act 2000 (FOIA) by virtue of section 40(3)(a)(i) FOIA.
2. The Commissioner's decision is that the GMC correctly withheld the requested information under section 40(2) by virtue of section 40(3)(a)(i) FOIA.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 3 February 2012 the complainant requested copies of the transcripts of those parts of the [named doctor] hearing that were held in private.
5. On 22 March 2012 the GMC responded. It refused to provide the complainant with the information he requested under section 40(2) by virtue of section 40(3)(a)(i) FOIA.
6. The complainant requested an internal review on 2 April 2012. The GMC sent the outcome of its internal review on 1 May 2012. It upheld its original position.

## Scope of the case

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7. The complainant contacted the Commissioner 10 December 2012 to complain about the way his request for information had been handled, in particular that the information he had requested had been withheld.
8. The Commissioner considered whether the GMC was correct to withhold the requested information under section 40(2) by virtue of section 40(3)(a)(i) FOIA.

## Reasons for decision

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9. 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.
10. 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 the 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."
11. 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, has them as its main focus or impacts on them in any way.
12. The information withheld under section 40(2) FOIA is information relating to a named doctor. This is information which relates to a living individual from which they could be identified. The Commissioner has included further information in the Confidential Annex attached to this Notice in support of this.
13. 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 at section 40(3)(a)(i) of FOIA, 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. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

### **Likely expectation of the data subject**

14. The GMC explained that Fitness to Practice Panel hearings are held in public unless the Panel agree that it should be held in private. It confirmed that this is allowed for under paragraph 41(1) of The General Medical Council (Fitness to Practice) Rules 2004.
15. It said that all parties involved expected that transcripts relating to the parts of the hearing that were held in private would not be made publicly available.
16. The Commissioner accepts that the named 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**

17. The Commissioner considers that disclosure of the named doctor's personal data which is contained within the transcripts which related to the part of the hearing which was held in private, would cause damage and distress to the data subject. Again further evidence in support of this is contained within the Confidential Annex attached to this Notice.

### **The legitimate public interest**

18. 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."
19. The Commissioner considers that there is a legitimate public interest in disclosure of information which demonstrates that the GMC Fitness to Practice Panel is operating effectively. Such hearings are held publicly and transcripts are publicly available except in limited circumstances when it is deemed that parts of the hearing should be held in private. The Commissioner considers that disclosure of the transcripts of the parts of the hearing that were held in public goes some way to meeting the legitimate public interest in this case. Again the Commissioner has

included further detail in the Confidential Annex attached to this Notice.

20. The Commissioner considers that it would be unfair to disclose the requested information and section 40(2) by virtue of section 40(3)(a)(i) FOIA was applied correctly in this case.

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**