

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2014

Public Authority: Health Care Professions Council

Address: Park House
184 Kennington Park Road
London SE11 4BU

Decision (including any steps ordered)

1. The complainant has requested information relating to fitness to practise hearings.
2. The Commissioner's decision is that the Health Care Professions Council (HCPC) has correctly applied section 30 (2)(a)(iii) of the FOIA to withhold the requested information. He is also satisfied that some of the information is exempt by virtue of section 40(1) and 40(2).
3. The Commissioner does not require the HCPC to take any steps as a result of this decision notice.

Request and response

4. There is some dispute over the original request itself. The request provided to the Commissioner dated 7 February 2014 stated:
"Can you send me data related to complaints I have raised with you."
5. HCPC referred to lengthier correspondence dated 20 January 2014, which is contained in a confidential annex at the end of this decision notice.
6. HCPC responded on 6 March 2014. It refused to provide the requested information and cited sections 30(2)(a)(iii), 40 and 41 of the FOIA as its basis for doing so.

7. In addition it stated that if it was not withholding the information under section 30 (2)(a)(iii) of FOIA, section 31(1)(g) of the Act would apply.
8. Following an internal review HCPC wrote to the complainant on 7 April 2014 and maintained its original position.

Background

9. The HCPC is a health and social care regulator responsible for the regulation of members of 16 professions. Social Workers are included in that number.
10. The Fitness to Practise Department is responsible for handling concerns about registrants' fitness to practise. Its fitness to practise process is designed to protect the public from those who are not fit to practise. If a professional's fitness to practise is 'impaired', it means that there are concerns about their ability to practise safely and effectively. This may mean that they should not practise at all or that they should be limited in what they are allowed to do.
11. The types of allegations the HCPC can consider are those that question whether a registrant's fitness to practise is 'impaired' by reason of:
 - Misconduct;
 - Lack of competence (not having the necessary skills and knowledge);
 - A caution or conviction for an offence in the United Kingdom (or somewhere else for an offence which would be a crime if it was committed in England or Wales);
 - Mental and/or physical health;
 - A determination (a decision) made by another regulator responsible for health care; or
 - Inclusion on a barring list preventing work with vulnerable adults and/or children.
12. It can also consider allegations about whether an entry to the HCPC Register has been made fraudulently or incorrectly.
13. HCPC had received information to the effect that a registrant's fitness to practise may be impaired by reason of misconduct/lack of competence in that she behaved unprofessionally when dealing with a service user and produced false and misleading reports about the same information.

14. As part of its investigation the HCPC contacted the registrant's employer.

Scope of the case

15. The complainant contacted the Commissioner on 23 April 2014 to complain about the way her request for information had been handled.
16. The Commissioner considers the scope of this case to be to determine if HCPC has correctly applied the exemptions it has cited.

Reasons for decision

Section 30 - Investigations and proceedings conducted by public authorities

18. Section 30(2) of the FOIA states -

(2) Information held by a public authority is exempt information if -

(a) it was obtained or recorded by the authority for the purposes of its functions relating to -

(i) investigations falling within subsection (1)(a) or (b),

(ii) criminal proceedings which the authority has power to conduct,

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment,

or

*(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, **and** [emphasis added]*

(b) it relates to the obtaining of information from confidential sources'.

19. Consequently for information to be exempt from disclosure under section 30(2), it must relate to the public authority's investigations or proceedings **and** relate to confidential sources.
20. Confidential sources contribute information which is often vital to the investigations, proceedings and the law enforcement activities of public authorities. A confidential source is a person who provides information on the basis that they will not be identified as the source of that information.
21. As a rule, confidential sources will be third parties. The authority's own officers are unlikely to be considered confidential sources, the exception

being police officers and others working for law enforcement bodies working undercover.

22. The Commissioner has examined the information withheld by the HCPC and is satisfied that all the information within the scope of the request is held by the HCPC in respect of an investigation of an allegation it received.
23. It is important to remember that section 30(2) is a class based exemption; if information meets both of these criteria, i.e. it relates to a public authority's investigations or proceedings and relates to confidential sources it is exempt from disclosure. There is no need to demonstrate a certain level of prejudice to a particular investigation or proceeding in order for the exemption to be engaged (albeit that the exemption is subject to the public interest test and the likelihood of any harm occurring as a consequence of disclosure is directly relevant to that test).
24. The HCPC explained that the original complaint centred on the actions of Ealing social workers in investigating allegations of abuse.
25. The initial allegations and data were provided in confidence to an individual's school and the school had a duty of care to pass this to the social services at Ealing Council.
26. These concerns relate to events which occurred during 2005 - 2007. The withheld information is evidence submitted by Ealing Council to the HCPC's investigation of the social worker's fitness to practise.
27. It further confirmed that the HCPC investigation was conducted under Part V of the Health and Social Work Professions Order 2001 (the Order) and constitutes the exercise of a relevant function, which is designed for protecting members of the public against dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on one of the professions regulated by the HCPC under that enactment. Accordingly it falls within the exemption provided by section 30(2)(a)(iii) of the Act.
28. The Commissioner accepts that all the withheld information can be said to have come from confidential sources. Due to the nature of the investigation the Commissioner does not consider it is appropriate to detail much of the information provided to him by HCPC in this decision notice. However, further details are provided in a confidential annex which is only for disclosure to the public authority.
29. The HCPC considered that if it reneged on commitments to maintain confidentiality (and setting aside the actionable nature of such conduct)

it would seriously undermine its effectiveness and credibility as a regulatory agency and its ability to conduct investigations effectively.

30. In particular, failure to maintain confidentiality would have a chilling effect on the willingness of registrants and employers to provide a full and frank response in the early stages of an investigation. It would also discourage those who may hold information from providing it to the HCPC.
31. It went on to explain that the nature of the HCPC caseload, dealing with sensitive issues relating to the physical and mental health and well-being of individuals, means that information is often gathered during the course of an investigation which is subject to explicit written instructions as to the sensitivity of the information and the need for it to be held securely and not disclosed to third parties, in line with the first two principles of the Data Protection Act. Failure to maintain confidentiality in such circumstances would lead to a reluctance to assist its investigations and thus prejudice the performance of its statutory functions.
32. In the circumstances of this case, the Commissioner is satisfied that the withheld information clearly relates to investigations and proceedings which the HCPC has the statutory duty to undertake which fall within the scope of section 30(2)(a)(iii), i.e. fitness to practise investigations.

The public interest test

Arguments in favour of disclosing the withheld information

33. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities.
34. Disclosure can assist the public in understanding the basis upon which and how public authorities make their decisions and this in turn may help foster greater trust in public authorities.
35. In this case, disclosure of the requested information may help the public to understand some of the issues considered in the HCPC's investigation processes.
36. In favour of disclosure is the principle of transparency which the HCPC strongly supports and aims to promote where possible. Details of its fitness to practise cases are listed on its website, and in addition final hearings are generally open to the public.

Arguments in favour of maintaining the exemption

37. Central to the public interest in this exemption is the ability of the HCPC to conduct investigations of a very sensitive and potentially criminal nature, without prejudicing the investigation and any future prosecutions which might ensue.
38. In this case, disclosure of the withheld information may be detrimental to the ability of the persons involved in the investigation process. Disclosure could result in a reticence of the persons involved in the process to communicate with an appropriate degree of necessary candour. This includes those persons whose roles are to investigate the allegation and also those persons who are required to furnish evidence and opinion.
39. A disclosure of information once the investigation has concluded may still adversely affect future investigations, as it could result in persons wishing to make allegations being reticent to come forward and jeopardising the safety of the vulnerable adults the Council is charged with maintaining.
40. HCPC considered that this case raised no issues of wider public significance that would merit disclosure and actionable breach of a commitment to confidentiality. Whilst it recognises that this case is of personal interest to the complainant that does not constitute a sufficient public interest to justify breaching a legally binding commitment to confidentiality.

Balance of the public interest

41. The Commissioner has carefully considered the withheld information and the representations made by the complainant and the HCPC. The Commissioner has also weighed what he considers are the main arguments relevant to the public interest test applicable to this exemption.
42. The Commissioner is obliged to point out that that an investigation did take place by the HCPC. The Commissioner considers that this information is sufficient to assure the public that the HCPC and its partners satisfy their duties under Part V of the Health and Social Work Professions Order 2001.
43. The Commissioner considers that the HCPC and its partner organisations must be able to conduct their investigations with necessary candour.
44. The Commissioner must also acknowledge the inherent sensitivity of the allegation in this case. This sensitivity must be given sufficient weight in

terms of this case and the application of section 30 to the withheld information.

45. In this case, the Commissioner has decided that greater weight must be given to those arguments which favour maintaining the exemption.
46. The Commissioner has decided that the HCPC is correct to rely on section 30 of the FOIA as the grounds for withholding the information sought by the complainant.

Section 40

47. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information that is the personal data of an individual other than the applicant if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
48. HCPC argued that the withheld information also fell under section 40(1) and 40(2) as it was personal data of various individuals as well as the complainant's.
49. HCPC stated the complainant's personal data would be exempt under section 40(1), however it would not be appropriate for disclosure under section 7 of the DPA as it considered the personal data of the complainant is so entwined with another individual's personal data that the HCPC would not be able to separate them or redact in a meaningful way.
50. The Commissioner has viewed the withheld information and, as stated in paragraph 28 it is not appropriate to provide further details in this decision notice. Further information is contained in the confidential annex.
51. The Commissioner is satisfied that some of the withheld information is that of the complainant, however, it is also inextricably linked to a third party's personal data. Therefore the HCPC is unable to provide it to the complainant.
52. Furthermore, the Commissioner is satisfied that some of the withheld information is that of third parties, and that some is also sensitive personal data.
53. Sensitive personal data is defined in the DPA as:

"sensitive personal data" means personal data consisting of information as to—

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

54. The Commissioner accepts that much of the personal data falls into one or more of the above categories, and therefore constitutes sensitive personal data about the parties.
55. For the reasons explained in the confidential annex he is satisfied that disclosure would be unfair and contravene the first data protection principle. He is also satisfied that it is not possible to meet a schedule 3 condition in relation to the sensitive personal data.
56. The Commissioner acknowledges the HCPC's application of section 41 of the FOIA. However, in view of his decision above, he has not found it necessary to consider this exemption.

Right of appeal

57. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

58. 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.
59. 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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