

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2015

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

Decision (including any steps ordered)

1. The complainant has requested information on whether GMC staff have private medical insurance. The GMC refused to comply with the request under section 14(1) of FOIA on the basis that it was vexatious.
2. The Commissioner's decision is that the GMC was entitled to rely on section 14(1).
3. The GMC is not required to take any further action in this matter.

Request and response

4. On the 11 November 2014 the complainant requested information in the following terms:

"I read in the medical magazine that GMC staff has private medical insurance. I shall be grateful to provide the following information:

 - 1: Do the GMC staff have private medical insurance?
 - 2: If so who is paying for the private medical insurance of the GMC staff."
5. On the 17 November 2014 the GMC responded. It refused to comply with the request under section 14(1) on the basis that it was vexatious.
6. Following an internal review the GMC wrote to the complainant on 16 March 2015. It maintained its position that the request was vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 13 April 2015 to complain about the way his request for information had been handled. However it was not until 2 May 2015 that the complainant provided copies of all the documentation necessary to commence an investigation.
8. The complainant expressed concern over both the refusal of his request and the length of time taken to conduct the internal review.
9. The Commissioner considers that the matter to be decided is whether the GMC was correct to refuse to comply with the request under section 14(1) on the basis that it was vexatious.
10. There is no statutory time limit on the length of time a public authority should take to conduct an internal review. Therefore the complainant's concerns over the internal review cannot be considered within the formal part of the decision notice. His concerns will however be addressed under 'Other matters'.

Reasons for decision

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. Section 14(1) is concerned with the nature of the request itself rather than the consequences of releasing the requested information. The Act does not contain a definition of what constitutes a vexatious request however, based on decisions by the Upper Tribunal, the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013) when it defined the purpose of section 14 as follows,

"The purpose of Section 14 ... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).
14. This particular request is one of three which the GMC refused in late 2014. The GMC maintained its reliance on section 14(1) in respect of all

three requests following internal reviews which were all completed on 16 March 2015. The other two requests are now the subject of separate decision notices.

15. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious and therefore it is necessary to set out the wider circumstances in which this particular request was made before looking in detail at the GMC's grounds for applying section 14(1).
16. The complainant has been in dispute with the GMC for a number of years. The dispute concerns how the GMC conducted investigations into his fitness to practise. The complainant has exhausted the GMC's complaints procedures regarding that matter which included a full investigation by independent external solicitors.
17. The complainant has submitted requests on 22 separate occasions over the last six years, many of which had multiple parts equating to over 100 separate requests for information. It is apparent that the complainant believes the GMC's investigation into his fitness to practise was flawed and that he was the subject of racial, religious and age related discrimination. There is a common theme to many of his requests which have included requests for details of the staff involved in the investigations, together with any equal opportunities training they had received, details of the ethnic origin and religion of doctors who have been the subject of GMC investigations together with the outcome of those investigations and the ethnicity of GMC staff in particular job roles.
18. It is against this background that the Commissioner will consider whether the request is vexatious. The GMC has argued that in common with the other two requests which it refused on the basis they were vexatious in late 2014, this request is an attempt by the complainant to use FOIA as a vehicle to continue his dialogue with the GMC and is designed to cause disruption and annoyance as opposed to being genuine requests for information.
19. There are a number of factors which may indicate that a request is vexatious. In its letter of 16 March 2015, informing the complainant of the outcome of its internal review, the GMC said it considered the request to be vexatious on the basis that it imposed a burden on the authority, that it formed part of a pattern of frequent and overlapping requests, that there was no obvious intent to obtain information and that it demonstrated a 'scattergun approach'.
20. When considering the burden a request places on a public authority the Commissioner's guidance explains that where the effort required to

meet a request is so oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter, or valid the intentions of the requester, that request may be vexatious.

21. In this case the Commissioner is not satisfied that the burden of complying with the request on its own would meet that criterion. The GMC itself accepts that the request is short and focussed. However when viewed in the wider context of the complainant's requests, this request can be seen as one in a sequence of requests which if complied with would only spawn further requests. The Commissioner accepts that ultimately this would create an unreasonable burden on the GMC. Therefore the Commissioner gives some weight to this factor as an indicator that the request is vexatious. However this argument on its own does not persuade the Commissioner that the request is vexatious.
22. Another indicator that a request is vexatious is that it is one of a number of frequent or overlapping requests. The Commissioner accepts that in this case the complainant has submitted numerous requests, often shortly after the receipt of the response to a previous request. Very often these subsequent requests are on the same or a similar subject, ie the ethnicity or religion of those doctors who the GMC has investigated or of the staff responsible for such investigations. In respect of this particular request the Commissioner recognises that the subject of the request departs from this theme. However it is also noted that it was made only a day after he submitted the previous request and while the complainant was still awaiting the outcome of a request he submitted on the 20 October 2014. This creates the impression of a remorseless stream of requests which the GMC as recipient would understandably feel could never be satisfied. The Commissioner finds that this would make the request vexatious.
23. The third argument presented by the GMC is that the request is not a serious attempt to obtain information. Rather, when seen in broader context of his long running dispute with the GMC, it is argued that the complainant is using the FOIA to vent his anger about the GMC's investigation into his fitness to practise or to annoy and harass the GMC.
24. The Commissioner finds it entirely plausible, based on the complainant's history of request making, that his request was, at least in part, an expression of the anger and resentment he felt against the GMC.
25. Finally the GMC has argued that the request demonstrates a 'scatter gun' approach in that the request appears to be part of a completely random approach, lacks any clear focus, and seems to be designed for the purpose of fishing for information without any idea what might be revealed. The GMC has argued this applies to the complainant's request.

26. The Commissioner notes that the request was prompted by an article the complainant had read in a magazine and as such it appears rather random. The complainant who has established a habit of requesting information from the GMC appears to have snatched inspiration for the topic of this latest request from the article. This supports the GMC's contention that this particular request was simply a fishing exercise rather than being a genuine attempt to obtain information that was of interest to the complainant.
27. The Commissioner recognises that in the current economic climate in which public sector services are subject to tight budgetary constraints, there is a public interest in knowing how public authorities spend their limited resources including the rewards provided to staff. It is also arguable that because of its regulatory role there is a public interest in knowing what, if any, commercial relationships the GMC has with private healthcare providers. Therefore, taken in isolation, this request appears to be one which is seeking information of public interest and which is simple enough to comply with. However this request cannot be taken in isolation. It has to be considered in the broader context of all the other requests submitted by the complainant.
28. Having considered the arguments presented by the GMC the Commissioner finds that the request is vexatious. In particular the request forms one of many requests made at frequent intervals. This request was made while the complainant was still awaiting the outcome of two earlier requests. This greatly adds to the sense of harassment the request would have caused and the burden that it could reasonably be assumed responding to the request would have created. Furthermore the Commissioner is unconvinced that the request was really an attempt to access information of value to the complainant, rather it is the manifestation of ill will felt by the complainant towards the GMC. For these reasons the Commissioner finds the request to be vexatious and that the GMC was entitled to refuse it under section 14(1). The GMC are not required to take any more action.

Other matters

29. The Commissioner does have concerns over the length of time that the GMC took to conduct the internal review of its handling of this request.
30. Although there is no statutory time limit for conducting such reviews the Commissioner has issued guidance on the subject. He considers that in most cases a public authority should complete its reconsideration of a request within 20 working days of a review being requested, and in no

circumstances should a review take longer than 40 working days to complete.

31. The complainant asked for a review to be conducted on 23 November 2014. The GMC finally provided him with the outcome of that review on 16 March 2015, three and a half months later. This is clearly well over the time that the Commissioner would expect a public authority to take.
32. The Commissioner would remind the GMC of the need to conduct such reviews in a timely manner.

Right of appeal

33. 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

34. 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.
35. 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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