

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2021

Public Authority: General Pharmaceutical Council
Address: 25 Canada Square
London
E14 5LQ

Decision (including any steps ordered)

1. The complainant has requested information about the pharmacy registration assessment in March 2021. The General Pharmaceutical Council ("the GPhC") provided some information but relied on section 36(2)(c) of the FOIA (prejudice to the effective conduct of public affairs) in order to withhold the remainder.
2. The Commissioner's decision is that the GPhC is not entitled to rely on section 36 to withhold this information.
3. The Commissioner requires the GPhC to take the following steps to ensure compliance with the legislation.
 - Disclose, to the complainant, the information sought by elements [1] and [2] of the request.
4. The GPhC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 March 2021 the complainant contacted the GPhC via the whatdotheyknow.com website and requested information of the following description:

"The registration assessment to register as a pharmacist includes two parts:

Part 1 - a calculations paper lasting 2 hours

Part 2 - a multiple choice paper lasting 2.5 hours

See: <https://www.pharmacyregulation.org/news/over-2600-candidates-sit-registration-assessment>

"Please provide the following information:

- 1. How many questions which appeared on the registration assessment paper Part 1 on 17 March 2021 also appeared on the registration assessment paper Part 1 on 18 March 2021 (i.e. how many times did the same question appear on both papers)*
 - 2. How many questions which appeared on the registration assessment paper Part 2 on 17 March 2021 also appeared on the registration assessment paper Part 2 on 18 March 2021 (i.e. how many times did the same question appear on both papers)*
 - 3. How many questions appeared in total on each paper (parts 1 and 2) on each day*
 - 4. Please provide a copy of the registration assessment papers for each day"*
6. On 19 April 2021, the GPhC responded. It provided information within the scope of element [3] of the request but refused to provide any information within the scope of the remaining elements. It relied on section 22 of the FOIA (intended for future publication) in order to do so.
7. The Complainant requested an internal review on 22 April 2021. Whilst he accepted that the GPhC was entitled to withhold the information within the scope of element [4], he challenged its reasons for withholding the information in respect of elements [1] and [2]. The GPhC sent the outcome of its internal review on 23 April 2021. It revised its position and now relied on section 36(2)(c) of the FOIA to withhold the information within the scope of elements [1] and [2].

Scope of the case

8. The complainant contacted the Commissioner on 22 May 2021 to complain about the way his request for information had been handled. He confirmed that he was happy with the GPhC's responses to both

elements [3] and [4] of the request, but wished to challenge its reliance on section 36(2)(c) of the FOIA to withhold the information within the scope of elements [1] and [2].

9. The Commissioner considers that the scope of his investigation is to determine whether the GPhC was entitled to rely on section 36 of the FOIA to withhold the information.

Reasons for decision

Section 36 – Prejudice to the Effective Conduct of Public Affairs

10. Section 36(1) states that this exemption can only apply to information to which section 35 does not apply.

11. Section 36(2) states that:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice—

- (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
- (iii) the work of the Cabinet of the Welsh Assembly Government.*

(b) would, or would be likely to, inhibit—

- (i) the free and frank provision of advice, or*
- (ii) the free and frank exchange of views for the purposes of deliberation, or*

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).*

- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable*

opinion of a qualified person”.

12. The Commissioner wrote to the GPhC at the outset of his investigation asking it to provide him with a copy of the opinion it had sought from its Qualified Person and the information that had been made available to that person to assist them in forming their opinion.
13. However, on further reflection, given its nature (ie. two numbers), the Commissioner now considers the information to be statistical information.
14. The FOIA does not define “statistical information”. However, the Collins Dictionary defines the word statistical as “relating to the use of statistics” and it defines the word “statistics” as:

“quantitative data on any subject, especially data comparing the distribution of some quantity for different subclasses of the population”¹
15. The Cambridge English Dictionary defines “statistics” as:

“information based on a study of the number of times something happens or is present, or other numerical facts”²
16. The Commissioner considers that the actual information being withheld here does constitute “quantitative data” or “numerical facts.” He is therefore satisfied that the information is statistical information for the purposes of section 36(4) of the FOIA.
17. Given that the withheld information is statistical, the Commissioner does not consider that the Qualified Person’s opinion should be afforded any special status. Nor is he required to decide whether that opinion is reasonable or not. He is simply required to determine whether disclosure of the withheld information would (or would be likely to) otherwise prejudice the effective conduct of public affairs.

¹ <https://www.collinsdictionary.com/dictionary/english/statistics>

² <https://dictionary.cambridge.org/dictionary/english/statistic>

The GPhC's position

18. The GPhC explained in its submission that, in normal circumstances, it would run two rounds of assessments per year with a minimum of a four-month gap between each assessment.
19. However, because of the extraordinary demands of the pandemic, in order to accommodate all candidates safely, in 2021 it had already had to run five sittings of the assessment and was about to run a sixth.
20. The GPhC noted that it had a large bank of questions from which each assessment paper would be created. It argued that repeating questions from previous papers was an important tool to help ensure a consistent standard across each assessment.
21. Capacity and availability requirements had meant that the two March assessments had needed to be run on consecutive days. The close proximity of these two assessments meant that it was much more obvious than usual that questions had been repeated. However the GPhC stressed that this did not reflect a change in its practice, just that a previous practice had been made more obvious by the peculiar circumstances of the assessments.
22. The GPhC explained that it was vital that it protected the integrity of its assessments because, once an individual was declared to have passed the assessment, that individual would be eligible to join the GPhC register and practice as a pharmacist. There would thus be a considerable risk to the public if the assessment was undermined to such an extent that candidates who were not suitably competent were able to pass.
23. Turning specifically to the question of prejudice, the GPhC explained that:

"we need to minimise the risk of cheating as far as possible. This is a high-stakes assessment and candidates are under intense pressure as they have put in five years of education and training and their future career is at stake. We know through experience that some candidates do attempt to cheat. While we have controls in place, including common registration assessment regulations for each sitting, which include a section on misconduct and measures in the assessment venues to prevent cheating, it is more difficult to prevent attempts to memorise questions. We are particularly concerned currently, where we need to run sittings on consecutive days, as we consider there is an increased risk that pressure will be put on candidates in the first day's sitting to memorise questions

for other candidates. This is likely to affect more vulnerable candidates and we are concerned that they are not put at risk."

24. In relation to the withheld information, the GPhC commented that:

"It is our belief that disclosure of the requested information would be likely to have the effect of encouraging cheating in the registration assessment. As outlined above, the type of cheating we would anticipate as a result of disclosing this information would be through putting pressure on other candidates to memorise questions, which is difficult to control. We already publish information on the registration assessment framework, which includes weightings of different topics and the proportion of questions assigned to them. Knowing the numbers of repeated questions on top of this would make it easier for anyone considering cheating to focus their efforts...

"...Even if we attempt to counter the threat to the integrity of the assessment process by increasing the proportion of new and unique questions, this raises issues with assuring standards and consistency across papers, which would also have a negative impact on our ability to achieve our objectives."

25. Whilst the GPhC accepted that the possibility of this prejudice occurring was less than 50%, it still believed that disclosure "would be likely" to cause prejudice.

The Commissioner's view

26. In the Commissioner's view, the GPhC has not demonstrated that there is realistic possibility that disclosure of this information would be likely to cause prejudice.

27. In order for section 36(2)(c) of the FOIA to be engaged, a public authority must demonstrate that some form of prejudice, not envisaged by another exemption, might flow from disclosure. The GPhC has drawn attention to the need to protect the integrity of its assessment as a means of ensuring only competent individuals are granted access to restricted drugs and have the means to provide them to others. That is an applicable interest relevant to this exemption.

28. However, the Commissioner is not satisfied that the GPhC has drawn a sufficient causal link between disclosure and the prejudice that might occur.

29. The GPhC has recognised, in its submission, that cheating is not a new problem. The particular circumstances of the assessments in March 2021 meant that the opportunity for cheating was perhaps greater than

it might usually have been – but the request was submitted after both assessments had been completed and not before. There was thus no possibility of the information being (mis-)used to affect the outcome of the March assessment and the GPhC would still have had ample time to reflect on the learnings from those assessments before running its July assessments.

30. The GPhC's published statement of 19 March 2021 stated that:

*"We can reassure candidates that different papers were used for each sitting. **The majority of the questions were different,** with some questions appearing similar but having appropriately different answers. Although a number of questions were the same, this is standard assessment practice in high-stakes assessments to ensure consistency, fairness and reliability across the two sittings."*³
[emphasis added]

31. In the Commissioner's view, the GPhC has, in making the above statement, confirmed that the number of questions that were used on both papers is less than half. Given that this information is already in the public domain, it is difficult to see why confirming the *exact* number will make it any more likely that a candidate will either wish to cheat – or would be successful in doing so.
32. If the GPhC had disclosed the information to the complainant (and therefore to the world at large) when it completed its internal review, a candidate preparing for one of the July assessments would have been able to have taken this into account. However, the Commissioner is not persuaded that this would give a candidate a significant advantage.
33. Suppose that one third of the questions on the first March assessment were repeated the following day (and the Commissioner notes that he has not been provided with the actual number so this is a purely hypothetical figure). There is no guarantee that the same proportion of questions from either paper will be repeated in the first July assessment and no guarantee that the same proportion of questions from the first July assessment will be repeated on either of the next two days.
34. Furthermore, even if the GPhC does reuse a third of its questions from one paper to the next, candidates still do not know which third will be reused. Therefore they would have to know all 160 questions from the

³ <https://www.pharmacyregulation.org/news/over-2600-candidates-sit-registration-assessment>

previous paper (and, of course, their correct answers) in order to be able to benefit and, even if they had all this information, they would still have to achieve a sufficiently high score on the rest of each paper in order to achieve the pass mark.

35. Furthermore, any candidate with the ability to memorise or record all 160 questions would be able to do so, regardless of whether they know the total number of questions likely to be re-used. The incentive is to memorise as many questions as possible, so as to maximise the chances of having memorised the repeated questions. A candidate who memorises 20 questions at random (because that is the amount they believe will be repeated) is unlikely to have memorised more than five or six repeated questions. The value lies not in knowing how many questions will be reused, but which questions they are.
36. Given that the GPhC says that it already has robust measures in place to deter would-be cheaters and has not indicated that this is a widespread issue, the Commissioner considers that the probability of this information increasing the risk of or the likelihood of success of cheating is negligible – especially considering the information already in the public domain.
37. Therefore the Commissioner is not persuaded the possibility of the prejudice occurring presents more than a remote or hypothetical risk. He therefore finds that section 36 is not engaged.
38. As the exemption is not engaged, the Commissioner does not need to consider the balance of the public interest but, had he done so, it is likely that he would have found that, because of the low probability of the prejudice occurring, the public interest would favour disclosure.

Right of appeal

39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

Roger Cawthorne
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