

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about Fitness to Practice Rule 17 (2g) successes at tribunal hearings. The General Medical Council ('GMC') refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the GMC was entitled to rely upon section 14(1) of FOIA to refuse the request.
3. The Commissioner does not require further steps.

Request and response

4. On 17 October 2023, the complainant wrote to the GMC and requested information in the following terms:

"FTP Rule 17 (2g) Successes

Please can you tell me how many MPT and IOT hearings have had Rule 17 - 2(g) successfully applied since the pandemic by a doctor's defence. If you can provide further breakdown (i.e. case types and year) if within costs, this would be appreciated but not necessary and you can use your discretion.

General Medical Council (Fitness to Practice) Rules Order of Council 2004 (updated 2017) Rule 17 (2)(g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find

some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;

For information: The GMC over-arching objectives are the background of the rule to prevent poor prosecution evidence and vexatious FTP complaints from progressing and undermining the confidence of the public in the medical profession. For information Rule 17 2g is about ending an MPT hearing as the GMC prosecution evidence is poor, it is not about whether facts are correct or not but where there is sufficient evidence that a theoretical jury would not find the strongest of prosecution evidence strong enough. Although based on criminal law, it is applied at a lower civil standard for now. The number of Rule 17 (2g) submissions are harder to obtain as the majority are dismissed and appear not clearly recorded, the successes are easier to identify as it leads to case curtailment.

I am aware on the basis of prosecuting doctors at all costs as unfairly as possible, you may take into consideration, the fact the GMC has several vexatious complaints from themselves against the doctor. May I remind you that the FOI Act requires an 'applicant blind' approach, which is to say that it embodies the principle that information is available to anyone and requests must be assessed without consideration of who made them. ICO's guidance is <https://ico.org.uk/media/for-organisatio...> This if anything highlights a duty to provide honest and transparent information rather than refusing a request from an elected medical professional."

5. The GMC responded on 14 November 2023 and advised that it was refusing the request under section 14(1) of FOIA.
6. On 22 December 2023, the GMC provided its internal review response and maintained its previous position.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to determine whether section 14(1) of FOIA has been applied correctly to refuse the request.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14 of FOIA states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

10. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC)¹. It commented that ‘vexatious’ could be defined as the ‘manifestly unjustified, inappropriate or improper use of a formal procedure.’ The Dransfield case considered four broad issues: the value or serious purpose of the request, the burden imposed by the request (on the public authority), the motive of the requester, and harassment or distress of and to staff.

11. The Upper Tribunal cautioned that these considerations were not meant to be exhaustive. It emphasised that:

“...all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”

12. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester. The Commissioner’s guidance states: “The context and history of the request can often be a major factor in determining whether a request is vexatious and may support the view that section 14(1) applies.”

13. Equally the context and history may weaken an argument that a request is vexatious in that the public authority needs to take into account any oversights on its part that may have led to the request.

14. However, the Commissioner is keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

¹ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

The complainant's position

15. In their complaint to the Commissioner, the complainant said "Pre-planned refusal of any and all requests (SAR and FOIA) from the requester rather than the request, due to the democratic representation of the Public Interest by the requestor and prosecution at all cost mentality by the unfit-for-purpose GMC regulator for doctors (and ambition to regulate Quacks against the Public & Professional Interest-legal term from the origins of the Medical Act 1983 and when the GMC was a committee of the Professional Body I am a Council Member of)."
16. The complainant has explained that they made the request as a result of ongoing litigation by the GMC and counter-litigation by themselves. The complainant considers that the request "has intrinsically a more serious and fair purpose where the information if provided would evidence one side or the other but refusal would only be used against the GMC."

The GMC's position

17. In its response to the complainant, the GMC advised that it believed the request was designed to cause disruption and annoyance to GMC staff rather than to seek information. It added that the judgment was on the request alone and not on the complainant as a requester.
18. In its submission, the GMC provided some background information about its previous and ongoing correspondence with the complainant. It explained that the complainant had previously submitted a number of requests in a similar manner, and the GMC had provided responses to the majority of these which did not rely on the section 14 exemption. As well as requests, the GMC explained that the complainant has also submitted a number of corporate complaints and made numerous annotations about the GMC on a public forum.
19. The GMC does not consider that the burden of complying with this request alone is particularly high. It considers the request vexatious "given the form and context in which it was made, considering the relatively low public interest, substantial motive to attack the GMC and its staff and the non-negligible distress and harassment this is likely to cause".
20. The GMC explained that in previous requests and annotations the complainant has made disparaging comments about the GMC and some of its staff. While the complainant has moderated their language somewhat in the request in this case, it still contains references that can be interpreted to bring GMC's reputation into question. Examples within the handling of this request include references to "Kangaroo GMC MPTS tribunal", "bad-GMC practice", "prosecuting doctors at all costs as

unfairly as possible” and “Given history, the response is clearly not going to be working with doctors but against doctors especially if Black or Asian. The bad-GMC-practices are what they are; they are not in the Public Interest or in line with the laws and good practices in the United Kingdom.”

21. In its internal review response, the GMC said:

“The aggregate burden of dealing with your overall correspondence (sic) has placed a burden on the resources of the GMC. For example, we have previously explained how S14 works and you have been subject to adverse decisions by the ICO where they also explain it. It does not appear to have registered in any meaningful way and you continue to erroneously suggest that the GMC has considered factors which we are prohibited from considering. I conclude from this that there is nothing the GMC could do to meet whatever your legitimate interests may be”

and

“ In your original request you incorrectly suggest that the GMC proceeds ‘on the basis of prosecuting doctors at all costs as unfairly as possible’ Within your appeal request, you continue to accuse the GMC and MPTS generally and staff specifically of unspecified ‘abuses,’ ‘pre-planned ongoing bad-GMC-practice,’ and racism. I also note that in your response to my most recent appeal request response you described the Fitness to Practise process you are party to as a ‘spiteful abuse’, referred to the process as a ‘Kangaroo GMC MPTS tribunal’ and suggested that the Information Access team has a ‘hatred of transparency.’ Worst of all you suggest that our staff would be distressed ‘by not getting additional pounds of flesh or causing suicide of doctors, the latter is unfortunately is a GMC purpose.’”

The Commissioner’s position

22. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
23. The Commissioner has recently issued a decision notice upholding the use of section 14 on a request the complainant made to the GMC in

September 2023 (IC-271984-H0W1²). In correspondence on that complaint case, the complainant highlighted that this request was linked to the request outlined above, and they suggested that these complaints be handled together.

24. Having reviewed the circumstances, the Commissioner is satisfied that the factors that determined the vexatious nature of the request in IC-271984-H0W1 are also present in the request in this case and therefore GMC has correctly applied section 14(1) of FOIA.
25. The Commissioner's decision, therefore, is that the request is vexatious and the GMC was entitled to rely on section 14(1) of FOIA to refuse it.

² [ic-271984-h0w1.pdf \(ico.org.uk\)](#)

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF