

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 8 June 2009

**Public Authority:** General Medical Council  
**Address:** Regent's Place  
35 Euston Road  
London  
NW1 3JN

### Summary

---

The complainant made a request to the GMC asking for further information regarding the Order of Conditions imposed by the Interim Orders Panel on a named doctor. The complainant was concerned that the named doctor was his GP and he required further details in order to make an informed decision as to whether he wished to remain on his list. After considering the case the Commissioner believes that this information was exempt from disclosure under section 40(2) by virtue of section 40(3)(a)(i). Therefore the Commissioner believes that the information should be withheld. The Commissioner has also decided that the GMC did not fulfil the requirements of section 17(1)(b) in that it did not fully cite the exemption it was seeking to rely upon.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. The complainant emailed the GMC on 16 May 2008 to make the following request:

*"I am registered in (sic) the patient list at [named doctor]'s surgery and make a request for further information regarding the circumstances leading up to the necessity to make this order, in order that I might consider this information in relation to my continued inclusion in the patient list."*

3. A series of emails ensued. The complainant maintained that he was not

requesting details of the complaint or who made the complaint to the GMC but the nature of the complaint.

4. On 30 May 2008 the GMC wrote to the complainant and provided him with a link to the publicly available information regarding the named doctor and outlined the investigative process. In this instance the named doctor had been referred to an Interim Orders Panel. It was decided to impose conditions on his registration whilst the investigation was on-going. At the stage that the complainant requested information there were no further details publicly available as the case had not progressed to a public hearing. The GMC believed that this information was exempt from disclosure under section 40(2) of the Act and stated that the letter served as a refusal notice.
5. The GMC explained that it believed disclosure would breach the Data Protection Act 1998 (the DPA) as the information requested is the personal data of a third party. It also stated that any such disclosure would breach the first principle of the DPA which requires that the processing of personal data must be done fairly and lawfully. This email stressed that the exemption quoted is absolute and not subject to a public interest test.
6. An explanation was given to the complainant that when the GMC receives concerns about a doctor, the Fitness to Practise Directorate decides whether an investigation should be conducted. It also explained that, at any stage of the investigation, a doctor could be referred to an Interim Orders Panel that has the power to suspend or restrict a doctor's ability to practise whilst an investigation is ongoing.
7. The complainant replied on 1 June 2008, quoting from the GMC site regarding referrals to the Interim Orders Panel. The Commissioner considers this to be a request for an internal review of the GMC's decision. The complainant explained that a doubt had been raised in his mind regarding his doctor without enough information being available from which he could make a judgement as to whether he wished to remain on the doctor's list. He also asked whether, if the case went to a Fitness to Practise Panel, there would be further background details provided. The complainant expressed the view that he didn't understand the logic behind this procedure.
8. On 4 June 2008 the GMC provided its internal review response reasserting that it considered disclosure of the information would be a breach of the DPA . The GMC repeated what was already in the public arena, that the named doctor had appeared before the Interim Orders Panel. It was emphasised that any order made by the Panel was not a finding of fact against the doctor but rather an interim measure designed to address the situation whilst any allegations are investigated.
9. On 9 June 2008 the complainant emailed to ask if the exemption cited by the GMC was absolute or not. He asked why, in certain circumstances, more information is made available. He also requested the category of complaint, enquiring whether it was a risk to patients – clinical or non-clinical issues; a case involving a breach of conditional registration; or of undertakings to limit practice.

He went on to enquire why the Interim Orders Panel's decision is published without further information being made available. The GMC appears to have assumed these questions to be a clarification of his original request rather than a new request.

10. On 27 June 2008 the GMC responded. It was made clear that the exemption is absolute and not subject to the public interest test. The complainant was informed that there was no expectation on behalf of either the doctor or any individual who had complained to the GMC that further information would be placed in the public domain at that stage. If the investigative process went to a public hearing then further details would be made public in line with the previous advice given. The GMC reiterated that any disclosure of the information at that stage would not be fair or lawful for the reasons cited and consequently would be a breach of the DPA.
11. The GMC explained that both the doctor and any complainant(s) are given an undertaking that the information remains confidential "unless or until" there is a public hearing.
12. The GMC also explained that the Interim Orders Panel decisions are published because of the GMC's legal obligation under section 35B(4) of the Medical Act 1983 for the following reasons: "If a doctor is... erased from the medical register, is suspended from the register, has conditions placed on their registrations or is given a formal warning."

## The Investigation

---

### Scope of the case

13. On 16 July 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider his need to make a decision concerning his doctor based on authoritative information and not on local gossip and rumour.
14. The complainant said that, although the GMC had been helpful in looking into his request, it was unable to provide the information he requested. He stressed that he was not looking for personal information about the person who complained or about his doctor but wanted sufficient information about the circumstances of the complaint to enable to him to reach an informed decision. He stated that The Medical Act 1983 required the GMC to publish their decision but, without further information, it merely raised fear and alarm.

### Chronology

15. On 2 March 2009 the Commissioner wrote to the GMC asking for a copy of the requested information within 20 working days of the date of the letter.

16. On 30 March 2009 the GMC wrote to the Commissioner. Since the complainant had requested the information concerning the named doctor there had been a further Interim Orders Panel and the named doctor had been suspended. It was pointed out by the GMC that it would have been inappropriate to use the 'neither confirm or deny' exemption at section 40(5) for the reason that the information that the named doctor had been the subject of an Interim Orders Panel was already in the public arena and that information was clearly held by the GMC regarding the named doctor.
17. The GMC confirmed that no further information could be released to the complainant as it was considered confidential and was the personal information of both the named doctor and other third parties and thus exempt from disclosure under section 40(2). It also added that information concerning the named doctor was also provided 'in confidence' by the third parties involved and subject to the exemption at section 41.

### **Findings of fact**

18. Once an investigation is completed by the GMC the matter is referred to the GMC's Case Examiners who then make a decision as to whether any further action is required. If a Fitness to Practise Panel hearing results this would normally be a public hearing and, at that point, further information as to the nature of the allegations would be made public usually in the form of a summary of the allegations. After the public hearing a 'determination' is then publicly available which includes a detailed summary of the case. Alternatively, if the complaint is closed without any further disciplinary action a further Interim Orders Panel hearing is held and the conditions which have been imposed on the named doctor are withdrawn.

### **Analysis**

---

19. The full text of the sections of the Act which are referred to can be found in the Legal Annex at the end of the notice, however the relevant points are summarised below.

### **Procedural matters**

20. The GMC explained to the complainant that it was unable to provide him with the required information because this would breach the data protection principles as the information related entirely to personal data about an individual/s and is therefore exempt under section 40(2) of the Act. Section 40(2) states that information is exempt from disclosure if one of the conditions listed in sections 40(3)(a)(i), 40(3)(a)(ii), 40(3)(b) or 40(4) is satisfied. In order to cite this exemption fully the Commissioner believes that the public authority should also cite which of the conditions it believes is satisfied (including citing the relevant sub-section number). In this case, although the GMC informed the complainant that it believed that the information was exempt under section 40(2) and also stated that it believed that disclosure would be a breach of the data protection

principles, it did not go on to cite which of the sub-sections it was seeking to rely upon (i.e. section 40(3)(a)(i)). For this reason the Commissioner believes that the GMC did not comply with section 17(1)(b), as it did not specify which parts of these exemptions it was relying upon.

### **Exemption: Section 40 'Personal Data'**

21. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
22. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA
23. In this case the GMC is seeking to rely upon section 40(2) and 40(3)(a)(i) to withhold the requested information. It has argued that it believes that the disclosure of this information would be in breach of the first principle of the DPA.
24. In order to reach a view on the GMC's arguments the Commissioner has first considered whether the withheld information is the personal data of a third party, or parties. Personal data is defined in the Act at section 1(1), as follows:

*'data which relate to a living individual who can be identified:*

- *from that data; or*
  - *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 intentions of the data controller or any other person in respect of the individual.'*
25. The Commissioner notes that there is no doubt as to the identity of the named doctor and that the named doctor is alive. Having inspected the requested information the Commissioner is satisfied that the information relates to the named doctor and is therefore the personal data of the named doctor.
  26. The Commissioner is also satisfied that some of the requested information is the personal data of other individuals. Such information is exempt if either of the conditions set out in section 40(3) or section 40(4) are met. With regard to this case section 40(3)(a)(i) is the relevant condition, where disclosure would contravene any of the data protection principles, namely the first principle of the DPA.

### **The First Data Protection Principle**

27. The first principle of the DPA requires amongst other things that personal data is:
  - processed fairly and lawfully and,
  - that at least one of the conditions in schedule 2 of the DPA is met.

28. The Commissioner has gone on to consider whether the disclosure of the withheld information would be fair.
29. In reaching a view on fairness the Commissioner has considered whether it would be fair for the GMC to put into the public domain details of the circumstances leading up to the imposition of an interim order against the named doctor, when cases such as his had not proceeded to a hearing by the GMC's Fitness to Practise panel.
30. The Commissioner is of the opinion that disclosing personal data is generally considered to be less unfair with regard to an individual's public rather than private life. In deciding whether to release personal data the threshold will generally be lower in releasing information regarding an individual's public life.
31. Whilst the Commissioner is of the opinion that individuals employed in a role where they are performing a public function should expect more information about them to be disclosed, he feels that neither the named doctor nor any complainant to the GMC would expect the nature of the complaint to be made public. The named doctor would not expect the nature of the complaint to be in the public arena unless and until the investigatory process had established that there was a case to answer (except in exceptional circumstances). It is likely that any complainant to the GMC would not expect their identity to be disclosed at all.
32. In *Waugh v Doncaster College (EA/2008/0038)* the Information Tribunal maintained that it was necessary to consider "in terms of fairness what would be [the data subject's] reasonable expectations about the use and subsequent release of the material".
33. In reaching a decision on fairness the Commissioner has also been mindful of previous decision notices he has issued in regard to requests to the GMC for details and numbers of complaints against doctors – FS50144027, FS50088137, FS50196748 and FS50064698. In these cases he noted the details of the GMC's complaints procedures and the fact that the requests in all those cases were in regard to complaints which had not proceeded as far as the GMC's adjudication process. In these cases he also noted the reasonable expectations of the doctors concerned, in relation to their complaint history/details of complaints against them. In all of these previous cases he found that the disclosure of this type of information would be unfair.
34. Whilst the Commissioner acknowledges that all these cases varied slightly in terms of the individual circumstances of each case, he believes that the principles regarding fairness in requests for details and numbers of complaints against doctors are also directly relevant in this case.
35. The Commissioner has also taken into account the views of the Tribunal in *Barbara Francis v ICO and the General Medical Council (EA/2008/0028)* where:  
  
*"...it was argued by the GMC and the IC that the doctor would have had an expectation that information as to previous complainants (if any) would be kept confidential. The Tribunal accepted that this was the case and found that, in the*

*light of this and its finding that no condition in Schedule 2 applied, disclosure would amount to a breach of the First Data Protection Principle and that the exemption in section 40(2) did apply “*

36. After taking all of the above factors into account the Commissioner is of the view that the disclosure of the withheld information would be unfair. Therefore he believes that the withheld information is exempt from disclosure under section 40(2) and section 40(3)(a)(i). As he has reached the view that disclosure would be unfair, the Commissioner has not gone on to consider whether any of the conditions for processing listed in schedule 2 of the DPA would apply.
37. As the Commissioner has reached the view that the withheld information is exempt by virtue of section 40(2) he has not gone on to consider the GMC's application of section 41.

## **The Decision**

---

38. The Commissioner's decision is that the public authority was correct to withhold the requested information under section 40(2) by virtue of section 40(3)(a)(i).
39. However the Commissioner also believes that the GMC failed to meet the requirements of section 17(1)(b) of the Act, in that it did not fully cite the exemption it was relying upon.

## **Steps Required**

---

40. The Commissioner requires no steps to be taken.



## Right of Appeal

---

Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 8<sup>th</sup> day of June 2009**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## LEGAL ANNEX

**Section 17(1)** provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

### Section 40

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.