

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 May 2010

Public Authority: General Medical Council
Address: Regents Place
350 Euston Road
London
NW1 3JN

Summary

The complainant made a request for information from the General Medical Council (the "GMC") for details of all complaints made by the Citizens' Commission on Human Rights (UK) Ltd (the "CCHR") to the Fitness to Practise Directorate and its predecessors. The request was refused under section 40(2) by virtue of section 40(3)(a)(i) of the Freedom of Information Act (the "Act") and section 41 – information supplied in confidence. The decision to withhold the information under these exemptions was upheld at the internal review stage. The Commissioner considers that the exemption at section 40(2) was correctly applied and therefore he requires no further action to be taken in respect of this request.

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. On 29 June 2009 the complainant made the following request for Information:

"Please provide details of all complaints made by [the CCHR] to the Fitness to Practise Directorate and its predecessors.

I request that you include complaints which were not heard by the FTP committee (or its predecessors).

I am aware that if the complainant were a 'natural person' then my request would present a privacy problem under the DPA, but as the complainant is a corporate entity and not a natural person, my understanding of the DPA is that it does not have a right to privacy.

I am aware that the details of doctors against whom complaints were made may need to be redacted..."

3. The GMC responded on 31 July 2009 acknowledging that it had previously provided details of complaints about two doctors made by the [named individual] to the GMC. However, the GMC refused to disclose any other complaints made by the CCHR as it believed such complaints were subject to the exemption under section 40(2) by virtue of section 40(3)(a)(i) and section 41 – information provided in confidence.
4. The complainant replied on the same day asking for an internal review on the basis that he did not believe that the CCHR had a right to the protection of the Data Protection Act 1998 (the "DPA") as it was a limited company. He also requested details of what promises of confidentiality the GMC had made to the CCHR.
5. The GMC took until 8 October 2009 to conduct an internal review. The reviewer explained that the original response regarding the application of section 40(2):

"...was in relation to any data concerning either the doctor involved or any other individuals affected by the complaint (any patients etc.) It was not her intention to wish to apply the personal data exemption to the CCHR itself. I believe that this was an appropriate course of action where, for whatever reason, it would not be possible to anonymise the data itself."

The GMC also stressed that any complainant to the GMC had the expectation of confidentiality until such time as the complaint became the subject of a Fitness to Practise Panel hearing.

The Investigation

Scope of the case

6. On 20 October 2009 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 the following points:
 - That the details of patients and doctors could be redacted
 - That he did not accept the assumption of the GMC that complainants expected privacy
7. The complainant had made a similar request to the GMC for details of complaints made by the CCHR that were subject to a Fitness to Practise Panel hearing FS50248774¹. As a result the GMC had already disclosed information relating to any complaints which had resulted in a Fitness to Practise Panel hearing, as the GMC explained in this case. Therefore this Decision Notice deals with a request for details of complaints that were not heard by the Panel.

Chronology

8. The Commissioner wrote to the GMC on 18 November 2009 asking to see the withheld information.
9. On 15 December 2009 the GMC wrote back to the Commissioner enclosing the withheld information. In this letter the GMC again cited section 40(2) by virtue of section 40(3)(a)(i) and explained that the complaints about doctors contained, in some cases, patient and third party details. The GMC's position, it argued, was supported by FS50064698² and that any disclosure would breach Principle 1 of the DPA.
10. The GMC accepted that the CCHR was not a "natural person" but that section 41 applied as there would be no expectation on the part of a complainant that the information would be placed in the public domain

¹ Found at http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50248774.pdf

² Found at http://www.ico.gov.uk/upload/documents/decisionnotices/2006/fs_50064698.pdf

unless and until it became the subject of a Fitness to Practice Panel Hearing. Equally the GMC felt that some of the requested information would be the doctor's or a third party's personal information. It reiterated the point that complaints such as these would be expected to be kept confidential until they were placed in the public domain, with the consent of the complainant, in a Fitness to Practice Panel hearing. The GMC had previously disclosed information to the complainant which was read into evidence at the hearings and had been publicised by the CCHR itself.

Analysis

11. All of the sections of the Act referred to in this Notice are quoted in full in the concluding Legal Annex.
12. The Commissioner has viewed the requested information but is not able to describe in detail all of the withheld information. However, he has described the information in broad categories to assist the parties to this case in understanding the decision he has reached.

Exemptions

13. The Commissioner has considered whether the GMC was correct to apply section 40(2) of the Act, by virtue of section 40(3)(a)(i). In doing so he has applied some of the reasoning in Decision Notices FS50248766³ and FS50248774⁴.
14. Section 40(2) will apply where the requested information constitutes the personal data of a third party, as defined by section 1(1) of the DPA and where disclosure of the requested information would breach one or more of the data protection principles as set out in Schedule 1 of the DPA.
15. The complainant sought information regarding details of all complaints made by the CCHR to the Fitness to Practise Directorate and its predecessors. The Commissioner understands that the request for information would encompass and comprise the following:
 - A list of complaints made by the CCHR to the GMC
 - Requests by the CCHR for the allocation of medical practitioners on behalf of certain individuals

³ Found at http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50248766.pdf

⁴ Found at http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50248774.pdf

- Information relating to named individual doctors that the CCHR alleges have criminal convictions/license revocations or suspensions
 - Complaints about certain doctors regarding their treatment/care/diagnosis of named patients
 - Enquiries by the CCHR regarding certain individual doctors
16. The Commissioner has considered whether the requested information constitutes personal data.
17. Information is personal data where it relates to a living individual who can be identified from that information.
18. The Commissioner is satisfied that the requested information constitutes the personal data of the doctors who are the subject of the complaints; the often sensitive personal data of patients who instigated or formed part of the complaints made to the GMC; and other third parties. Although the GMC disclosed information relating to two doctors who had had complaints made about them by the CCHR there is logic to these disclosures. The GMC had previously disclosed information in response to an earlier request made by the applicant (see paragraph 10). The information disclosed was in the public domain as a result of these doctors being subject to a Fitness to Practise Panel hearing and the CCHR had publicised its involvement in these two instances.

Fairness

19. The Commissioner has considered whether disclosure of the requested information would breach any of the data protection principles as set out in Schedule 1 of the DPA. The Commissioner considers the most relevant principle in this case is the first principle:

"...personal data shall be processed fairly and lawfully..."

20. The withheld information consists of information that is the personal data of third parties – the [named doctors] who are the subject of the complaints, patients and other third parties. The Commissioner is of the opinion that, despite the complainant's suggestion that the requested information could be redacted, this would either lead to the possible identification of the individuals involved or render the information meaningless.
21. Some of the information that has been withheld includes allegations about [named doctors'] conduct. The Commissioner considers that those making allegations should be able to do so candidly and without the fear that that information will later be disclosed.

22. Equally the doctors involved would have expectations of how the information would be used. It is likely that any doctor involved in a complaint would have an expectation that this information would remain confidential, particularly if the investigations of the allegations had not concluded or any complaints had not had a hearing.
23. The Commissioner considers that there is a clear expectation in our society that medical information will remain confidential to preserve the relationship between doctor and patient and because disclosure is likely to be damaging or distressing to the individual. The Commissioner therefore considers that it would be unfair to the individuals concerned if information about their care was to be disclosed.
24. The Commissioner considers section 40(2) to apply to the requested information by virtue of section 40(3)(a)(i). The requested information constitutes personal data and it would be unfair to the individuals involved to disclose it. The Commissioner has also considered whether the information could be anonymised but is convinced that this would render the requested information meaningless. As he considers the application of section 40 to be engaged the Commissioner has not gone on to consider whether section 41 applies to the same information.

The Decision

25. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 'Code of Practice' makes it desirable practice that a public authority should have a procedure in place for dealing

with complaints about its handling of requests for information. As he has made clear in his 'Good Practice No 5', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that, in this case, it took 49 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

28. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: 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 sent.

Dated the 27th day of May 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

40 Personal information

(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.