

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 April 2010

Public Authority: The General Medical Council
Address: 5th Floor, St James's Buildings
79 Oxford Street
Manchester
M1 6QF

Summary

On 27 August 2009 the complainant submitted a Freedom of Information request to the General Medical Council (the 'GMC') for the name of the GMC official who allocated a named panellist to a specific GMC Fitness to Practise Panel. The GMC refused the request under section 40(2) of the Freedom of Information Act 2000. The Commissioner upheld the exemption and does not require the GMC to take any steps in relation to 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.

Background

2. On 18 January 2010 the Information Tribunal considered a case related to this complaint: *William Thackeray v The Information Commissioner and the General Medical Council; EA/2009/0063*. That case had involved a request for information regarding a panellist who sat on a particular GMC Fitness to Practise Panel in 2004. Such panels are convened to

conduct disciplinary hearings concerning medical practitioners.

3. At the beginning of the disciplinary hearing it was revealed that one of the complaints against the practitioner had come from an organisation called the Citizens' Commission on Human Rights or 'CCHR'. This organisation was co-founded in 1969 by the Church of Scientology.
4. It was then revealed that one of the panellists had a past association with the Church of Scientology. This individual consequently stepped down from the panel. It transpired that he had once been a Commissioner of the CCHR but had resigned that position in January 2001.
5. This Decision Notice regards a further request for the name of the GMC official who allocated the above panellist to the hearing in question.

The Request

6. On 27 August 2009 the complainant requested that the General Medical Council (the 'GMC') should provide him with the following information:

'Please provide the name of the GMC official who allocated [named individual A] to the FTP panel hearing the case against [named individual B], where it transpired that [named individual A] was a Commissioner (or former Commissioner) at the complainant body, the Scientology organisation 'Citizens Commission on Human Rights (UK) Ltd'.

7. On 21 September 2009, the GMC informed the complainant that it no longer held the information requested.

8. On 21 September 2009 the complainant therefore asked the GMC:

'May I clarify my request, by asking you for a list of officials who could have done the allocation for this hearing?'

9. The complainant's information request was acknowledged by the GMC on 22 September 2009.
10. On 12 October 2009 the GMC informed the complainant that it was refusing him the requested information. The GMC confirmed that it was able to identify five individuals who worked in the Fitness to Practise empanelment at the time and who may have allocated the individual in question to the specific panel.
11. However, the GMC considered that the identities of these five staff were exempt from disclosure under the Freedom of Information Act 2000 (the 'Act') under section 40(2) by virtue of section 40(3)(a)(i). The GMC argued that it would not be fair to disclose the names as this would be a breach of the first principle of the Data Protection Act 1998.
12. The complainant requested an internal review on 13 October 2009.
13. The internal review was completed on 18 November 2009. The GMC repeated its argument that the information should be refused under section 40(2) of the Act.

The Investigation

Scope of the case

14. On 30 November 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 Information Tribunal case *EA/2009/0063*. The Tribunal had been provided with evidence that demonstrated there was a legitimate interest to the public in disclosure of the information under appeal. The complainant suggested that these arguments were applicable to this case.
15. On 18 January 2010 the GMC provided further arguments to the Commissioner regarding its refusal of this information request. The GMC also confirmed that in fact the request concerned three possible staff members and not five as indicated on 12 October 2010.

16. The GMC explained that the identification of the three individuals is based on circumstantial evidence rather than any data definitively linking them directly to the panel in question. At the time, the three individuals held roles which mean they may possibly have been involved in the allocation of panel members.
17. On 18 January 2010 the GMC asked the Commissioner for advice regarding when to tell the complainant of this alteration in their response.

Chronology

18. On 4 March 2010 the Commissioner confirmed with the GMC that he would inform the complainant of this alteration in his opening letter to the complainant.
19. The GMC confirmed that there was no recorded evidence to demonstrate that any of the three individuals were specifically involved. There existed a letter (on an entirely different subject) which had been signed by all those responsible for the panellist allocation role at the time of the hearing.
20. On 4 March 2010 the Commissioner wrote to the complainant and explained his initial conclusion. He did not consider that it would be fair to disclose the requested information and therefore upheld the refusal of the GMC to provide the information under section 40(2) of the Act.
21. On 5 March 2010 the complainant informed the Commissioner that he was not content with this initial finding.

Analysis

Exemptions

Section 40(2)

22. The full text of section 40(2) and 40(3) is available in the Legal Annex at the end of this Notice.
23. Section 40(2) of the Act specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the 'DPA')

- states that personal data must be processed fairly and lawfully.
24. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller. The requested names are therefore the personal data of the individuals concerned.
 25. In determining whether disclosure of the requested names would contravene the requirements of the first data protection principle, the Commissioner has therefore considered whether providing the names of the individuals concerned would be fair.
 26. Consent for disclosure has not been provided by the individuals and the Commissioner believes that it would be within their reasonable expectation that their names would remain private and confidential. Two of the three individuals still work for the GMC and have both refused their consent for disclosure.
 27. The GMC has argued that the three individuals identified were all junior administrative staff at the time. Their roles were not public facing. They did not come into contact with the public as a result of their roles and consequently would have no expectation that their identities would be released into the public domain. The GMC has argued that there is no suggestion that the allocation of panellists in this case was in any way flawed: this was a case of a junior administrator (who cannot be positively identified) doing their job. The allocation of panellists at the time was an administrative task based on a panellist's availability.
 28. Whilst the GMC acknowledges that the Act is applicant blind, it is aware that the information request was submitted via the website 'What do they know?' and that any GMC response would be placed on this website. The GMC believes that should it disclose the names of the panel administrators, the context of the request would imply an allegation that one or all of them had an association or potential association with Scientology. The Commissioner agrees with the GMC that this would not be fair.
 29. The GMC has also raised the possibility that to identify these individuals might lead to unwarranted scrutiny in relation to

information that may be held about them on the internet. There is therefore a risk of harassment and detriment to those individuals outside their working environment.

30. The Commissioner's published guidance regarding the disclosure of personal information (Awareness Guidance 1) suggests that the legitimate public interest in disclosure must be balanced against the interests of the individual whose data it is. The guidance explains that senior public servants have an obligation to ensure that they are accountable and transparent in the fulfilment of their roles. If an individual holds a public facing role financed by public money then there must be an expectation that information about their professional life should be released. This was recognised by the Information Tribunal in the case of *The Corporate Officer of the House of Commons v IC and Norman Baker MP (EA/2006/0015 & 0016)* where it was said that there was an greater expectation that information should be disclosed when it "relates to the performance of public duties or the expenditure of public money".
31. However, the guidance draws a distinction between information regarding a senior public servant and an individual who holds a junior role. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair.
32. In this case the individuals concerned were junior administrative staff. There is therefore a greater expectation that their personal information will be protected.
33. The Decision Notice regarding the case *FS50202556* is relevant to this case. In this instance, the request was also for names of individuals who took specific decisions within the GMC. The individuals did not hold public facing roles and consent for disclosure was refused. It was argued that there was an expectation that the requested information would not be released. These were significant points which contributed to the conclusion that the legitimate rights of the data subjects outweighed the legitimate interests of the public. The application of section 40(2) was therefore upheld.
34. The legitimate interests of the public were also considered by the Information Tribunal in the case *EA/2009/0063* and the complainant has suggested that the arguments presented by the Tribunal in that case are also relevant here. The appeal concerned a request for information about the same panellist

who sat on the GMC Fitness to Practise Panel for the same medical practitioner.

35. The Information Tribunal considered the legitimate interests of the public in disclosure of information regarding the specified panellist. These focused upon the public interest in knowing more about the role and influence of the individual in question and more about the mechanisms in place regarding the appointment and selection of panellists. The complainant wished to ensure that the GMC's internal processes regarding this selection were scrutinised as it was in the public interest to be assured that the committees of the GMC were both objective and independent.
36. The complainant was concerned that the panellist had failed to declare his links with the Church of Scientology and he wished to ensure that public bodies such as the GMC were not "manipulated" by this organisation. He also believed that it was in the public interest to know what action the GMC had taken once the non-declaration became known.
37. The Information Tribunal acknowledged that the fact the individual had withheld information from the GMC was significant to its considerations: this information may have raised the question of his suitability to sit on a panel. The Tribunal argued that there was a legitimate public interest in knowing what the GMC did about these facts once it became aware of them.
38. The Information Tribunal also considered the balance between the legitimate interests of the public and the legitimate interests of the individual in question. It came to the conclusion that there is considerable public interest in knowing how doctors are regulated and particularly in having confidence in the GMC's panel system.
39. It concluded that due to the circumstances of that case, the individual concerned could not have had any reasonable expectation of privacy with regard to the disputed information. His seniority was also a significant factor in concluding that the release of the information might not be unfair.
40. The Information Tribunal therefore ordered that the information which had been withheld under section 40(2) should be disclosed to the complainant.

41. The Tribunal's arguments have some bearing on this case. There is undoubtedly a public interest in the provision of information which will reassure the public that the selection process for panels which consider whether medical professionals are fit to practise is objective.
42. However, the GMC has argued that the allocation of panellists at the time was an administrative task based on a panellist's availability. It was the job of a junior administrator. The fact that the individuals concerned were not senior is significant to the arguments in this case and an important difference to that considered by the Information Tribunal.
43. In addition, the fact that the individual who made the specific recommendation for the panel cannot be positively identified is an important consideration. Releasing the names of individuals who might have been involved is likely to result in an unwarranted interference in their private lives. They would have no expectation that their names would be released.
44. Crucially in this instance, the GMC would argue that there is no suggestion or proof of any wrongdoing, as there was in the Tribunal case. The knowledge that the individual in that case had withheld information from the GMC which may have raised the question of his suitability to sit on a panel was material to the balance of argument in that case. There was an acknowledgement of the public interest in knowing what the GMC did about this information once it had come to light. This does not apply here.
45. The complainant has argued that he disagrees with the GMC's contention that 'there is no suggestion of any wrongdoing' in respect of this case. He has argued that a CCHR Commissioner was allocated as a panellist to judge a case in which one of the complainants was the CCHR (see paragraph 3). Both complainant and panellist were therefore members of the Church of Scientology. He concedes that this could have occurred by accident, but given the GMC's description of their panellist allocation process, he believes this seems unlikely. He has not provided any arguments to support this assertion.
46. The Commissioner acknowledges that there is a strong public interest in knowing about the suitability of panel members for GMC panels who conduct disciplinary hearings concerning medical practitioners. The public interest in understanding the selection process is less strong. However, this process should be transparent and accountable and the Commissioner is

satisfied that this issue has been covered in the information provided which explains the way in which the panel members are allocated.

47. In conclusion, the Commissioner considers that the legitimate public interest in knowing the names of those who allocate suitable individuals to the GMC panels which regulate doctors is outweighed by the legitimate interests of the individuals concerned. The junior status of these individuals plus the fact that the relevant person cannot now be positively identified means that they would have a reasonable expectation that their names would not be disclosed. Furthermore, the GMC has described the selection process as a junior administrative task based on a panellist's availability. The disclosure of the names involved would improve transparency but in this instance would not be fair to the individuals concerned. The Commissioner therefore upholds the refusal of the GMC to provide the information under section 40(2) of the Act.

The Decision

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

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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 28th day of April 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Personal information

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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 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 Data

Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”