Reference: FS50453667

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **1 October 2012**

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of complaints handled by the General Medical Council (the 'GMC') on various issues. The GMC provided some information but also applied section 12 of the FOIA.

2. The Commissioner's decision is that the GMC has correctly applied section 12 of the FOIA (cost to comply exceeds the appropriate limit).

3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 29 January 2012, the complainant wrote to the GMC and requested information in the following terms:

   (a) How many medical records have you refused to release to a complainant?

   (b) How many medical records have you refused to release to a legal representative of a deceased person ie no longer alive and therefore not DPA 1998?

(c) How many medical records have you refused to release stating that the enquirer has the medical records available elsewhere?

(d) How many complaints have been investigated by the Information Commissioner regarding the GMC and withholding of data under Section 21?

(e) How many breaches by the GMC of the FOIA - REGARDLESS OF SECTION
- have been identified by the ICO? And how many prosecutions of the GMC have occurred?

(f) How many Information Tribunals - if any - have been conducted where the GMC has had to defend its actions regarding the FOIA? Please give the specific details of any tribunals [if they are allowed to be in the public domain].

(g) How many Information Tribunal decisions - if any - went in favour of the GMC? Please give the specific details of any tribunals [if they are allowed to be in the public domain].

(h) How many Information Tribunal decisions - if any - went against the GMC and what enforcement ensued? What penalties were enforced? Were any complainants recompensed the costs of taking action? Please give the specific details of any tribunals [if they are allowed to be in the public domain].

(i) How many complaints have been made that the GMC has withheld from the complainant about Fitness to Practise reports?

(j) How many complaints have been made that the GMC has not insisted on a hospital trust or GP or consultant or other NHS registered doctor to provide the details of a person's identity such as that on a prescription form where the signature is indecipherable but that the hospital had provided it in the first place, but that the hospital has refused outright to provide the complainant with the details of that signature and identity – even though they originally identified that it was a doctor they employed?

(k) How many fitness to practise investigations have never been initiated by the GMC when they received complaints

about a doctor whom the complainant knew existed but did not know the identity - as in my question (j) above - but refused to insist on the hospital giving them the information whilst knowing that the person existed because they saw the person's signature on the drugs chart of the patient's records, as provided by that same hospital?

5. The GMC responded on 14 February 2012. It provided information to a number of questions and referred the complainant to other sources of information where appropriate. In response to questions (j) and (k) it cited section 12 of the FOIA.

6. The complainant attempted to refine her request and asked if her complaints were 'unique, rare or commonplace'.

7. Following an internal review the GMC wrote to the complainant on 12 March 2012. It stated that in order to quantify her complaints it would have to carry out the process it had previously described on 14 February 2012, therefore the cost would still exceed the appropriate limit.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled.

9. The Commissioner considers the scope of this case to determine if the GMC has correctly applied section 12 of the FOIA.

Reasons for decision

10. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit, which in this case is £450 as laid out in section 3(2) of the Fees Regulations. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.

11. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed

the appropriate limit, can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or documents containing it;
- retrieving the information, or documents containing it; and
- extracting the information from the document containing it.

12. To determine whether the GMC has applied section 12 of the FOIA correctly the Commissioner has considered the submission provided by the GMC on 14 September 2012 as well as the response and internal review which was sent to the complainant.

13. The GMC explained that establishing the number of cases that match the two scenarios the complainant had described above would require an extremely extensive review of its records. To provide the information required it would have to carry out a review of every complaint received by the GMC.

14. The GMC estimated that to locate, retrieve and review the files for just one year of complaints (2010) would take at least 10 minutes per complaint.

15. In 2010 (for example) it received 7,153 fitness to practise complaints. Therefore this work would take 1,192 hours to fulfil, cost at least £29,804 and would exceed the appropriate limit.

16. Consequently the GMC believes that this request falls under section 12 of the FOIA.

17. The GMC stated that the complainant's questions relate to very specific scenarios and she had not set time parameters within her request.

18. The GMC explained that its usual practice in these circumstances would be to contact the requestor explaining what information it could and could not provide and invite the requestor to set time parameters if desired.

19. However, the GMC did not consider this course of action was appropriate in this case because of the range of data that could be reviewed within the costs limit would, in its view, be so inadequate as to be of very little use to the complainant.

20. The GMC considered it was appropriate to use one year as an example of the costs rather than asking the requestor to set parameters for their request given the likelihood that it would be refused under section 12.

21. The GMC also considered that it would be inappropriate to consider complaints up to the cost limit as the small sample would not, in its view, be representative or useful to the complainant.

22. In addition the GMC is not required to carry out work up to the cost limit.

23. Using 2010 as an example, the GMC explained that firstly it would need to specifically identify those complaints received in 2010. Secondly, it would need to identify documents in each of those complaint files which provide an adequate summary of the nature of the complaint. The complainant's questions are such that it is highly likely that a number of documents would need to be reviewed. Thirdly, the GMC would need to interrogate each of those documents individually to identify whether they matched the criteria set by the complainant.

24. The GMC considered that the second and third steps could not be automated and required a human element of judgement. The GMC believed that the complainant's criteria were so specific that it would not be able to do any type of 'key word search'. As such it considered its estimate of 10 minutes per complaint was reasonable and realistic.

25. Having considered the arguments presented by the GMC the Commissioner considers that due to the number of complaints received by the GMC, and the very specific criteria requested by the complainant it would exceed the cost limit under section 12 to comply with the request. The Commissioner therefore considers that section 12 was correctly applied to this request.

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: 0300 1234504
    Fax: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed ……

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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Wilmslow
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