

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **27 June 2013**

**Public Authority:** **The General Medical Council**

**Address:** **5<sup>th</sup> Floor, St James's Building  
79 Oxford Street, Manchester M1 6QF**

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a complaint he made concerning the treatment of his late mother.
2. The Commissioner's decision is that the General Medical Council (GMC) has correctly applied section 40(5)(b)(i) of the FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

### **Background**

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4. The complainant has made a number of requests to the GMC relating to complaints made about various doctors' actions in respect of the death of an individual in hospital.

### **Request and response**

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5. On 31 August 2012, the complainant wrote to the GMC and requested information in the following terms:

*"Under the provision of the FOI/DPA protocols can you please provide the following information:*

*Besides [named individual]'s involvement in the GMC decision not to move conflicts of evidence concerning doctor accounts of my Mother's death to another State agency for investigation, can you please provide the names of all individuals involved in the above mentioned GMC decision (GMC employees and external persons to the GMC).*

6. The GMC responded on 28 September 2012. It stated that the request had been considered under the DPA and FOIA. In terms of FOIA it refused to confirm or deny that it held the requested information. It cited section 40(5)(a) and 40(5)(b)(i) as its basis for doing so.
7. The GMC wrote to the complainant on 4 December 2012 with the outcome of its internal review.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 12 December 2012 to complain about the way his request for information had been handled.
9. During the Commissioner's investigation the GMC confirmed that it was claiming the exemption within section 40(5)(b)(i) to neither confirm nor deny that it held the requested information. The Commissioner has therefore investigated whether the GMC has correctly applied the exemption.

## **Reasons for decision**

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10. Section 1 of FOIA states that

*"Any person making a request for information to a public authority is entitled-*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him".*

11. However, section 40(5)(b)(i) of the FOIA provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
  - constitute a disclosure of personal data, and
  - this disclosure would breach any of the data protection principles of section 10 of the Data Protection Act (DPA).
12. The Commissioner's analysis of whether the above criteria would be satisfied follows.

**Would confirming or denying that the requested information is held constitute a disclosure of personal data?**

13. The DPA defines personal information as:

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

*a) from those data, or*

*b) 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 person in respect of the individual."*

14. The Commissioner's guidance on the exemption of personal data<sup>1</sup> expands on what constitutes personal data:

*"The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is:*

- about them;*
- is linked to them;*
- has some biographical significance for them;*
- is used to inform decisions affecting them;*
- has them as its main focus; or*
- impacts on them in any way."*

15. The Commissioner considers that the request is for the purposes of identifying individuals, therefore the information requested is the personal data of those individuals as it 'relates' to them in that confirming or denying whether information was held would reveal something about the work those individuals are involved in. The
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<sup>1</sup> The guidance is available online at the following link:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/PERSONAL\\_INFORMATION.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.aspx)

information, if such exists, cannot be disclosed as it asks for the names of individuals involved in a decision making process.

**Would confirming or denying whether the information is held breach a data protection principle?**

16. In determining whether section 40(5) applies, the Commissioner has considered whether it would breach the first data protection principle to confirm or deny that the information was held.
17. The first data protection principle requires, amongst other things, that personal data to be processed fairly and lawfully.
18. Therefore the Commissioner has focused on whether the GMC confirming or denying to the world at large that it held any information relating to the request in this case would be fair to any individuals concerned.
19. In establishing whether disclosure is fair, the Commissioner has considered the reasonable expectations of the data subjects, the legitimate interests of the public and the rights and freedoms of the individuals referred to in the request.
20. The GMC has referred the Commissioner to one of his previous decision notices namely FS50277585 which dealt with a similar request. In that decision notice he found that the GMC was entitled to neither confirm nor deny whether such information was held. The Commissioner has considered that decision notice and agrees that it is relevant to this complaint.
21. In its response to the Commissioner, the GMC explained that in its initial response to the complainant dated 28 September 2012 it stated that the GMC's Case Examiners (senior decision makers) confirmed that they cannot resolve conflicts of evidence to another State agency.
22. The GMC further explained to the Commissioner the complainant had asked it to identify who made the decision not to move conflicts of evidence to another State agency.
23. The GMC explained why it felt that it had been appropriate to apply section 40(5)(b)(i) in its initial response. It provided further information in relation to how it handles complaints against doctors.
24. The GMC explained that when it receives a complaint about a doctor an initial decision is made by the Fitness to Practise Directorate as to whether an investigation should be conducted.
25. If an investigation takes place, on completion of the investigation, the complaint will be considered by two senior GMC staff (one medical and

one non-medical). They can conclude the case, issue a warning, agree undertakings with the doctor, or refer the case to the Fitness to Practise (FTP) Panel for a hearing.

26. FTP Panel hearings are usually held in public, although may be held in private if discussing a doctor's health or any other confidential matter. It is at the hearing stage that details regarding the case may be made publicly available.
27. Outcomes of FTP Panel hearings are published on the GMC website. Details of any current restrictions on a doctor's practise are also made publicly available. The expectation of all parties involved in the GMC's complaint process is that information will only be published in line with these disclosure points.
28. Further information about the GMC's investigation process can be found on its website at [www.gmc-uk.org](http://www.gmc-uk.org)
29. The GMC stated on that basis (and in relation to the applicant blindness of the FOIA) it believed that it was appropriate to neither confirm nor deny the existence of any information under the FOIA. It would be, in their view, odd to disclose information concerning a complaint, the very existence of which it would not be obliged to confirm at this stage of its investigation.
30. The GMC maintained that it believed the exemption applied as to confirm where or not it held any information in a FOIA context would confirm that it held, and was considering, a complaint about identifiable registered doctors. It was their view that this would not be fair or lawful and therefore in breach of the first data protection principle.
31. Disclosure of information under the FOIA constitutes disclosure to the world at large. The Commissioner therefore accepts that, if such information exists, it would be unfair in the circumstances for the GMC to confirm or deny whether it held information within the scope of the request.
32. As the Commissioner has determined that it would be unfair to disclose the requested information if it was held, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met.
33. In view of the above, the Commissioner finds that confirming or denying that the GMC holds information within the scope of the request would contravene the first data protection principle. The GMC was therefore entitled to rely on the exclusion at section 40(5)(b)(i) of the FOIA.

## **Right of appeal**

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34. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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  
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