

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 07 November 2019

Public Authority: The General Dental Council
Address: 37 Wimpole Street
London
W1G 8DQ

Decision (including any steps ordered)

1. The complainant has requested a copy of the redaction policy. The General Dental Council (GDC) refused the request under section 31(1)(g) with subsection (2)(d) of FOIA.
2. The Commissioner's decision is that the GDC has demonstrated that section 31(1)(g) with 31(2)(d) is engaged and the public interest favours maintaining the exemption. She requires no steps to be taken.

Summary of the request and response

3. On 13 and 26 March 2019 the complainant requested the following information:

13 March - *'Could you just let me know whether any of my submissions to the Case Examiners were redacted? If they were, could you please send me copies of the redacted versions that were given to the CEs?'*

26 March - *'...what I am concerned about is the redactions that have already been made in both cases and whether they were consistent with your policies. In order to make a judgement about that I will need to see a) the redacted versions...b) the GDC policy or policies about redaction in place at the time they were redacted. If you could please send me a link to or a copy of the policy or policies that would be very helpful.'*

4. On 11 April 2019 the GDC disclosed a copy of the redacted submissions as provided to the Case Examiners under the General Data Protection Regulations (GDPR) as it was the complainant's own personal data.

5. Under FOIA, the GDC confirmed that it held redaction guidance but withheld it: *'disclosing internal GDC guidance material would be likely to prejudice our ability to carry out our regulatory (i.e. fitness to practice) function effectively'*. It cited section 31(1)(g) and 31(2)(d) of FOIA.
6. The complainant requested an internal review on 13 April 2019. He disputed the redactions in his own case and the application of the FOIA exemption section 31.
7. The GDC provided the outcome of its internal review on 15 May 2019. It explained that the purpose of the review *'was not to look at decisions taken in respect of your case or the reasons why redactions were or were not made to your submissions'* but to review the handling of the FOIA request for the copy of the GDC policies applying to redactions that were made.
8. The GDC concluded that it should not disclose its redaction guidance document in its entirety as it is exempt information under section 31 of FOIA. However, it disclosed the relevant section of the redaction policy: *'This is because we have already described it to you in correspondence and we appear to have agreed it was not followed with sufficient flexibility and consideration'*.

Scope of the case

9. The complainant contacted the Commissioner on 15 May 2019 to complain about the way his request for information had been handled. He argued that: *'the arguments for not releasing all of this guidance...are weak'*.
10. The Commissioner considers the scope of her investigation to be to determine if the GDC has correctly applied the provisions of section 31 to refuse to disclose its internal redaction policy and if so to determine where the balance of the public interest lies.

Background

11. The GDC provided the following as a background.
12. The GDC is the UK-wide statutory regulator of just over 100,000 dental professionals.
13. Complaints or concerns about a registrant's fitness to practise (FtP) are initially considered by the Registrar, through the GDC's Casework team. (See stage 2 of the GDC's four stage fitness to practise process:

<https://www.gdc-uk.org/raising-concerns/raising-concerns-about-dental-treatment/should-i-raise-a-concern/how-we-look-into-concerns>

14. Under the General Dental Council (Fitness to Practise) Rules 2006 (the FtP Rules), if it is assessed by the Registrar that there is an allegation (or allegations) of impaired fitness to practise, the matter must be referred to the Case Examiners for consideration. (stage 3 of the GDC's FtP process)
15. The Case Examiners' role is to consider whether an allegation referred to them by the Registrar ought to be considered by a Practice Committee. They sit in private and consider the allegation based on the documentary evidence which has been gathered.
16. As explained to the complainant in the internal review response, within the legal framework which the GDC must operate, it is for the GDC, rather than the informant or the registrant, to determine how a case should be handled, including the evidence that should be gathered, disclosed or redacted.
17. There is a statutory route of appeal. A decision by the Registrar or by the Case Examiners can be challenged under Rule 9 of the FtP Rules which looks at whether the law has been applied correctly and whether the correct procedures have been followed.

Reasons for decision

Section 31 – law enforcement

18. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.
19. The GDC has applied section 31(1)(g) together with section 31(2)(d) to withhold the redaction policy.
20. The relevant parts of section 31 of the FOI provide that:

"(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are –

(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,"

21. The Commissioner will therefore consider whether the GDC exercises a relevant function for the purposes specified in this subsection, the likelihood of prejudice to any of the functions if the requested information were to be disclosed and whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The GDC's functions for the purposes of Section 31(2)(d)

22. For the exemption to be engaged, the Commissioner requires the function identified by the public authority in relation to section 31(1)(g) to be a function which is specifically entrusted to that public authority to fulfil.
23. The GDC stated that it is the UK-wide statutory regulator of just over 100,000 dental professionals. In line with the Dentist Act 1984 which defines the GDC's role and powers, it registers qualified dental professionals, sets and enforces standards of dental practice and conduct, protects the public from illegal practice, assures the quality of dental education and investigates complaints (see: <https://www.gdc-uk.org/about-us/our-organisation/statutory-functions>).
24. In this case the Commissioner is satisfied that the GDC has been formally tasked with ascertaining a person's fitness or competence in relation to any profession or other activity which he is authorised to carry on and that this function was specifically designed to fulfil this purpose.

Likelihood of prejudice occurring

25. The Commissioner has reviewed the withheld information. It is a copy of the GDC's internal guidance document to caseworkers in relation to managing the redaction of information at stages 1 to 3 of the fitness to practise process. The Commissioner notes that the complainant has been provided with the section 'Information on Other Practitioners' which was relevant to his case.
26. The GDC is of the view that disclosing the internal redaction guidance would have an impact on patient protection as it would be likely to prejudice the GDC's ability to carry out its regulatory functions set out above:

- Decisions in respect of the redaction of information are often intrinsically linked to the decisions the Registrar is taking in the management of fitness to practice cases.
 - These are decisions which the statutory framework makes clear are for the GDC to take.
 - The fitness to practise process is not a complainant led complaints process. It is a legal process prescribed in the FtP Rules where an informant or patient are in effect witnesses in the legal case brought by the GDC. Therefore, anything that would be likely to prejudice the GDC's management of that process also threatens to prejudice the purpose of that process which is to protect the public.
 - Disclosing this narrow, operational guidance on redaction designed for caseworkers would be likely to encourage complainants and registrants to challenge the FtP process paperwork the GDC sends them, leading to disruption and delay in the process.
 - Those who disagree with how the GDC has decided to handle a case would be likely to prejudice the fitness to practise process by using the GDC's internal guidance to challenge every redaction made, allowing them to obfuscate and frustrate the progress of cases to put pressure on the GDC to change its approach.
 - This would be likely to prejudice the GDC's regulatory activity by delaying fitness to practise cases and would increase the cost to the GDC.
 - It is not for complainants to seek to 'supervise', or engage in debate about, whether GDC caseworkers have complied with all aspects of internal GDC guidance.
 - There is a prescribed statutory appeals route where decisions can be challenged under Rule 9 of the FtP Rules which looks at whether the law has been applied correctly and whether the correct procedures have been followed.
27. Taking into account the subject matter and the GDC's representations, the Commissioner understands that there is a legal process to follow for fitness to practise cases that is prescribed in the FtP Rules including an appeal process. She accepts that disclosure of the internal redaction guidance would be likely to result in the prejudicial effects to the GDC's purposes described at section 31(2)(d) of FOIA.
28. Therefore the Commissioner considers that section 31(1)(g) with section 31(2)(d) is engaged in relation to the withheld information. As section 31 is a qualified exemption, the next step is for the Commissioner to consider

whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

29. The complainant has argued for disclosure as he believed '*the redactions were harmful to the proper understanding of some of the arguments*' he had made in his case and the arguments for not releasing all the redaction guidance are '*weak*'.
30. The GDC stated that there is a general public interest in a public authority being transparent about its policies and procedures so that members of the public understand how their concerns will be handled when they make an FtP complaint to the GDC.

Public interest arguments in favour of maintaining the exemption

31. The GDC have argued that the public interest arguments in favour of maintaining the exemption are:
 - the GDC already publishes a considerable amount of information about what is involved for complainants, and registrants, at the various stages of the FtP complaints process and this narrow, detailed operational guidance designed to guide staff on minimising personal data in complaint correspondence and supporting papers would not satisfy a wider, or unmet, need to assist the public in understanding the FtP process.
 - disclosing this internal document would be likely to have an impact on patient protection, as it would be likely to prejudice the GDC's ability to carry out its regulatory function
 - disclosure of this particular guidance, and similar detailed operational guidance intended to support caseworkers in their role, would be likely to be misused by complainants seeking to exercise a misplaced degree of control or '*oversight*' of the GDC statutory FtP process and by legal representatives raising procedural challenges to the process (in individual cases) based on perceived minor divergences from the guidance, which would be likely to disrupt and delay the GDC's investigative process, potentially resulting in public safety being at risk for longer than necessary.
 - it is not in registrants' interests (or the public interest) for the FtP process to be delayed through queries or challenges being raised about compliance with internal guidance, as registrants regularly advise the GDC that being subject to an FtP complaint is stressful.

Balance of the public interest arguments

32. There is a strong public interest in an effective and efficient regulator of the dental sector that operates in an open and accountable manner.
33. The Commissioner also considers that there is a strong public interest in not disclosing information which would be likely to impede the GDC's ability to carry out its functions effectively. She considers that disclosing information on the internal guidance to case workers on redaction of personal data may lead to challenges being raised about compliance with internal guidance and would be likely to frustrate the fitness to practice process which would not be in the public interest.
34. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. The Commissioner therefore finds that section 31(1)(g) with section 31(2)(d) is engaged in relation to the withheld information and the public interest favours maintaining the exemption.

Right of appeal

35. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

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