

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

### **Decision notice**

**Date:** 8 February 2023

**Public Authority:** General Medical Council  
**Address:** Regent's Place  
350 Euston Road  
London  
NW1 3JN

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

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1. The complainant requested information from the General Medical Council (GMC) relating to Fitness to Practice (FTP) investigations. GMC refused the request under section 14(1) of FOIA (vexatious requests).
2. The Commissioner's decision is that the request was vexatious and therefore the GMC was entitled to rely upon section 14(1) of FOIA to refuse it.
3. The Commissioner does not require any steps.

#### **Request and response**

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4. On 10 October 2021, the complainant made the following request for information to the GMC:

"Please can you tell me, per year for the last 5 years, how many FTP investigations has the GMC investigated/investigating non-medical matters, ideally as whole numbers. Also as a percentage of total investigations per year.

Please can you tell me, per year for the last 5 years, for how many FTP investigations, the GMC investigated non-medical matters, ideally as whole numbers and also as a percentage of total investigations.  
[repeated paragraph]

For clarification: Non-medical matters are matters unrelated to medical employment/standards, and health/safety/wellbeing of the public i.e. unrelated to the practice or study of medicine. Examples are driving offences/tickets outside the workplace, criminal offences without any harm outside the workplace, having a second non-medical job in prejudiced industries, not paying a utility bill, embarrassing the GMC, having a moustache, having pineapple on pizza, tying your shoe-laces the wrong way, etc.

If it helps, in essence I am asking how many Section 65 FTP investigations is the GMC conducting/abusing. Good Medical Practice 2018 edition ('GMP'), paragraph 65: 65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession. A section frequently misused by the GMC at the MPTS to make any offence/action by a doctor, like in the last paragraph a crime in a potential/imaginary context."

5. On 4 November 2021, the GMC responded and said the requested information could "be found via the extensive tables that we publish on line within our publication, The State of Medical Education and Practice in the UK."
6. Following an internal review, the GMC wrote to the complainant on 11 January 2022, stating that it was refusing the request under section 14(1) of FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 January 2022 to complain about the way their request for information had been handled.
8. This notice covers whether the GMC correctly determined that the request was vexatious.

### **Reasons for decision**

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#### **Section 14(1) – vexatious requests**

9. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.

10. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s updated guidance on section 14(1)<sup>1</sup> states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
12. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
13. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
14. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
15. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).

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<sup>1</sup> <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

16. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. They stated:

“all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA” (paragraph 82).

### **GMC's view**

17. The Commissioner wrote to the GMC to ask it to provide justifications and explanations for its application of section 14(1) of FOIA to this request.
18. The GMC rejects the complainant's view that providing data split by whether the investigation was about medical or non medical matters is “quite simple really”. By way of example, the GMC pointed out that the complainant considers non-medical matters should include “criminal offences without any harm.” This would imply that the complainant considers criminal offences with harm to be a medical matter and would anticipate it to be included. The GMC instead suggested that it could not comply with this part of the request without further clarifying the request, thereby increasing the additional burden.
19. The GMC advised that the extent of the value or purpose is diminished by the complainant “using his request as a vehicle to vent his concerns publicly about the GMC generally and our investigations of him specifically.” The GMC further argues that the wording of the request “challenges the idea that the GMC is investigating him and has not carried out the investigations he believes is necessary.”
20. The GMC informed the Commissioner that, at the date of the internal review outcome, the complainant had made 14 FOI requests via ‘whatdotheyknow’ (WDTK) relating to the GMC or Medical Practitioners Tribunal Service (MPTS), as well as 39 annotations, in the prior 18 months. The GMC acknowledged the Commissioner's guidance that explains ‘that simply counting up the number of previous requests will not reveal the full story’, and pointed out that “no request prior to this had been considered vexatious”.
21. The GMC believes that “at least some of the motive of making the number of requests that have been made is to obtain a further platform to make disparaging remarks about GMC staff and the organisation more generally.” This has had the “effect of causing at least some distress to staff.”
22. The GMC provided an annex of remarks which demonstrate the complainant's use of comments which would be deemed as disparaging.

23. For example, in relation to an investigation involving the complainant, it was stated: "only GCSEs, maybe some related experience and a pitbull mentality is needed for this investigating officer role."
24. In addition, the complainant described GMC colleagues as "Gestapo actions" which the GMC described as "an extremely emotive, derogatory and offensive description given the historical connotations."
25. The GMC highlighted that such remarks, made in a public forum, are "totally irrelevant to the requests".
26. The GMC stated that similar remarks have continued. For example, in a separate complaint, the complainant stated to the corresponding Information Access officer that "you either know the law and act maliciously or you do not know the DPA law and need re-training" as well as stating that the GMC has an employment bias towards "right wing and fascist [sic] candidates."
27. The GMC accepts that whilst staff "must show an amount of fortitude, especially if some comments are made generally rather than specifically", the volume of comments, compounded with the public nature of the comments, have caused an undue level of distress.

### **The Commissioner's decision**

28. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
29. The Commissioner acknowledges that the subject matter may be of public interest. He accepts that, by seeking transparency and accountability, a request can have value or serious purpose.
30. In reaching a decision in this case however, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
31. He has also considered, in light of the nature, and degree, of the dealings between the complainant and the GMC, whether, at the time, the request crossed the threshold of what was reasonable.
32. In his guidance, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

33. The Commissioner agrees with the GMC's acknowledgement that the volume of correspondence is not enough, on its own, to consider the request as vexatious. However, he has also considered the burden that dealing with these requests and the manner in which the complainant has pursued them, has had on the public authority.
34. Whilst the Commissioner does not necessarily consider that complying with the request itself would place a significant burden on the GMC, he recognises that the aggregated burden of dealing with the complainant's overall correspondence has placed a burden on the GMC and its resources.
35. The Commissioner notes that there have been instances of abusive or disparaging language being used and to unfounded accusations being levelled against individual members of staff which would have caused them some distress.
36. The Commissioner is of the view that at least part of the complainant's motive has been to discredit the GMC and to vent their displeasure about an investigation involving them. The use of abusive language, indicates that the motive is to attack the public authority, rather than present a genuine attempt to obtain information. In any case, it would appear that much of the information the complainant has requested may already be in the public domain – as indicated in the GMC's original response to the request.
37. Having balanced the purpose and value of the request against the detrimental effect on the GMC, the Commissioner is satisfied that the request was not an appropriate use of FOIA procedure.
38. The Commissioner believes that the request was vexatious and therefore the GMC was entitled to rely on section 14(1) of FOIA to refuse the request.

## Right of appeal

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39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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** .....

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**