

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 January 2007

Public Authority: The General Medical Council
Address: Regents Place
350 Euston Road
London
NW1 3JN

Summary

The complainant made a request for “the name of the Medical Screener to whom the complaint about me was referred.” The public authority refused to release this information citing the exemptions provided at section 40 of the Act for personal data and at section 44 of the Act for prohibitions on disclosure. The Commissioners decision is to uphold the public authority’s application of section 40(2) to withhold the information.

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.

The Request

2. A request was made on 22 April 2005 for “the name of the Medical Screener to whom the complaint about me was referred.”
3. Complaints made to the General Medical Council about doctors are initially considered by medical screeners, who decide whether or not the complaint requires further investigation. These medical screeners are also doctors.
4. The complainant had previously made a subject access request for his own personal data under the Data Protection Act and had been supplied with information relating to the complaint made against him, from which the name of the medical screener had been redacted.
5. The Freedom of Information request was refused on 11 May 2005 citing the exemptions given at section 40 (2) of the Act for third party personal data and

section 44 for prohibitions on disclosure. The complainant appealed against this decision on 30 September 2005 and the public authority upheld its decision in a letter dated 29 November 2005.

The Investigation

Scope of the case

6. The complainant first contacted the Information Commissioner on 30 September 2005, at which time he had not exhausted the public authority's internal review process. He contacted the Commissioner again on 15 October 2006 after he had received the result of the internal review. The complainant specifically asked the Commissioner to consider ordering the release of the requested information.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. The Commissioner contacted the public authority on 29 September 2006 and asked it to provide its arguments in favour of maintaining the claimed exemptions. The public authority responded with this information on 20 October 2006, and its response is summarised and considered in the Analysis section of this notice.
9. The Commissioner contacted the public authority on 23 November 2006 asking for further clarification of points it had made.
10. The public authority provided further information in support of its arguments on 28 November 2006.

Analysis

11. Although the public authority applied more than one exemption to the requested information, as the Commissioner found that the section 40 exemption had been correctly applied he did not consider the application of the section 44 exemption.

Section 40 Exemption

12. Section 40 (2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998.

13. The first data protection principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the Data Protection Act is met.
14. When making the request the complainant specifically referred to *Durant vs FSA (2003)* and argued that a name in isolation did not reveal anything biographical in a significant sense about the medical screener and so should not be considered as their personal data.
15. The Commissioner considers that because the request was for the name of a screener who made a decision in a certain case, revealing the name would link the data subject to a specific decision that they had made and so would reveal information about their professional life as a medical screener. He therefore considers that the requested information does constitute the personal data of the medical screener.
16. The public authority argued that the section 40 (2) exemption for third party personal data applied as the name of the medical screener was their personal data and to release this information would breach the first data protection principle. It said that the first principle would be breached because no Schedule 2 condition existed to legitimise disclosure, and that disclosure would be both unlawful and unfair to the data subject (the medical screener). It specifically argued that condition 6 of Schedule 2 did not apply as the legitimate interests of the complainant did not outweigh the legitimate right to privacy of the data subject. It argued that to release the requested information would be unfair as the data subject had a reasonable expectation that this information would not be released and had refused consent to release. It further argued that to release the information would be unfair because on previous occasions when names of screeners had been disclosed the right to privacy of these screeners had been compromised by contact outside of the GMC working environment. It said that at the time that the request was made a risk of detriment to the screener's privacy was particularly relevant as the screener's registered address was publicly available on the GMC register of doctors.
17. The Commissioner firstly considered whether any Schedule 2 condition was met and then went on to consider whether processing of the personal data would be fair.
18. The Commissioner considers that, apart from condition 6 which is considered below, no other Data Protection Act Schedule 2 reason for processing the medical screener's personal data is evident in the circumstances of this case.
19. With regard to condition 6 of Schedule 2 of the Data Protection Act, this requires a balancing of the legitimate interests of a third party against any prejudice to the rights freedoms or legitimate interests of the data subject. As the request was made under the Freedom of Information Act, release of the information would be into the public domain rather than just to the individual complainant. The Commissioner therefore considers that the third party whose legitimate interests must be considered is the general public rather than the complainant.

20. In his correspondence with the public authority the complainant suggested that he had a legitimate interest in obtaining the name of the medical screener to enable him to pursue a "Good Medical Practice" complaint against said screener. The public authority has advised the complainant that it would be able to investigate such a complaint without this information, because it would be able to identify the screener from its own records. The Commissioner considers that the general public has a legitimate interest in being able to obtain the name of a doctor in order to make a complaint against them, as this ensures that doctors are accountable for their actions and decisions. However he considers that this interest is weakened in this case by the ability of the public authority to investigate a complaint without the complainant providing this information.
21. The Commissioner considers that the medical screener has a legitimate right for their data to be processed fairly. In his Awareness Guidance number 1- Personal Information, he provides guidance on the issues that should be considered when assessing whether the disclosure of third party personal data would be fair. The Commissioner has considered these issues in relation to this case.
22. "Would the third party expect that his or her information might be disclosed to others? Had the person been led to believe that his or her information would be kept secret?" The public authority has advised that at the time that the data was created the medical screener had an expectation, based on the policy then in place, that their name would not be released. The public authority has explained that although this policy was changed on 1 June 2004, screeners making decisions before this date did so on the understanding that they would remain anonymous. The screener's decision in this case was made prior to 1 June 2004. Whilst the Commissioner does not consider the mere existence of a policy as sufficient reason in itself to deem processing as unfair he has taken this into account as a factor in this case. He has also however, weighed against this the general expectation of a medical practitioner that they are accountable for their own practice, which the Commissioner considers carries with it an expectation that there may be some circumstances in which their identity will not be protected.
23. "Has the third party expressly refused consent to disclosure of the information?" The public authority has advised that the data subject had specifically refused disclosure of this information.
24. "Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?" Whilst the Commissioner's guidance states that information about someone acting in an official or work capacity should normally be provided on request, it is also clear that this does not apply where there is risk to the individual concerned. In this case the Commissioner considers that the public authority have sufficiently demonstrated that there was a risk of harassment and of being contacted outside of the GMC working environment which would be detrimental to the medical screener.
25. In all the circumstances of this case the Commissioner considers that the legitimate rights of the data subject outweigh the legitimate interests of the third party and that release of the requested information would be unfair processing. He considers that to release the requested information would breach principle

one of the Data Protection Act 1998 and that the information is therefore exempt under section 40(2) of the Freedom of Information Act.

The Decision

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

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3 day of January 2007

Signed

**Richard Thomas
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.”