

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2013

Public Authority: General Medical Council
Address: St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Decision (including any steps ordered)

1. The complainant requested the answers to a case study question used by the Medical Practitioners Tribunal Service in assessing panellists for positions on its Fitness to Practice Panel.
2. The Commissioner's decision is that the General Medical Council has correctly relied upon s31(1)(g) for the purpose at s31(2)(d) to withhold the information.
3. He does not require the public authority to take any further steps.

Request and response

4. On 18 October 2012 the complainant requested the following information concerning a case study used by the Medical Practitioners Tribunal Service (MPTS) in its assessment of applicants for the position of medical panellist in its Fitness to Practice Panel:

"With regard to case study, could you please send ... a scoring scale and expected answers to questions which the examiner may have used for purposes of marking answers."

5. On 14 November 2012 the General Medical Council (GMC) withheld the information under s31(1)(g) FOIA for the purpose specified at s31(2)(d).

6. The complainant appealed on 25 November 2012. On 18 January 2013 he was informed that the GMC's internal review had upheld the exemption.

Scope of the case

7. The complainant contacted the Commissioner on 2 April 2013 to complain about the way his request for information had been handled. He said that without the expected answers to questions he would be unable to verify or understand his own performance or exclude possible bias/errors on the part of examiners.
8. On 19 June 2013 the Commissioner asked the GMC for a copy of the withheld information in order to determine the appropriateness of the exemption that had been applied.
9. This decision notice addresses the GMC's withholding of the information under s31(1)(g) for the purpose specified at s31(2)(d).

Reasons for decision

10. Section 31(1)(g) states that information which is not exempt under s30 is exempt if its disclosure under FOIA would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). The purpose specified at subsection (2)(d) is that of ascertaining a person's fitness or competence in relation to any profession which he is, or seeks to become, authorised to carry on.
11. A regulatory function of the GMC is to ascertain a person's competence or fitness to practice as a doctor. This function is provided by s35 of the Medical Act 1983 and is carried out by the MPTS's Fitness to Practice Panel. Aspiring panellists are assessed by the MPTS in order to ascertain their capability to undertake the role.
12. The GMC maintained that if the answers to its case study questions were to be disclosed, its regulatory function would be likely to be prejudiced. This was because the recruitment process to the panel would be impaired by allowing lesser quality candidates to become panellists. This in turn would have a negative impact upon the quality of the panel's decision making.
13. The Commissioner accepts that the argument that disclosure would cause prejudice is relevant to the GMC's regulatory role and therefore to s31(2)(d) of FOIA. He has gone on to determine whether there is a

causal relationship between disclosure of the requested information and the prejudice described by the GMC.

14. The GMC explained that the number of suitable case studies available for use by the MPTS in recruiting to its Fitness to Practice Panel is limited. Because information released under FOIA is disclosed to the wider world the GMC submitted that the MPTS would be unable to use the case study again if the answers were released. To do so would give an unfair advantage to anyone who accessed the answers and applied for a medical panellist position.
15. The complainant argued that the same case study would not need to be used again as he considered that the MPTS should have a question bank from which another could be substituted.
16. The Commissioner has considered the opposing arguments. He recognises that there is unlikely to be an inexhaustible number of appropriate case studies that could continue to be constructed and used for recruitment purposes by the MPTS. In his view the release of answers to the case study requested by the complainant would open the door for the MPTS's other case study answers to be released. The GMC would have slim grounds to prevent disclosure of its other case studies upon receipt of further FOIA requests. The wholesale availability of the GMC's case studies and answers to anyone who might wish to apply to be a medical panellist would be likely to lead to the recruitment of insufficiently tested applicants.
17. The Commissioner is satisfied that disclosure of the requested information would be likely to prejudice the exercise of the GMC's function for the purpose specified at s31(2)(d). Accordingly he finds that the s31 exemption is engaged in relation to the withheld information.
18. The s31 exemption is subject to the public interest test whereby the information can only be withheld if the public interest in maintaining the exemption outweighs that of disclosure. The Commissioner has first considered the public interest in disclosure.
19. Disclosure would enable transparency regarding the MPTS's process of recruitment to its Fitness to Practice Panel. It would provide public assurance that the process was fair and impartial.
20. In favour of maintaining the exemption the GMC has stated the importance of ensuring that the mechanism for recruiting to a medical panellist position is fair and robust and leads to the recruitment of the strongest possible candidate.
21. In the Commissioner's view the public interest argument in favour of maintaining the exemption is powerful. By contrast the argument in favour of disclosure suffers because the declared means of achieving

transparency of the panel recruitment process would at the same time serve to weaken its integrity.

22. The Commissioner has concluded that in all the circumstances of the case the public interest favours maintainance of the exemption. The requested information should therefore be withheld.

Right of appeal

23. 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

24. 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.
25. 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

Rachael Cragg
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