

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2014

Public Authority: General Medical Council
Address: 3 Hardman Street
Manchester M3 3AW

Decision (including any steps ordered)

1. The complainant has requested information relating to the 'Shape of Training Review'.
2. The Commissioner's decision is that the General Medical Council (GMC) has correctly applied section 36(2)(b)(ii) of the FOIA to the withheld information. However, he also finds that the GMC is in breach of section 10 of the FOIA, having taken 42 working days to respond to the request.
3. The Commissioner does not require the GMC to take any steps as a result of this decision notice save to ensure future compliance with the timescales stipulated for a response within the FOIA.

Request and response

4. On 25 July 2013, the complainant wrote to the GMC and requested information in the following terms:

"May I obtain some more information on the above including which sites were visited, who was surveyed for their opinion and the documents detailed what was said by who?"

http://www.shapeoftraining.co.uk/static/documents/content/Summary_of_site_visits_0_2.pdf_52468134.pdf

2. "17. Most doctors in training supported the idea of strengthening core training by building in longer placements, which will foster better team relationships. They thought this change would also allow them to become more valued staff members within a department. A number of

doctors in training also called for more research and academic opportunities. Many claimed that these are becoming increasingly difficult to access in the current economic climate. "

As regards the above in

http://www.shapeoftraining.co.uk/static/documents/content/Summary_of_site_visits_0_2.pdf 52468134.pdf

The statement of most makes it appear that this 'most' of doctors has been quantified? Have you evidence to back up this claim? (ie how many doctors out of total supported the idea)

3. "The Sponsoring Board approved a 'Terms of Reference' document which formally sets out the roles and responsibilities of those involved in the review, what we aim to achieve, how and by when."

this is stated on your website - if the sponsoring board 'approved' the terms of reference, does this mean they created it without any input from anyone else? If not, then may I ask which other individuals had any input into the terms of reference?

4. Was there any input into the terms of reference from ministers/no10/Department of Health?

5. May I see the official documentation of the work that went into the 'themes and issues' of the terms of reference? (ie who was involved and what was discussed in meetings/emails)

6. Has the Chair of the review (Prof Greenaway) discussed the review with any ministers/civil servants? If so may I see the documentation of these meetings and who was involved?

5. The GMC acknowledged the request on 26 July 2013. It stated that questions 1 - 5 would be responded to by its Education team and that question 6 was being dealt with as a FOIA request.
6. Although technically FOI requests the Commissioner notes that the Education team responded to questions 1 - 5 on 29 July 2013 outside of the Freedom of Information Act. The complainant did not query these responses to the Commissioner and therefore these do not form part of this decision notice.
7. The GMC responded to the question 6 on 23 September 2013. It refused to provide the requested information citing section 36(2)(b)(ii) as its basis for doing so.

8. Following an internal review the GMC wrote to the complainant on 9 January 2014 upholding its original position.

Scope of the case

9. The complainant contacted the Commissioner on 23 September 2013 to complain about the way his request for information had been handled. He was advised to wait for the GMC to complete its internal review. The Commissioner accepted the complaint on 6 January 2014 given the time taken for the internal review response. This was completed on 9 January 2014.
10. The Commissioner considers the scope of this case to be to determine:
 - a) if the GMC is entitled to rely on section 36(2)(b)(ii) of the FOIA to withhold the information at part 6 of the request;
 - b) is in breach of section 10 of the FOIA

Reasons for decision

11. Section 36 FOIA provides that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(2)(b) would, or would be likely to, inhibit-

- i. the free and frank provision of advice, or*
- ii. the free and frank exchange of views for the purposes of deliberation,"*

12. The GMC has applied section 36(2)(b)(ii) to the withheld information. In determining whether section 36(2)(b)(ii) was correctly engaged the Commissioner is required to consider the qualified person's opinion as well as the reasoning which informed the opinion. Therefore in order to establish that the exemption has been correctly applied the Commissioner must:
 - Establish that an opinion was given;
 - Ascertain who was the qualified person or persons;

- Ascertain when the opinion was given; and
 - Consider whether the opinion was reasonable.
13. The GMC has explained that Mr Niall Dickson, Chief Executive, is the qualified person in this case and his opinion was obtained on 16 September 2013. The GMC has provided the Commissioner with an explanation of the submissions put to the qualified person in relation to the application of section 36(2)(b)(ii):
- The qualified person had access to a copy of the withheld information, alongside the 'section 36 form' which contained background information about the request, the exemption that may be applicable and public interest factors in favour of, and against, disclosure.
 - The qualified person was provided with evidence supporting engagement of the exemption.
14. The GMC confirmed that the qualified person's response agrees that section 36(2)(b)(ii) is engaged. It said that the qualified person's opinion is that the prejudice in this case would be likely to occur.
15. The GMC explained that the purpose of the Shape of Training Review was to make sure that postgraduate medical training continues to provide the high quality specialists and GPs needed to treat a changing population of patients. As part of the information gathering process, discussion took place with various individuals in senior posts within Government to seek their views on this topic. These discussions were merely an informal record of conversations had and the issues raised to help inform its thinking.
16. They did not feed directly into the evidence for the review, the purpose of them was for Professor Greenaway (the Chair of the review) to meet with key people and raise the profile of the review. These discussions were not formally minuted and the individuals had no expectation that the notes taken by a GMC staff member at the time would be typed up into their present form let alone considered for disclosure under the FOIA.

Was the opinion reasonable?

17. The Commissioner must determine whether the qualified person's opinion was a reasonable one. In doing so the Commissioner has considered all of the relevant factors including:
- Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is

not related to the specific subsection the opinion is unlikely to be reasonable.

- The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
 - The qualified person's knowledge of, or involvement in, the issue.
18. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
19. The withheld information is a variety of meeting notes and file notes with a number of stakeholders and professionals relating to the 'Shape of Training'. The GMC explained that the notes of the meetings were informal, produced by the GMC and not agreed with the individuals involved. It said the withheld information contains very candid and open discussions with key stakeholders in some very sensitive areas.
20. The Commissioner has reviewed the withheld information and considers that they are records of candid discussions. Based upon this and the submissions which the GMC has confirmed were put to the qualified person, the Commissioner is of the view that the opinion of the qualified person is a reasonable one and has been reasonably arrived at. He therefore finds that section 36(2)(b)(ii) was correctly engaged.
21. The Commissioner has next gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In his approach to the competing public interest arguments in this case, the Commissioner has drawn heavily upon the Information Tribunal's Decision in the case of Guardian

Newspapers Limited and Heather Brooke v Information Commissioner and BBC (the Brooke case)¹.

22. The Commissioner notes, and adopts in particular, the Tribunal's conclusions that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely, to have the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest.
23. However, in order to form the balancing judgment required by section 2(2)(b), the Commissioner is entitled, and will need, to form his own view as to the severity of, and the extent and frequency with which, any such detrimental effect might occur. Applying this approach to the present case, the Commissioner recognises that there are public interest arguments which pull in competing directions, and he gives due weight to the qualified person's reasonable opinion that disclosure would, or would be likely to inhibit the free and frank provision of advice.

Public interest arguments in favour of disclosing the requested information

24. The GMC recognised the inherent public interest in operating in an open and transparent way and being held to account for decisions made. It further recognised the public interest in releasing information that will help the public understand the reasoning as to why decisions are made.
25. However, the GMC stated it has demonstrated transparency in relation to the review by proactively disclosing information, including minutes of various meetings along with evidence gathered².
26. The complainant argued that the public interest massively outweighs the risk of inhibiting a free and frank exchange of views. The GMC is currently reviewing several aspects of medical training regulation and is in fact pushing for full transparency. In this context the influence of Ministers/politicians on Prof Greenaway/the review has to be seen in the open, otherwise the review appears another sham process with the real motives hidden from the medical profession and general public.

¹ 1 EA/2006/0011; EA/2006/0013

² http://www.gmc-uk.org/education_news/14424.asp; <http://www.gmc-uk.org/publications/23146.asp>;

27. It is in the best interests of the public and medical profession that the full context of the Shape of Training review sees the light of day, and this involves releasing all information concerning meetings involving Prof Greenaway and Ministers/civil servants/politicians.

Public interest arguments in favour of maintaining the exemption

28. The GMC stated that disclosure of information used as part of a deliberative process could inhibit those who engage in discussions in the future. At the time of the request the review was on-going. As such, the GMC considers there is a strong public interest in withholding information that would be likely to prejudice the on-going work of the Group and of the wider review to:

- continue to train effective doctors who are fit to practise in the UK;
- provide high quality and safe care; and
- meet the needs of patients and service now and in the future.

29. The GMC further stated that whilst the review has now concluded and a final report published, there are a number of recommendations made which are currently under consideration by the GMC and other key stakeholders. Therefore the issues discussed are still very much live and on-going at this point in time, whilst it determines how to implement the recommendations made. These discussions form part of an iterative process, as the GMC develops policy in this space. It will use all information gathered as part of the review (including the withheld information) to assist in this process. This can be evidenced by the supporting statement made by Sir Peter Rubin³ following publication:

"We warmly welcome the final report from Professor David Greenaway's Shape of Training review.

We are pleased Professor Greenaway's focus is on the changing demographics in the UK, and especially on the ageing population and growing number of people with complex medical conditions.

We particularly welcome the idea of a more flexible training structure for doctors and for doctors to be able to change roles and specialties throughout their career so we can continue to attract and retain the best doctors in the profession.

³ <http://www.shapeoftraining.co.uk/reviewsofar/1790.asp>

Some of the recommendations will require further discussion, including the suggestion that full registration should be awarded at the point of graduation from medical school. But overall we are confident that these recommendations will help to improve the way doctors are trained and provide clear benefits for patients and the public within the health service now and in the future. The key is to ensure that we are able to make steady progress towards these reforms while maintaining some stability in a system that has already been subject to a great deal of change and pressure in recent years."

30. The GMC argued that the withheld information contains very candid and open discussions with key stakeholders. It considers that it is in the public interest not to hamper the candour of such discussions, which are necessary to improve patient care.
31. Should this information be disclosed there is a strong likelihood that the individuals involved in these informal discussions will be extremely unhappy (given that the opinions they shared were provided with no expectation of onward disclosure). The GMC therefore argued that disclosure would undoubtedly impact on future relationships with these individuals and the departments they represent. It relies on candid discussion with these key stakeholders (and their departments) in a number of areas, including upcoming work on the Law Commission⁴ review of the UK law relating to the regulation of health care professions and a review of the equivalence application routes in Registration⁵. These discussions inform the creation and development of policy by the GMC in such areas and allow issues to be fully considered and debated before decisions are made.
32. The GMC considered that disclosure of the information would have a significant impact on the willingness of these individuals and their departments to share honest opinions with the GMC about important matters as outlined above. This would be likely to inhibit the GMC's ability to conduct robust and meaningful reviews in the future on important issues in its role as Regulator, which affect patient care. This could result in poorer quality advice and less well formulated policy and decisions in a number of areas of the GMC's work, which is not just constrained to training.

⁴ http://lawcommission.justice.gov.uk/areas/Healthcare_professions.htm

⁵ http://www.gmc-uk.org/registration_news/23654.asp

Balance of the public interest

33. The Commissioner considers that there is a public interest in the GMC operating in an open and transparent way and being held to account for decisions made. He also considers that there is a public interest in releasing information that will help members of the public understand the reasoning why decisions are made.
34. The Commissioner considers that the withheld information contains candid and open discussions in some sensitive areas. He considers that it is in the public interest not to hamper the candour of such discussions which are important to improve governance and ultimately patient safety.
35. In addition the Commissioner notes that although the review has been completed the requested information relates to live and on-going issues and recommendations. This adds greater weight to the public interest arguments in favour of maintaining the exemption.
36. On balance the Commissioner considers that in this case, the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption. Section 36(2)(b)(ii) FOIA was therefore correctly applied in this case.

Other matters

37. Section 1(1) states:

(1) Any person making a request 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.

38. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
39. From the information provided to the Commissioner it is evident that the GMC did not respond to the complainant within the statutory timeframe in respect of this request.
40. The Commissioner's decision is that the GMC did not deal with the request for information in accordance with the FOIA. It breached section 10(1) of the FOIA by failing to provide a substantive response to the request within the statutory timeframe of 20 working days.

41. In addition the Commissioner notes that the complainant requested an internal review on 10 October 2013. The GMC responded on 9 January 2014 and therefore took 43 working days to provide an internal review. Although there is no stipulated timeframe in the FOIA the Commissioner expects an internal review to take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
42. The Commissioner records details of the complaints he receives about public authorities and the time taken to respond to requests. He has therefore recorded this complaint accordingly.

Right of appeal

43. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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
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