

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2017

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

Decision (including any steps ordered)

1. The complainant has requested the indemnity details of a dentist. Under section 40(5)(b)(i) of the FOIA the General Dental Council (GDC) neither confirms nor denies that it holds this information, which it says would be the personal data of third persons. The Commissioner's decision is that the GDC is correct to neither confirm nor deny that it holds the requested information, and that the exemption under section 40(5)(b)(i) is engaged.
2. The Commissioner does not require the GDC to take any steps.

Request and response

3. On 7 July 2016 the complainant made the following request for information:

'[Redacted name of dentist] was previously operating in a dental practice in Rep. Of Ireland (Dublin) namely [redacted name of practice], this practice has since been shut down and is now a matter of a criminal investigation with the Irish authorities. The fitness to practice team referred me to yourselves because I am seeking [redacted name of dentist] current public liability insurers details.'

My legal team has written directly to [redacted name of dentist] directly on a number of occasions seeking these details however he failed to reply to any of our letters when it came to providing insurance details. Hence the reason I am making a disclosure of information.'

I have contacted the data commissioners office in the UK and they see no reason as to why i cant be provide with this man's insurance details, as he is operating with the general public and is register with the UK dentistry council.'

4. On 21 July 2016 the GDC responded that it was:

'unable to disclose under the FOI Act any information about any FTP history which has never been in the public domain. Therefore under section 40 (5) (b) (i) of the FOI Act, the GDC neither confirms nor denies whether it holds the any information of that type as to do so would contravene the data protection rights of the individual concerned under section 40 (2) and 40 (3) (a) (i) of the FOI Act.'

5. On 1 August 2016, the complainant requested an internal review. He argued that:

'I will not be satisfied with any response unless the response is confirming this dentist has indemnity in place.

I think its in the GDC's interest to investigate the individual in question given the concerns I have risen and can the question be answer is this individual actually indemnified or not.'

6. On 26 August 2016 the GDC provided the outcome or its internal review and upheld the decision to apply section 40(5)(b)(i) of the FOI Act.
7. The GDC explained in more detail that the GDC is not currently required to hold a copy of a registrant's indemnity information as a matter of course. *'This information would ordinarily be requested from the individual registrants if there is a concern about their fitness to practise. Therefore, to confirm or deny that we hold this information would indicate whether a registrant has been or is currently the subject of a disciplinary process.'*

Scope of the case

8. The complainant contacted the Commissioner on 12 August 2016 to complain about the way the request for information had been handled.
9. The Commissioner has focussed her investigation on whether the GDC is correct not to confirm or deny it holds the information that has been requested, under section 40(5)(b)(i) of the FOIA.

10. The issue raised under the Data Protection Act 1998, section 35(2), has been dealt with under case reference RFA0641872 and will not be considered here.

Reasons for decision

11. When a public authority receives a request for information under FOIA, it normally has a duty under section 1(1)(a) of the Act to tell the requester whether it holds the information. This is called "the duty to confirm or deny". However, in certain circumstances, this duty does not apply and the public authority is not obliged to say whether or not it holds the information; instead, it can give a "neither confirm nor deny" response.
12. Section 40(5) of FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.
13. If the information would constitute personal data relating to someone other than the requester, then the public authority does not have to confirm or deny whether it holds it if one of the conditions in section 40(5)(b)(i) or (ii) applies.
14. There may be circumstances, for example requests for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that personal data about an individual can, itself, reveal something about that individual. To either confirm or deny that the information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process. If to do so would contravene data protection principles, for example because it would be unfair, then the public authority is not obliged to confirm or deny that it holds the information.
15. The GDC says that 40(5)(b)(i) applies in this case, namely that confirming or denying information is held would contravene one of the data protection principles. Specifically it would contravene the first principle which says that personal data should be processed fairly and lawfully.

If held, would the information be personal data?

16. The Commissioner has first considered whether the requested information would be the personal data of third persons.

17. The Data Protection Act categorises personal data as data that relates to a living individual from which that individual can be identified.
18. The GDC has explained that it is not currently required to hold a copy of a registrant's indemnity information as a matter of course.

- Registrant's are only required to confirm when they register for the first time, or renew their registration (on an annual basis), with the GDC that they have insurance in place. This information would usually only be requested from the individual registrant if we have received a complaint and decided that there is a case to answer about their fitness to practise. Therefore, to confirm or deny that we hold this information would indicate whether a registrant has been or is currently the subject of a disciplinary process.

19. The Commissioner has considered this and the wording of the request and is satisfied that the requested information would relate to a living individual and be personal data. If held, it would tell the public something about the individual, namely whether in their professional role, they have been involved in any investigation or complaint.

Would confirming or denying the information is held breach any of the data protection principles?

20. In assessing fairness, the Commissioner considers the reasonable expectations of individuals concerned and what might be the likely consequences resulting from disclosure.
21. The GDC says that confirming or denying whether the information is held would communicate whether or not a complaint has been made about the competency or conduct of an individual registrant.
 - We do not have consent to disclose the information and there is no general expectation on the part of dental professionals that the GDC will disclose information about their fitness to practise history outside of that process and for a reason other than for the purpose of the GDC performing its regulatory (i.e. fitness to practise or disciplinary) function. Assisting members of the public in bringing civil claims against dentists is not part of the GDC's regulatory function as set out in the Dentists Act 1984.
22. Releasing information under the FOIA is effectively releasing it to the world at large. In previous, similar decisions – such as FS50633726 [see link <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1624797/fs50633726.pdf>] - the Commissioner accepted that the information was only provided to the GDC to enable it to fulfil its regulatory functions. The insurance indemnity was personal to the

registrant and provided for this specific purpose, therefore the Commissioner accepts that he would have had the reasonable expectation that this would not be placed into the public domain.

23. The Commissioner notes here that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the requester already knows or suspects that the public authority holds the information.
24. The FOIA is motive and applicant 'blind', and the test is whether the information can be disclosed to the public at large, not just to the requester. Therefore an authority can only disclose or confirm or deny it holds information under the FOIA if it could disclose it, or confirm or deny it holds the information, to any member of the public who requested it.
25. The Commissioner accepts the GDC's argument that registrants would expect their personal data to be treated fairly. It would be reasonable for them to have an expectation of confidentiality that would extend to the GDC refusing to confirm or deny information about their fitness to practise history.
26. The Commissioner is also prepared to accept that a registrant would be likely to feel a degree of distress if the GDC confirmed whether or not it held information of the type that has been requested in this case. She is therefore satisfied that the GDC is correct to apply to the request the absolute exemption at section 40(5)(b)(i). Confirming or denying whether the GDC held the requested information would not be fair and would contravene one of the data protection principles.
27. In conclusion, the Commissioner finds that confirming or denying that the requested information is held would be unfair and thus contravene the first data protection principle. The Commissioner finds that the GDC was entitled to refuse the request on the basis of section 40(5)(i)(b) of the FOIA.
28. As the Commissioner has determined that it would be unfair to confirm or deny if the information is held, it has not been necessary to go on to consider whether this is lawful or whether one of the schedule 2 conditions is met.

Right of appeal

29. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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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