

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 October 2011

**Public Authority:** Dr Phillip Skinner  
Senior Partner

**Address:** St James Medical Centre  
Coal Orchard  
Taunton  
Somerset TA1 1JP

#### Decision (including any steps ordered)

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1. The complainants requested a copy of legal advice which was included in an internal email sent between a doctor and the practice manager at the St James Medical Centre (the practice) on 18 February 2008.
2. The Information Commissioner's decision is that the practice was correct to refuse to disclose the requested legal advice under section 42(1) of the FOIA.

#### Background

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3. The Information Commissioner (the Commissioner) notes that the medical practice itself is not for the purposes of the FOIA a public authority. Rather, each GP within the practice is a separate legal person and therefore each is a separate public authority. The Commissioner acknowledges that when an applicant makes a freedom of information request to a medical practice it is reasonable to expect for convenience that the practice will act as the single point of contact. However, each GP has a duty under section 1 of the FOIA to confirm or deny whether information is held and then to provide the requested information to the applicant, subject to the application of any exemptions.

4. For the purposes of this decision notice the senior partner has been named as the relevant public authority. The Commissioner notes that the senior partner has undertaken to respond to the request as the public authority given that the practice holds the information on his behalf. However for clarity and ease of reading the notice refers to the practice where appropriate in detailing the correspondence and analysis that has taken place.

## **Request and response**

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5. On 5 November 2010, the complainants wrote to the practice and requested information in the following terms:

*'Any correspondence / emails / telephone and meeting notes covering the issue of our late mother's will'.*

Further information was requested but this has been removed from the scope of this case.

6. The practice responded on 3 December 2010. It addressed the other aspects of the information request but did not provide any internal emails.
7. Following an internal review the practice wrote to the complainants on 7 January 2011. It stated that it did not hold any internal emails regarding the issue of the will of the complainants' late mother. It confirmed that it did hold emails sent by the complainants to the practice but that they already had that information. It also confirmed that those emails had been forwarded between the practice manager and a doctor at the practice and that it therefore held email traffic which was created at that time. These emails had not been provided to the complainants as the practice did not consider that they contained any information relating to the request.

## **Scope of the case**

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8. The complainants contacted the Commissioner to complain about the way their request for information had been handled. With respect to this part of the request, they required a copy of the emails covering the case of their late mother. They believed the practice was refusing to provide them as it considered they were of "limited value".

9. The Commissioner explained to the practice that it should have considered the email traffic which forwarded the substantive emails as part of this request. The practice agreed to provide these emails; however it redacted references to legal advice it had received from one email. The practice explained this was exempt under section 42(1) of the FOIA (Legal Professional Privilege).
10. The complainants do not accept that the redacted information is subject to Legal Profession Privilege ('LPP'). They consider that any privilege that applied to the advice was lost when it was included in the relevant email and shared by the doctor with the practice manager.
11. The Commissioner therefore considers the scope of this case to be concerned with the question of whether LPP applies to legal advice which has been shared in an email between staff within a doctors' practice.

## **Reasons for decision**

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12. Section 42(1) of the FOIA states that information in respect of which a claim to LPP could be maintained in legal proceedings is exempt information.
13. LPP protects the confidentiality of communications between a lawyer and client.
14. There are two types of privilege – litigation privilege and legal advice privilege. Advice privilege will apply where no litigation is in progress or being contemplated. In these cases, the communications must be:
  - confidential;
  - made between a client and professional legal adviser acting in their professional capacity; and
  - made for the sole or dominant purpose of obtaining legal advice.Communications made between adviser and client in a relevant legal context will attract privilege.
15. In this case the Commissioner considers that the practice sought advice from its lawyers on a professional basis regarding a complaint made about one of its doctors. The practice therefore sought legal advice on behalf of one of the doctors.

16. The advice was provided in confidential communications between the doctor at the practice (the client) and a solicitor at the Medical Defence Union (the MDU) (the professional legal adviser) and between the same doctor and a solicitor at a private firm (the professional legal adviser). The dominant purpose of the communications was to provide legal advice. The relevant privilege is therefore advice privilege.
17. The complainants have accepted that the legal advice between the client and the professional legal adviser is subject to LPP and is therefore exempt from disclosure. The documents which comprise this legal advice are not under consideration in this decision notice.
18. However, the complainants consider that in this case the client is the doctor and not the practice. They argue that the doctor is the client who received the legal advice as a private individual. They argue that the MDU sent its advice to the doctor and not the practice.
19. The complainants accept that communications between a solicitor and client are privileged but point out that privilege is lost when all or part of the communication is disclosed to a third person. For this reason, the complainants consider that the doctor at the practice (the client) lost any claim to privilege for a specific part of the legal advice which she sent as a summary in an email to the practice manager (a third party).
20. By this action, the complainants argue that privilege has been lost for that part of the legal advice summarised in the relevant email and that this advice should therefore be disclosed.
21. The Commissioner does not accept this argument. He considers that because the legal advice was received by the doctor as a member of the practice, in this case the client is the practice. The advice was not taken by the doctor as a private individual. The Commissioner therefore does not consider the practice manager to be a third party and does not consider that privilege has been lost.
22. The Commissioner is satisfied that this advice can be shared within the practice without losing its confidentiality. Privilege has not been lost as it has not been shared without restriction to external third parties or with the world at large. It has not been shared with any third party outside the practice and its professional advisers.

23. Even in cases where advice has been disclosed to a third party, the Commissioner considers that LPP still applies to restricted disclosures that remain confidential to the world at large. Essentially where the information is disclosed on a confidential basis and the information remains confidential from the world at large, this will not result in the loss of LPP. In such cases, restricted disclosures of information outside litigation may include a disclosure to a business partner.
24. The Commissioner therefore considers that the practice was correct to refuse to disclose the summary of legal advice contained in the internal email of 18 February 2008. It was correct to apply section 42(1) of the FOIA to this information.

## Right of appeal

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25. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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** .....

**Faye Spencer**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**