

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 November 2013

**Public Authority:** General Medical Council (the "GMC")

**Address:** 3 Hardman Street  
Manchester  
M3 3AW

#### Decision (including any steps ordered)

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1. The complainant made a request for information concerning doctors and case examiners employed at the GMC. The request included the number of doctors and case examiners employed at the GMC, their age and their racial and ethnic origin.
2. The GMC responded and provided most of the requested information to the complainant. It refused to provide some information and relied upon section 40(2) of the FOIA. It stated that the information was personal data and its release would breach principle 1 of the Data Protection Act 1998 (the "DPA").
3. The Commissioner's decision is that the GMC is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the complainant with the outstanding requested information.

#### Background

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4. By way of background the request focuses on question 3, parts a) to c) which concerns the age, racial and ethnic origin of the Case Examiners employed by the GMC. The remaining parts of the request have been disclosed to the complainant unless otherwise specified by the GMC.
5. The complainant had stated in his request to the GMC that the information which had been previously provided to him did not "*compare with the information provided by the Heywood, Middleton and Rochdale Primary Care Trust (HMR PCT)*" and he was therefore making a new request.

## Request and response

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6. On 3 November 2012 the complainant wrote to the GMC and requested information in the following terms:
- (1) *"How many total GP doctors are on the GMC Register?"*
    - (a) *Number of Caucasian doctors*
    - (b) *Number of non-Caucasian doctors*
  - (2) *How many investigation officers work for the GMC?*
    - (a) *Ethnicity of origin of these investigating officers*
    - (b) *Age of these officers*
    - (c) *Race and religion of these officers*
  - (3) *How many case examiners work for the GMC?*
    - a) *Ethnicity of origin of these case examiners*
    - b) *Age of these case examiners*
    - c) *Race and religion of these case examiners*
  - (4) *How many cases were examined by Dr I. Taylor?*
    - a) *Ethnicity of origin of those doctors*
    - b) *Age of those doctors*
    - c) *Race and religion of those doctors*
    - d) *How many of those doctors examined by Dr Taylor were referred to the IOP?*
      - 1) *Ethnicity of origin of those doctors*
      - 2) *Age of those doctors*
      - 3) *Race and religion of those doctors*
    - e) *How many of those doctors examined by Dr I. Taylor were referred to the FTP Panel?*
      - 1) *Ethnicity of origin of those doctors*

- 2) *Age of those doctors*
- 3) *Race and religion of those doctors*
- (5) *How many cases were examined by Mr B. Davies?*
  - a) *Ethnicity of origin of doctors*
  - b) *Age of those doctors*
  - c) *Race and religion of those doctors*
  - d) *How many of those were referred to the IOP?*
    - 1) *Ethnicity of origin of those doctors*
    - 2) *Age of those doctors*
    - 3) *Race and religion of those doctors*
- (6) *How many of those doctors cases were examined by Mr Davies were referred to the FTP Panel?*
  - 1) *Ethnicity of origin of those doctors*
  - 2) *Age of those doctors*
  - 3) *Race and religion of those doctors”*
- 7. On 30 November 2012 the GMC responded. It provided most of the information to the complainant but confirmed that some of the information within the scope of the requests was not held. The GMC also refused to comply with parts (a) to (c) of request 3, citing the exemption set out at section 40(2) (personal information) of the FOIA as its basis for doing so.
- 8. On 7 December 2012 the complainant requested an internal review regarding request 3 as not all the information to this was provided.
- 9. On 31 January 2013 the GMC explained to the complainant why it relied on section 40(2) of the FOIA to not disclose all the details to question 3 of the request.
- 10. On 17 February 2013 the complainant requested a further internal review on the information requested which had not been provided and he asked for an explanation as to why the information was sensitive.
- 11. As the complainant did not receive a response from the GMC, on 27 March 2013 the complainant made a complaint to the Commissioner

about the GMC's decision not to release some of the requested information.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 11 November 2013 to complain about the way his request for information had been handled, in particular that the information requested had been withheld and he asked the Commissioner for a formal resolution.
13. Therefore the Commissioner has considered whether the GMC was correct to apply section 40(2) of the FOIA as a basis for refusing to provide the complainant with the requested information concerning (a) to (c) of part 3 of the request.

## **Reasons for decision**

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### **Section 40 (2) – Requests for third party personal data**

14. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
15. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

### **Personal data**

16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, had them as its main focus or impacts on them in any way.
17. The Commissioner considers the withheld information relates to the Case Examiners. As to the question of whether individuals could be identified from the information in question, the GMC has explained that

*"We provide a list of all our Case Examiners (13 in number at the time of the request) under the FOIA on request and their identities are available on various internet postings. They are also relatively few in*

*number and we believe that if we provided a breakdown of their ages, ethnicity and race/religion these could be associated with particular named Case Examiners based on other information that is publicly available (their names, primary medical qualifications etc. which for the medical Case Examiners would be available on our List of Registered Medical Practitioners (LRMP))."*

Taking this into account the Commissioner is satisfied that this is information which relates to a living individual from which they could be identified.

18. Section 2 of the DPA sets out certain categories of personal data which are to be regarded as sensitive personal data. These include, amongst other things, information as to the racial or ethnic origin of the individual; and information as to the religious beliefs of the individual. Therefore some of the outstanding information is also sensitive personal data for the purposes of the DPA.
19. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met and (in circumstances involving the processing of sensitive personal data) at least one of the conditions of schedule 3 should be met.
20. As the Commissioner finds that the withheld information in its entirety constitutes personal data he has concluded that the information falls within the scope of the exemption.
21. In the GMC's response to the complainant, it stated that in providing the requested information, this would breach the first principle of the DPA.
22. The GMC concluded in its response that disclosure would not be 'fair' to the individuals involved who would have no expectations that this personal information (some of which is sensitive personal data) would be made publicly available. In addition, the GMC stated that it could not identify any appropriate conditions in either schedule 2 or 3 that would justify disclosure.

### **The Commissioner's response to fairness**

23. The Commissioner has first gone onto consider whether the disclosure of this information would be fair. In considering whether disclosure of

personal information is fair the Commissioner takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

### **Reasonable expectation of the data subject**

24. The GMC stated that the Case Examiners have a strong expectation that the requested information would be kept confidential. It explained that the information which relates to the Case Examiners ethnicity, age and race/religion is sensitive personal data.
25. The GMC stated that any disclosure of this information under FOIA is 'public disclosure'. It explained that any member of the public can request the information and information released under FOIA can then be released to any other person requesting the same information. The GMC continued to say that in order to protect personal information from being released publicly, the FOIA contains certain provisions exempting information that is personal to individuals.
26. Given that much of the outstanding information is sensitive personal data, the Commissioner considers that it would be within the reasonable expectations of the Case Examiners for this information to not be put into the public domain.

### **Would disclosure cause damage and distress to the data subject?**

27. The Commissioner notes that the information in this case is sensitive personal data relating to the ethnicity, age and race/religion of Case Examiners. Therefore the GMC stated that given that it provides a list of all its Case Examiners under the FOIA on request and that they are few in number, it believes that if it provided a breakdown of its ages, ethnicity and race/religion these could be associated with particular Case Examiners based on other information that is publicly available (their names, primary medical qualifications etc.).
28. The Commissioner would generally expect this information to be confidential. Therefore he is satisfied that the disclosure of this information would cause damage and distress to the Case Examiners.

### **The legitimate public interest**

29. The complainant had expressed to the Commissioner that he was dissatisfied with the response from the GMC. He did not see any reason why the requested information is sensitive and that the GMC should disclose this information.
30. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainants) accessing the withheld information.
31. The Commissioner considers that there is a legitimate public interest in openness and transparency. However, in this case the Commissioner notes that most of the requested information was disclosed to the complainant. He also notes that the GMC has confirmed that it does provide a list of all its case examiners under the FOIA on request. He considers that this goes some way to meeting the legitimate public interest in this case.
32. The GMC stated that certain information concerning Case Examiners is publicly available (their names, primary medical qualifications etc.) on its List of Registered Medical Practitioners.
33. Taking into account the reasonable expectations of the Case Examiners, and the potential impact on them if their sensitive personal data were to be disclosed, the Commissioner considers that it would be unfair to disclose the outstanding requested information. Whilst he accepts that there is a legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. Therefore it is the Commissioner's decision that section 40(2) of the FOIA was applied correctly in this case.

## Right of appeal

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34. 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)

35. 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.
36. 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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