

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 March 2014

**Public Authority:** General Chiropractic Council  
**Address:** 44 Wicklow Street  
London  
WC1X 9HL

#### **Decision (including any steps ordered)**

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1. The complainant has requested the transcript of a hearing held by the General Chiropractic Council's (GCC) Professional Conduct Committee at which a named chiropractor was suspended. The GCC withheld the information although it did not inform the complainant of its basis for doing so. During his investigation the GCC advised the Commissioner that it was relying on section 40(2) – third party personal data, to do so.
2. The Commissioner's decision is that the GCC is correct to withhold the information under section 40(2).
3. Therefore the Commissioner does not require the public authority to take any further steps in this matter.

#### **Request and response**

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4. On 8 July 2013, the complainant wrote to the GCC. He asked:  
"Do you have the transcript of events for the case below?"
5. He then copied an entry from the public authority's website which gave very brief details of the Professional Conduct Committee's decision to suspend a named chiropractor.
6. The GCC responded on 2 August 2013. It explained that:  
"Whilst the proceedings of the Professional Conduct Committee are usually public, in this case the Committee exercised its discretion to

exclude the public from the whole of the hearing and we are not, therefore, in a position to provide you with a copy of the transcript”.

It did not however cite any of the exemptions contained within FOIA as its basis for refusing the request.

7. Following an internal review the GCC wrote to the complainant on 9 August 2013. It maintained its original response on the 2 August was correct. Again it did not cite any exemptions.
8. During the course of the Commissioner's investigation the GCC made him aware of its concerns over the disclosure of this information. Ultimately the GCC advised the Commissioner that the information was being withheld under section 40(2) of FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner 22 August 2013 to complain about the way his request for information had been handled. He was concerned that information about the decisions of the Professional Conduct Committee were normally made available on the GCC's website but this procedure had not been followed in this case.
10. During the course of the Commissioner's investigation the complainant advised him that his use of the term 'transcript' may perhaps not have been the correct term. The GCC normally published its 'determinations' or 'decision notices' which explain the findings of the Professional Conduct Committee in some detail. It was the determination or decision notice in respect of the named chiropractor that the complainant wanted.
11. Public authorities are only obliged to provide the information described in a request. Therefore in this case the GCC is only obliged to consider the disclosure of the transcript it holds for the particular hearing. However the transcript itself does include the determination which would normally have been published. The Commissioner is also satisfied that the arguments presented in respect of the transcript as a whole apply equally to the determination. Therefore the complainant has not inadvertently disadvantaged himself by asking for the full transcript.
12. The Commissioner considers that the issue to be decided is whether the transcript of the hearing can be withheld under section 40(2) – third party personal data.

## Reasons for decision

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13. So far as is relevant to this request section 40(2) of FOIA provides that information, constituting the personal data of someone other than the applicant, is exempt if its disclosure would contravene any of the data protection principles as set out in the Data Protection Act 1998 (DPA).
14. Personal data is defined in section 1 of the DPA as being information that both identifies and relates to a living individual. The GCC has provided a copy of the transcript to the Commissioner. It very clearly identifies the named chiropractor and relates to that person. It is therefore clearly his personal data.
15. The GCC has argued that disclosing the information would breach the first data protection principle. The first principle states that personal data shall be processed fairly and lawfully and in, particular shall not be processed unless one of the conditions in Schedule 2 is met. The Commissioner will first look at whether disclosing the transcript would be fair.
16. When dealing with freedom of information requests the consideration of fairness takes account of the consequences of disclosure to the data subject, their expectations of how the information will be treated and the circumstances under which the information was provided. This is then balanced against the value of disclosing the information to the public. These factors are often interlinked.
17. It is understood that the majority of professional conduct hearings are in public. At the time of the request the decisions of the Professional Conduct Committee were routinely published on the GCC's website. From a table providing a very brief summary of the Committee's findings there was a link to the more detailed information, which is referred to as a decision notice or a determination. These set out the nature of the complaint against the chiropractor, summarised the evidence considered, the Committee's decision and any sanction imposed.
18. It could be argued that this would have meant that any chiropractor subject to a professional conduct hearing would expect that the details of that hearing would be made public. However it is understood that the Committee can hear cases in private and that where this happened the full decision notice or determination was not made public. In such situations the only information that was made available was the date of the hearing, the findings (ie whether the complaint was proved) and any sanction imposed. This is what happened in respect of the chiropractor named by the complainant.

19. The Commissioner considers that the named chiropractor's expectations would have been shaped by the Committee's decision to hold the hearing in private and to not make the full determination publicly available. In light of this the chiropractor would not have expected these details to be disclosed at a later date in response to a freedom of information request.
20. The Commissioner has also had regard for the contents of the transcript itself. He is satisfied that they would reinforce the chiropractor's expectation that the information would remain confidential.
21. The complainant has argued that he needs access to the transcript of the determination as it will inform his own business decisions. However when looking at the fairness of disclosure in response to a freedom of information request, the Commissioner will focus on the value of the disclosure to the public at large. Disclosing the decisions of the Professional Conduct Committee would go some way to promoting confidence in the profession and the work of the GCC as the regulator of that profession. However the Commissioner is satisfied that in this case this is not sufficient to override the expectations of the chiropractor that the transcript would remain private.
22. In light of this the Commissioner finds that disclosing the requested information would be unfair and therefore contravene the first data protection principle. It is not necessary for the Commissioner to consider the other elements of the first principle.
23. The Commissioner finds that the transcript is exempt under section 40(2) of FOI. He does not require the GCC to take any further action in this matter.

## **Other matters**

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24. The complainant did not raise the GCC's failure to explain its grounds for refusing his request when he complained to the Commissioner. However the Commissioner feels it appropriate to remind the GCC of its obligations under section 17 of FOIA to issue a proper refusal notice when a request is refused. That refusal notice should identify the exemptions that the GCC is relying on to refuse the request and must be served within the time allowed for dealing with a request, normally 20 working days.
25. In this case it was the Commissioner who actually informed the complainant that his request had been refused under section 40(2).

26. The Commissioner does however welcome the fact that the GCC did provide the complainant with some additional information during the course of his investigation. That information being the duration of the named chiropractor's suspension.

## Right of appeal

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27. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**