

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2015

Public Authority: Health & Care Professions Council

Address: Park House
184 Kennington Park Road
London SE11 4BU

Decision (including any steps ordered)

1. In a series of four requests, the complainant has requested information about international social worker registration. The Health & Care Professions Council (HCPC) responded to the first two requests. It then collated these requests with the third and fourth request, refusing to comply with the later requests under section 12 of the FOIA as to do so would exceed the appropriate limit. During his investigation, HCPC also said that the complainant's requests are vexatious under section 14 and it is therefore not obliged to comply with them.
2. The Commissioner's decision is that the requests are vexatious and that HCPC is correct not to comply with them. He does not require HCPC to take any further steps.

Background

3. The complainant runs a business that recruits social workers abroad and places them with local authorities in the UK. The General Social Care Council (GSCC) regulated social workers until 2012, when HCPC took over this function. The complainant says that the GSCC had an understanding with him whereby his applicants were fast tracked. HCPC has told the complainant that it does not fast track applicants and that it requires applicants to register with it directly, and not through an agent.

Request and response

4. As part of wider and ongoing correspondence, the complainant submitted four requests to HCPC. These are provided at an Appendix to this notice.
5. HCPC responded to the first request on 12 September and the second request on 16 October. In both cases it released information to the complainant. On 16 October, the complainant sought clarification from HCPC on the information it had disclosed, in the following terms:

"What I am trying to get at is the qualifications (one or several) held by each individual applicant. That may be an undergraduate and a Masters Degree from the same or different Universities or persons who only have an undergraduate Degree and no Masters.

Would it be possible for one of your statisticians to provide a commentary on what you have provided and/or re-format the data in such a way as it shows the totality and type of qualification per applicant?"

6. HCPC then responded to separate requests 3 and 4 on 20 October. It had collated requests 1 and 2 with these requests and said it was not obliged to comply with the later requests as to do so would exceed the appropriate limit under section 12 of the FOIA. It had also not provided clarification to requests 1 and 2.
7. Following an internal review HCPC wrote to the complainant on 18 November. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2014 to complain about the way his requests for information had been handled. He considered that HCPC's response to request 1 and 2 was not clear. However, his principle concerns are requests 3 and 4 and he considers that HCPC has avoided complying with these by consolidating them with his two earlier requests and applying section 12 to them all.

9. In its submission to the Commissioner, HCPC said that, having reviewed the history and context of the case, it is now applying section 14 of the FOIA to the complainant's requests 3 and 4 because it considers these requests to be vexatious in their obsessiveness. On the advice of the Commissioner, HCPC then told the complainant that it is treating these requests as vexatious requests. The Commissioner has initially focussed his investigation on HCPC's application of section 14 and if necessary, he has been prepared to go on to consider HCPC's original application of section 12.

Reasons for decision

10. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
11. The term "vexatious" is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that the background and history of the request may be relevant here but has nonetheless considered all the circumstances of the case.

15. HCPC has told the Commissioner that it considers the complainant's repeated requests are vexatious in their obsessiveness.
16. HCPC has been handling requests for information from the complainant since January 2012. From the evidence that HCPC has provided to the Commissioner, it appears that between July and October 2014 the complainant submitted 11 requests for information.
17. The complainant's requests are all on broadly the same theme, namely the registration process for international social workers. The majority have been from the complainant himself; two are from an apparently different person. These were sent from the complainant's email account however, and this individual may therefore be an associate of the complainant's.
18. Often one email has embedded in it a series of requests for different aspects of information related to the international registration process, for example request 3 in this case. The Commissioner also notes that since October 2014 the complainant has submitted a further request and in addition, six further requests for similar information have been submitted to HCPC – though by apparently different people – through the 'What do they know?' website.
19. HCPC says that the language and tone of the complainant's correspondence suggest that he intends to irritate and cause distress, such as calling HCPC's responses 'mumbo jumbo' and on one occasion writing *"I dont (sic) need to speak with a Brigadier at Defence Headquarters. I am asking to speak to the Captain of the troops in the field. Or perhaps I should pay you a visit?"* – a comment that the Commissioner considers is at best a little rude and at worst, a little intimidating in tone. The Commissioner therefore agrees that, on occasion, the complainant's tone during this correspondence with HCPC has been unfairly impatient.
20. Nonetheless, HCPC complied with the first nine of the eleven requests it received from the complainant in 2014, which included requests 1 and 2 in this case. It is not unusual for a response from HCPC to have then generated additional questions, requests for further information or requests for clarification from the complainant. During the course of responding to these and previous requests therefore, HCPC has provided the complainant with a large amount of relevant information in the form of data sets, answers to questions, consultation documents and reports – all on particular aspects of the international social worker registration process.

21. On receipt of requests 3 and 4, HCPC told the complainant that, given the length and number of his requests, it now refused to comply with these requests. HCPC cited the exemption under section 12, as it said that it would exceed the appropriate cost limit to comply with the latest requests. (And by implication, to also clarify requests 1 and 2 as the complainant had requested.)
22. It may be the case that the Commissioner finds that dealing with each of the complainant's requests in this case, in isolation, would not exceed the cost limit under section 12.
23. However, HCPC has now also applied section 14 to these requests. As above, responding to both request 3 and 4 may not, in isolation, be a significant burden to it. However, the Commissioner considers that, cumulatively, the complainant's frequent and related information requests do disrupt HCPC's ability to carry out its routine functions.
24. On the evidence of the complainant's requests going back to 2012, and the fact that they have submitted at least one further request since October 2014, it is reasonable to conclude that the requests for information from the complainant are likely to continue if they receive a response to the requests in this case. HCPC has provided the complainant with the related information they have previously requested and this, as noted, has tended to generate further questions and requests for clarification.
25. In addition, the Commissioner agrees with HCPC that the correspondence logs it has provided to him suggest that the complainant (and his associates) is pursuing a campaign against HCPC because HCPC is unwilling to assist him with his private business interests. The logs detail the correspondence HCPC has had with the complainant (and possibly his associates, through 'What do they know?') since 2012. HCPC has also provided a log of its correspondence with other bodies such as the Department of Health, Department for Business, Innovation and Skills (DBIS) and the British Association of Social Workers. These organisations have also had correspondence and requests for information from the complainant regarding the registration of international social workers. In addition the complainant complained to his MP in October 2014 about HCPC's response to his requests.
26. The Commissioner is of the view that the complainant's correspondence, culminating in the requests in this case, attract a number of the indicators of vexatiousness detailed at §11 - §14. Namely, frequent or overlapping requests, intransigence, deliberate intent to cause annoyance and unreasonable persistence.

27. The complainant may well have a personal interest in the registration of international social workers – and have concerns about the process. However, the Commissioner considers that the burden caused to HCPC if it were to respond to the requests in question is also disproportionate. This is because, as it has explained to the Commissioner, international social worker registrations are overseen by DBIS and HCPC submits data sets to this Department annually. These in turn are shared with the European Commission and SOLVIT, a pan European assistance body.
28. These oversight bodies have not raised any concerns with HCPC's international registration process and the complainant's requests do not therefore have a wider public interest. (HCPC has told the complainant through its response to the complainant's MP that he can take his concerns about the international social worker registration process directly to SOLVIT and provided SOLVIT's contact details.)
29. Finally, there is some evidence – from the material that HCPC has provided and the background to the case – that the complainant is pursuing a campaign against HCPC, for the reason given at §25.
30. The Commissioner is satisfied that the complainant's additional correspondence regarding requests 1 and 2 and their requests 3 and 4 are vexatious. Since the Commissioner's decision is that section 14 of the FOIA can be applied to these requests, he has not gone on to consider HCPC's application of section 12.

Right of appeal

31. 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

32. 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.
33. 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

APPENDIX

Request 1: 12 August 2014

"Would it be possible to provide the information originally requested in relation to persons registered with qualifications from: 1. Romania 2. Portugal 3. Poland?"

Request 2 – 22 September 2014

"I would be so grateful if you could address the question once more, namely, with regard to applications from American trained persons, of those who you have registered and not registered what proportion have had the BA qualification only or have they all also had the Masters? The 'also' is important."

Request 3 – 9 October 2014

"In relation to the principal source countries within Europe, namely Poland, Romania, Germany and Portugal, and, the principal source Commonwealth countries from outside of Europe, namely, Australia, Canada, India, Zimbabwe and South Africa I would be grateful if you would be kind enough to provide the following information in relation to each country and averaged across EU and Commonwealth countries but only in relation to applications completed within the most recent 12 month period:

- 1. The number of applications received, approved, qualified by an adaptation period or aptitude test(with outcomes), refused outright.*
- 2. The average time taken to acknowledge receipt of original documents/request additional documents.*
- 3. The number and percentage of decisions taken within three months; four months; five months; six months or more after receipt of the application.*
- 4. The number and percentage of cases within the sample that have resulted in approval or rejection.*
- 4. In relation to the countries mentioned please provide a table showing a lesser or greater number of average processing days compared to GSCC data for each country mentioned.*
- 5. Please could you provide details of the process that you apply to managing applications for social worker registration making a clear distinction between procedures for mutual recognition applicants and other international social worker applicants.*

6. Please could you provide any minutes of meetings where plans have been discussed concerning mutual recognition procedures for EU-trained applicants that are separate to other international applicants or specific to social workers."

Request 4 – 12 October 2014

"I have one further question on a different matter to questions previously asked.

I would be grateful if you could confirm receipt of this mail and those sent previously.

How many assessors do you have who are registered social workers to scrutinise international (including EMR...European Mutual Recognition) applications? How many are students; social workers; Senior Practitioners; Team Managers or higher?

What training do they receive on international social work and the EU Directive concerning mutual recognition?

Is it correct that they are paid £72 per assessment?

The scrutiny fee for international applications is £440. Taking the last 20 applications processed from EU countries and separately the last 20 applications processed from Commonwealth countries please provide the maximum, minimum and average number of assessor hours to process such applications.

Please identify the average number of administrative hours required to process such applications (e.g. minutes or seconds to send an e mail) and also identify all other actual costs incurred in processing such applications.

If the average actual cost is less than the £440 can you explain in budget terms how that money is spent?

Is it or is it not the case that the fees charged to European and other international applicants are excessive and a de facto restriction on the free movement of labour in a profession where employers aspire to reflect the ethnicity of their local communities particularly in large urban local authorities?"