

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 July 2015

**Public Authority:** General Medical Council  
**Address:** 3 Hardman Street  
Manchester  
M3 3AW

#### Decision (including any steps ordered)

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1. The complainant has requested information from the General Medical Council (GMC) about medical practitioners with criminal convictions who are still practicing. The GMC provided some information to the complainant. It withheld some which it says is the personal data of third persons and exempt from disclosure under section 40(2) of the FOIA, by virtue of section 40(3)(a)(i).
2. The Commissioner finds that the GMC breached section 10 of the FOIA as it did not provide a response to the complainant's request within the 20 working days that is a requirement of the Act.
3. The Commissioner has also decided that the GMC has correctly withheld the requested information under section 40(2), by virtue of section 40(3)(a)(i), because to disclose it would contravene Data Protection Act. The Commissioner does not require the GMC to take any further steps.

#### Request and response

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4. On 14 November 2014, the complainant wrote to the GMC and requested information in the following terms:

*"I understand that under the freedom of information act I am allowed to have access to a list of medical practitioners who are still practicing but have criminal convictions. I understand that there are actually over 800 doctors who are in such a position. Could you please send this information to me as a matter of urgency."*

5. Despite sending several reminders to the GMC, the complainant did not receive a response until 9 March 2015, following the Commissioner's intervention.
6. The GMC released some information to the complainant and withheld some which it said was the personal data of third persons and exempt from disclosure under section 40(2). It also took the opportunity to apologise for the length of time it had taken to respond to the complainant's request.
7. Following an internal review the GMC wrote to the complainant on 20 April. It maintained its position that some of the information that the complainant has requested is exempt from disclosure under section 40(2).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 12 January 2015 to complain about the way his request for information had been handled. At that stage he was dissatisfied because the GMC had not responded to his request. During the investigation the GMC provided a response that the complainant was not satisfied with. The complainant agreed to defer a decision notice until the Commissioner had gone on to also investigate the GMC's response.
9. The Commissioner has focussed his investigation on the GMC's application of section 40(2) to some of the requested information and whether it met its obligations under section 10.

### **Reasons for decision**

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#### **Section 10**

10. Section 1(1) of the FOIA says that when someone requests information from a public authority, the authority must tell the requester if it holds the information and, if it does, it must communicate that information to the requester.
11. Section 10(1) says that a public authority must comply with section 1(1) within 20 working days. In this case, the complainant requested information on 14 November 2014 and did not receive a substantive response until 9 March 2015, which is a clear breach of section 10. The Commissioner notes that the GMC says that it did provide the complainant with updates on the progress of its response. The GMC

also explained to the Commissioner that, on this occasion, a delay was caused because a particular member of staff was on extended leave, and because of the detailed review of the requested information that it had to undertake.

## **Section 40**

12. The complainant has requested a list of medical practitioners who are still practicing but who have criminal convictions. The GMC released to the complainant a list of over 300 names of doctors who fell within the scope of his request. It advised the complainant that it had withheld the names of some doctors with convictions – approximately 750 – who are registered and hold a licence to practice.
13. The GMC has told the Commissioner that when it responded to the complainant's request, it was guided by the principles set out in its (Fitness to Practice) Rules 2004 and Publication and Disclosure Policy. This Policy details the GMC's position with regard to publishing doctors' personal data in various circumstances. In line with this Policy, it released to the complainant the names of those doctors with a conviction where either:
  - The doctor was currently registered with a licence to practice and had an active warning in relation to a conviction – an active warning being one issued within the last five years; or
  - The doctor was currently registered with a licence to practice and had appeared at a Fitness to Practice (FtP) Panel hearing where a conviction formed part of the allegations and the doctor received a sanction. This information is already in the public domain, for example on the Medical Practitioners Tribunal Service website.
14. The GMC has explained to the Commissioner its rationale for releasing this information. It has referred to the conditions under Schedule 2 paragraph 5(b) and Schedule 3 paragraph 7(b) of the Data Protection Act (DPA) which allow personal data to be processed if it is necessary for the exercise of functions conferred by an enactment. The GMC has a statutory function under section 35B(2) of the Medical Act 1983. This permits it to publish information about a particular practitioner's fitness to practice if it considers it to be in the public interest to do so.
15. Pursuant to this function, the GMC maintains the List of Registered Medical Practitioners (LRMP) on its website. This allows a member of the public to search for information about a particular doctor's registration and fitness to practice history. The service includes details of any criminal convictions where the nature of the case warrants disclosure in line with the GMC's Publication and Disclosure Policy.

16. The GMC believes there is a public interest in disclosing this information (through the LRMP) and that disclosing these particular doctors' names meets the test of necessity and proportionality that is built into Schedule 3 paragraph 7(b), underpinning the Medical Act 1983. The GMC recognises that there is a need for the public to be properly informed about how the GMC exercises its functions in regulating doctors. It says that disclosure in these circumstances is proportionate and strikes a fair balance between the wide social interest and the interests of the individual doctors.
17. The GMC says it is withholding some names on the basis that either: the doctor(s) warning has expired; the Fitness to Practice Panel determination does not appear on the LRMP or the doctor(s) concerned have not received any warning or hearing sanction relating to their conviction(s). The GMC says it is withholding this information as it is the personal data of third persons. It also says that personal data relating to criminal convictions is categorised as sensitive personal data and, as such, needs to be treated with greater care than other personal data.
18. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of a third person ie someone other than the requester and the conditions under either section 40(3) or 40(4) are also satisfied.
19. The Commissioner therefore first considered whether the requested information is the personal data of a third party.

*Is the information personal data?*

20. The DPA says that for data to constitute personal data, it must relate to a living individual, and that individual must be identifiable.
21. The Commissioner is satisfied that the names and criminal convictions of the doctors in question 'relates' to them and that they could be identified if this information were to be released. The requested information is therefore personal data and the Commissioner agrees with the GMC that it is also sensitive personal data.
22. Having decided that the requested information is third party personal data, the Commissioner then turned his attention to the conditions under section 40(3).

*Are the conditions under section 40(3) satisfied?*

23. The first condition under section 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of

the DPA. The Commissioner has considered whether the GMC is correct when it argues in its submission to him that disclosing the information would breach the first data protection principle: that personal data 'shall be processed fairly and lawfully...'. The GMC maintains that disclosing this information to the public at large would be unfair, and so contravene the first data protection principle.

24. When considering whether disclosure would be unfair, and so breach the first principle, the Commissioner took three factors into account:

- Have the individuals concerned (ie the data subjects) given their consent to disclosure?
- What reasonable expectation do the individuals have about what will happen to their personal data?
- What might be the likely consequences resulting from disclosure?

25. Assessing fairness however, also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so (condition 6 in Schedule 2 of the Data Protection Act). The Commissioner therefore also finally considered these interests.

*Have the individuals given their consent to disclosure?*

26. With regard to the consent of the individuals concerned, the GMC has told the Commissioner that it has not consulted these doctors about disclosing their data under the FOIA because it considers that disclosing the information to the public would be a breach of the DPA principles.

*What reasonable expectation do the individuals have about what will happen to their personal data?*

27. The GMC has told the Commissioner that it withheld particular names on the basis that disclosing them would be outside the terms set out in both its Rules and its Publication and Disclosure Policy. It has explained that, given the number of names concerned, in excess of 750, it would be difficult to explain the individual reasons for withholding individual doctors' names. Broadly speaking, it has excluded doctors' names where, for example:

- A doctor received a warning in connection with their conviction but this warning had expired (ie it was over five years old) and therefore the details are no longer published on the LRMP or elsewhere.

- A doctor had a conviction but their case was not referred to a public Fitness to Practice Panel because the GMC's investigation concluded before reaching the public Panel stage. This includes cases where the GMC issued 'advice' to the doctor concerned. Advice issued to doctors is not made publicly available.
  - A doctor was the subject of a FtP Panel (or historical equivalent) in connection with a conviction but the Panel's determination is not publicly available on the LRMP. This may be the case where a hearing was held in private because the matter concerned the doctor's health or where the date of the hearing pre-dates the introduction of its LRMP service on 20 October 2005.
  - A doctor went to a public FtP hearing and their fitness to practice was not found to be impaired.
28. The GMC says that the fact that these doctors have a conviction is not made publicly available through the LRMP. In line with its Rules and Publication and Disclosure Policy, it does not believe that disclosure is necessary and proportionate for the exercise of its functions under 35B(2) of the Medical Act. The GMC argues that since it considers it is not appropriate to disclose the information on the LRMP, it is difficult to justify why it should disclose it to a member of the public (and effectively, the world at large) on request.
29. The Commissioner has had sight of the GMC's Rules and Publication and Disclosure Policy. He notes that the Policy says that warnings are published on the LRMP for five years. After five years, it ceases to publish warnings or disclose this information in response to general enquirers. The Policy also states that information solely relating to a doctor's health, and interim orders (orders to suspend a doctor or impose conditions on their registration pending the outcome of an investigation) where a case is closed with no finding of impairment or no warning, is also excluded from the LRMP. In view of this, the Commissioner agrees with the GMC when it says that the doctors concerned would have the reasonable expectation that this information would not be released into the public domain as a result of a Freedom of Information request.

*What might be the likely consequences resulting from disclosure?*

30. The GMC says that disclosing the withheld names would constitute an unwarranted interference with those doctors' rights and freedoms. For example, disclosing the names of doctors with historic criminal convictions would, in the GMC's opinion, interfere with their rights under the Article 8(1) of the European Convention on Human Rights as

determined in the case of *R (on the application of L) (FC) (Appellant) v Commissioner of Police of the Metropolis [2009] UKSC 3*.

31. The Commissioner has found the GMC's arguments against disclosing the requested information compelling. In view of the clear guidelines in the GMC's (Fitness to Practice) Rules and Publication and Disclosure Policy, he is convinced that the doctors concerned would not expect their sensitive personal data to be published and that publishing it would unnecessarily interfere with their right to a private and family life. The Commissioner also considers it is reasonable to assume that publishing the requested information would cause many or all of the doctors concerned a degree of damage and distress. This is because it concerns matters that the doctors may have considered to have expired, or that were not previously in the public domain.
32. The Commissioner is satisfied that it would not be fair to release the requested information, and that to do so would breach the first data protection principle. Since the Commissioner is satisfied that a condition under section 40(3) has been satisfied, he has not gone on to consider the conditions under 40(4).

*Balancing the individuals' rights and freedoms against the legitimate interest in disclosure*

33. Despite the factors above, the requested information may still be disclosed if there is a compelling public interest in doing so.
34. The GMC acknowledges that the complainant may be pursuing legitimate private interests in pursuit of disclosure of the withheld doctors' names; and that disclosing these names is necessary for the purpose of those interests.
35. The GMC goes on to argue that those doctors with convictions that have been dealt with by the GMC without the need for a public hearing or sanction have a legitimate expectation under its Rules and Publication and Disclosure Policy that no public disclosure will be made. The GMC says that to do so in either of these circumstances would, in its view, constitute 'unwarranted interference' and prejudice those doctors' rights and freedoms. The GMC's public interest arguments are also discussed at paragraph 16.
36. The complainant says that a search of the internet will show that many newspapers have previously requested and then published the information he has requested. He is of the view that because those newspapers have a lot of money and strong legal departments, the GMC has treated their FOI requests differently from his own. In its internal review, the GMC sought to reassure the complainant by explaining to

him that requests for information that it had received from newspapers were considered under the FOIA in exactly the same way in which it had considered his. The Commissioner has not seen any evidence to suggest that this was not the case. Furthermore, having conducted a simple internet search himself, he notes that, for example, a newspaper such as the Telegraph may discuss the number of practicing doctors with convictions, but its article does not name any doctors.

37. The Commissioner recognises that under that, under the Medical Act, the GMC publishes information that relates to particular practitioner's fitness to practice, where it considers it is in the public interest to do so. To this end, it publishes the List of Registered Medical Practitioners. This includes information about doctors with active warnings relating to a conviction (ie issued within the last five years) and doctors who appeared at a Fitness to Practice Panel hearing where a conviction formed part of the allegations and the doctor received a sanction. The Commissioner considers that the LRMP as it is currently managed fulfils the obligations that the GMC has to provide access to the public to information about individuals from whom they may receive health care, and satisfies the wider social interest.
38. The Commissioner agrees that withholding information in the particular circumstances that the GMC has detailed at paragraph 27 is proportionate. Warnings have expired, investigations did not progress as far as a Fitness to Practice Panel, a Panel found that a doctor's fitness to practice was not impaired, or a hearing was held in private (and so not published) because it concerned the health of a particular doctor. In the Commissioner's view, any wider public interest in publishing this information does not outweigh the significant public interest in protecting individuals' sensitive personal data.
39. To conclude, the Commissioner accepts the GMC's arguments and is satisfied that the withheld information is the sensitive personal data of third persons and that releasing it would contravene one of the conditions under section 40(3)(a)(i). He considers it would be unfair to do so, would breach the first data protection principle and there is no legitimate public interest in its disclosure.



## Right of appeal

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

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

41. 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.
42. 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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