

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2015

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

Decision (including any steps ordered)

1. The complainant has requested information on the ethnicity and religion of the General Medical Council's (GMC's) staff. The GMC refused to comply with the request under section 14(1) of FOIA on the basis that it was vexatious.
2. The Commissioner's decision is that the GMC was entitled to rely on section 14(1).
3. The GMC is not required to take any further action in this matter.

Request and response

4. The GMC had previously provided the complainant with information on the total number of staff working in each of its departments together with statistics on the ethnicity, race and religion of its staff in response to an earlier request. On the 10 November 2014 he made a further request for information in the following terms:

"I shall be grateful to provide me the further breakdown of staff in different directorates, e.g.

1: Number of investigating officers and their ethnicity of origin and religion

2: Number of case examiners and their ethnicity of origin and religion.

- 3: Number of managers and their ethnicity of origin and religion
- 4: Number of managers for decision for decision making and their ethnicity of origin and religion
- 5: Number of Assistant Registrars and their ethnicity and religion.”
5. On the 21 November 2014 the GMC responded. It refused to comply with the request under section 14(1) on the basis that it was vexatious.
6. Following an internal review the GMC wrote to the complainant on 16 March 2015. It maintained its position that the request was vexatious.

Scope of the case

7. The complainant contacted the Commissioner on 13 April 2015 to complain about the way his request for information had been handled. However it was not until 2 May 2015 that the complainant provided copies of all the documentation necessary to commence an investigation.
8. The complainant expressed concern over both the refusal of his request and the length of time taken to conduct the internal review.
9. The Commissioner considers that the matter to be decided is whether the GMC was correct to refuse to comply with the request under section 14(1) on the basis that it was vexatious.
10. There is no statutory time limit on the length of time a public authority should take to conduct an internal review. Therefore the complainant's concerns over the internal review cannot be considered within the formal part of the decision notice. His concerns will however be addressed under 'Other matters'.

Reasons for decision

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
12. Section 14(1) is concerned with the nature of the request itself rather than the consequences of releasing the requested information. The Act does not contain a definition of what constitutes a vexatious request however, based on decisions by the Upper Tribunal, the Commissioner considers that a request will be vexatious if it is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

13. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (ACC), (28 January 2013) when it defined the purpose of section 14 as follows,

"The purpose of Section 14 ... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).
14. This particular request is one of three which the GMC refused in late 2014. The GMC maintained its reliance on section 14(1) in respect of all three requests following internal reviews which were all completed on 16 March 2015. The other two requests are now the subject of separate decision notices.
15. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious and therefore it is necessary to set out the wider circumstances in which this particular request was made before looking in detail at the GMC's grounds for applying section 14(1).
16. The complainant has been in dispute with the GMC for a number of years. The dispute concerns how the GMC conducted investigations into his fitness to practise. The complainant has exhausted the GMC's complaints procedures regarding that matter which included a full investigation by independent external solicitors.
17. The complainant has submitted requests on 22 separate occasions over the last six years many of which had multiple parts equating to over 100 separate requests for information. It is apparent that the complainant believes the GMC's investigation into his fitness to practise was flawed and that he was the subject of racial, religious and age related discrimination. There is a common theme to many of his requests which have included requests for details of the staff involved in the investigations, together with any equal opportunities training they had received, details of the ethnic origin and religion of doctors who have been the subject of GMC investigations together with the outcome of those investigations and the ethnicity of GMC staff in particular job roles.
18. It is against this background that the Commissioner will consider whether the request is vexatious. The GMC has argued that in common with the other two requests which it refused on the basis they were vexatious in late 2014, this request is an attempt by the complainant to use FOIA as a vehicle to continue his dialogue with the GMC over its

investigations into his fitness to practise despite his concerns having already exhausted the GMC's complaints process

19. There are a number of factors which may indicate that a request is vexatious. One such indicator is that the request places a burden on the authority. The GMC has submitted that this request fits that criterion.
20. The Commissioner's guidance goes on to explain that where the effort required to meet a request is so oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter, or valid the intentions of the requester, that request may be vexatious.
21. In this case the Commissioner is not satisfied that the burden of complying with the request on its own would meet that criterion. However when viewed in the wider context of the complainant's requests, this request can be seen as one in a sequence of similar requests which if complied with would only spawn further requests. The Commissioner accepts that ultimately this would create an unreasonable burden on the GMC. Therefore the Commissioner gives some weight to this factor as an indicator that the request is vexatious. However this argument on its own does not persuade the Commissioner that the request is vexatious.
22. The GMC has also argued that the request reveals an unreasonable persistence on behalf of the complainant. By reference to the Commissioner's guidance the GMC argues that the complainant is attempting to reopen an issue which has already been comprehensively addressed and subjected to some form of independent scrutiny. The Commissioner gives significant weight to this argument. The request is clearly a continuation of the complainant's dispute over alleged discrimination by the GMC. These allegations have been fully considered by the GMC and by independent solicitors and these enquiries have found no flaws in the outcome or conduct of the GMC's investigation into the complainant's fitness to practise. The complainant is clearly unable to accept this and remains aggrieved. Whilst the Commissioner recognises the impact that such investigations may have on a doctor and how stressful such investigations would be, this does not justify the continued pursuit of the matter when the investigation has already been thoroughly scrutinised and when the original investigation into the complainant's fitness to practise concluded some years ago. The last investigation is understood to have been concluded in 2010 and the GMC's review of its handling of that investigation, including that of external solicitors, was completed in early 2012. The Commissioner is satisfied that the request demonstrates an unreasonable persistence on behalf of the complainant.

23. The GMC has further argued that the request demonstrates intransigence in that the complainant has taken an unreasonably entrenched position and has rejected the GMC's attempts to advise and assist the complainant out of hand, showing no willingness to engage with the authority. The Commissioner does not place any great weight on this argument. Whilst he concedes that the complainant's reluctance to accept the GMC's findings can be described as intransigence on his behalf, this factor has already been taken account of under the GMC's arguments that the request demonstrates unreasonable persistence. It would be wrong to try and double count this factor and the Commissioner has not been presented with specific evidence that the complainant has rejected any advice and assistance that the GMC has offered.
24. A third indicator that a request is vexatious is that it is one of a number of frequent or overlapping requests. The Commissioner accepts that in this case the complainant has submitted numerous requests, often in swift succession to the receipt of the response to a previous request. Very often these subsequent requests are on the same or a similar subject. In respect of this particular request it seeks further, more detailed information based on the preceding request. This creates the impression of a remorseless stream of requests which the GMC as recipient would understandably feel could never be satisfied. The Commissioner finds that this would make the request vexatious.
25. Further the Commissioner notes that this particular request is similar to an earlier one which the complainant made on 3 November 2012. That 2012 request sought information on the ethnicity, age race and religion of investigation officers and case examiners at the GMC. Whilst some information was released in response to this request the GMC withheld other information on the basis that it was the sensitive personal data of the staff concerned and its disclosure would breach the first principle of the Data Protection Act. Those elements were therefore refused under section 40(2) of FOIA, a decision which was later upheld by the Commissioner. This adds to a sense that no matter what the GMC does it will not be able to stem the flow of requests from the complainant and bring the matter to a conclusion. The Commissioner is satisfied that this indicates the request is vexatious.
26. Finally the GMC has argued that the request is not a serious attempt to obtain information. Rather, when seen in broader context of his long running dispute with the GMC, it is argued that the complainant is using the FOIA to vent his anger about the GMC's investigation into his fitness to practise or to annoy and harass the GMC.
27. The complainant has had a similar request refused in the past and that decision was upheld by the Commissioner. Therefore it would be

reasonable to expect that the complainant would recognise that it was unlikely this request would be complied with. This supports the GMC's contention that his request was not a serious attempt to access information as he should have known it was unlikely to lead to the disclosure of the information he had asked for.

28. The Commissioner finds it entirely plausible, based on the complainant's history of request making, that his request was, at least in part, an expression of the anger and resentment he felt against the GMCC.
29. Having considered the arguments presented by the GMC the Commissioner finds that the request is vexatious. In particular the request demonstrates an unreasonable persistence in respect of the complainant's wish to challenge how the GMC handled the complaints that were made about him. This is despite the fact that the GMC has reviewed its handling of those complaints and that one investigation at least, was the subject of an independent investigation. When set in the wider context of the complainant's relationship with the GMC, another weighty factor is that the request can be seen as an attempt by him to vent his anger and frustration over how the GMC handled the complaints about him. For these reasons the Commissioner finds the request to be vexatious and that the GMC was entitled to refuse it under section 14(1). The GMC are not required to take any more action.

Other matters

30. The Commissioner does have concerns over the length of time that the GMC took to conduct the internal review of its handling of this request.
31. Although there is no statutory time limit for conducting such reviews the Commissioner has issued guidance on the subject. He considers that in most cases a public authority should complete its reconsideration of a request within 20 working days of a review being requested, and in no circumstances should a review take longer than 40 working days to complete.
32. The complainant asked for a review to be conducted on 2 December 2014. The GMC finally provided him with the outcome of that review on 16 March 2015, over three months later. This is clearly well over the time that the Commissioner would expect a public authority to take.
33. The Commissioner would remind the GMC of the need to conduct such reviews in a timely manner.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF