

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 August 2016

**Public Authority:** Health and Care Professions Council  
**Address:** Park House  
184 Kennington Park Road  
London  
SE11 4BU

### Decision (including any steps ordered)

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1. The complainant has requested information from the Health and Care Professions Council (the HCPC) about the background of the named panel members of a Fitness to Practice hearing. The Commissioner's decision is that HCPC has correctly applied section 40(2) to the withheld information. The Commissioner does not require the HCPC to take any steps.

### Request and response

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2. On 11 March 2016 the complainant made the following request for information:  
*'for the background to all panel members who have been involved with my FTP case (number redacted). I do not want any personal information purely information on (sic) there work backgrounds please. Also I would like to know the requirement for the registrant panel member to sit on the final panel (I.e do they have to have recent experience as a radiographer taking X Ray's and Scans?)'*
3. On 12 April 2016 HCPC responded with some information and refused further detail under section 40(2) (Personal Information) of the FOIA:  
*'Under Rule 3 (6) (a) of the Health and Care Professions Council (Practice Committees) Rules 2009, the HCPC must ensure that a member of the relevant profession is present on any fitness to practise hearing. [Redacted name 1] is a HCPC registered radiographer. I understand my colleague [redacted name 2] provided*

*you with more information about the HCPC's use of registrant panel members and has commented about the use of [redacted name 1] in your specific case.*

*Fitness to practise panels are also able to request expert evidence if they require a specialist opinion on a matter of competency. As [redacted name 2] explained the allegations in your case were all misconduct based and did not require expert evidence.*

*[Redacted name 3] and [redacted name 4] are both lay members of the panel. HCPC recruitment is competency based. More information on the HCPC's requirements for lay members can be found at the following links;*

<http://www.hcpc-uk.org/assets/documents/10004A82PanelMemberRolebrief.pdf>

<http://www.hcpc-uk.org/assets/documents/100030B8PanelChairRoleBrief.pdf>

<http://www.hcpc-uk.org/aboutus/partners/handbook/>

*We are unable to provide you with personal information about our panel members as this is exempt under section 40 of the FOIA, personal information of a third party. You may find the following links to ICO decisions helpful in understanding our position Care Quality Commission FS50518803, Ofqual FS50508627 and City College Peterborough FS50495651.'*

4. The complainant queried the answer provided and on 9 May 2016 HCPC provided the outcome of the internal review. It upheld the decision to refuse to provide further information.

## **Scope of the case**

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5. On 18 April 2016 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled and after providing further documents, the case was accepted on 20 May 2016.
6. The focus of the Commissioner's investigation is to determine if HCPC has correctly applied section 40(2) of the FOIA to the information that it withheld.
7. In addition to HCPC's application of the exemption under section 40(2) to the requested information, the complainant was not satisfied

with the length of time that it took HCPC to respond. HCPC responded to the complainant's request on the 21st working day. The Commissioner has noted that HCPC apologised to the complainant for the slight delay as this was a little over the 20 working days for compliance. It is, however, a breach of section 10 of the FOIA and will be recorded as part of the Commissioner's ongoing activity to monitor public authorities' performance under the Act.

## Reasons for decision

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### Section 40(2) – Third party personal data

8. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

#### **Is the withheld information personal data**

9. Personal data is defined by the DPA as any information relating to a living and identifiable individual. A named individual's employment history is clearly personal data.

#### **Would disclosure breach the Data Protection Principles?**

10. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
11. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

#### **Reasonable expectations**

12. Whether an employee might reasonably expect to have his/her personal data released depends on a number of factors. These include whether the information relates to the employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
13. The information in this case concerns individuals in their professional roles as members of a Fitness to Practise panel, appointed by HCPC to consider allegations of impairment of fitness to practise for individual registrants.

14. HCPC has explained to the complainant and to the Commissioner that Lay Panel members are recruited on a competency basis and applicants are not required to have a particular or professional background:

*'Applicants providing personal data to the HCPC as part of an employment process, have received assurance from the HCPC that this information would be handled confidentially. Panel members would not expect that we would disclose information from their application forms under FOIA. They do not undertake their duties on the basis on their previous or current external employment.'*

15. In addition HCPC argued that:

*'When appointed Panel members reasonably expect that details of their qualifications and experience would not be disclosed into the public domain, in a way that identifies them. As this is a specific request for two named people's data, this information does identify them. The HCPC would be providing personal data to the public which is not relevant to their duties or role. This would be unfair processing contrary to first data protection principle.'*

16. The Commissioner accepts that the employment background information was provided in confidence and that the named panel members have a reasonable expectation that the information on their application forms would not be disclosed to the public under FOIA. The Commissioner considers that this information relates to the private and not the public life of a panel member of HCPC.
17. Therefore the Commissioner understands that HCPC would not routinely make public such information and that the individuals in this case have not consented to such a disclosure.

### **Consequences of disclosure**

18. HCPC has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure.
19. However, the Commissioner is satisfied that the named members of the Panel would have a reasonable expectation that the information in question, that had been provided to HCPC in confidence as part of their appointment process to the roles, would not be placed into the public domain by disclosure under the FOIA. Therefore she considers that disclosure of this information would be an invasion of the privacy of the individuals, and as such may cause them some distress.
20. The Commissioner considers that this possible consequence of disclosure is credible.

## **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

21. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
22. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
23. The Commissioner accepts that there is a legitimate interest in overall transparency in the way a public authority such as HCPC conducts its business. However, there is no presumption that this should automatically take priority over personal privacy. The Commissioner judges each case on its merits.
24. The complainant has argued that:

*'this meeting was held in public and with the press in attendance that the background of the panel members should be released...and wish to submit that there is public interest in this information as [redacted named 5] has been contacting the HCPC to obtain further information on my case however he has not been very successful in the HCPC answering his complaints'*
25. HCPC has argued that

*'There is no public interest in disclosing this information, as discussed above the HCPC recruits on a competency basis and this information is readily available to the public to scrutinise. We are concerned that to provide this personal data would set a precedent for all our panel member's personal data to be available on demand. In this case the allegations the Panel members considered were all conduct based, allegations regarding how [ the complainant] interacted with colleagues. Technical expertise in Radiography was not required as this was not a question of competence, this makes disclosure even less justifiable, prior professional experience is not relevant and did not enter into the decision made by the Panel as a whole.'*

26. In this case, the Commissioner is not convinced that the specific employment background information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned. It adds nothing to the transparency or accountability of HCPC as the requested information does not form part of the job specification on which Panel Members are appointed.
27. The complainant has been referred to a number of previous decision notices by HCPC and the Commissioner is satisfied that the same rationale applies in this case.
28. Having considered HCPC's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that HCPC has put forward for protecting the individuals' personal data, namely:
  - the individuals' likely expectations about how their personal data will be managed, implicit in their roles as HCPC panel members;
  - the individuals' lack of consent to its release; and
  - the possible negative consequences to the individuals of releasing the information.
29. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the data subjects and that it would not be fair to disclose the requested information in this case. Consequently, the Commissioner considers that section 40(3)(a)(i) could be applied to this request, and that HCPC is correct to withhold the information.

### **Conclusions**

30. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

## Right of appeal

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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: [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)

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**  
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