

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2016

Public Authority: General Dental Council
Address: 37 Wimpole Street
London
W1G 8DQ

Decision (including any steps ordered)

1. The complainant made a request to the GDC for the indemnity certificate of a particular registrant. The GDC refused to disclose the requested information under section 31(1)(g) with subsection (2)(d), 40(2) and 41 FOIA.
2. The Commissioner's decision is that the GDC has correctly applied section 40(2) FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 September 2015 the complainant requested information of the following description:

"I made a freedom of information request on 27th August. This related to a case heard by the Investigating Committee on 1st September 2011, regarding [named registrant].

I was informed by the GDC that I should have received papers "6.2" before the hearing (I did not receive these papers) and my FOI request was for this bundle of papers.

The information I specifically require is the registrant's indemnifier and his policy number."

5. On 14 April 2016 the GDC responded (following the Decision Notice on case ref FS50603692 which ordered the GDC to confirm or deny whether it held the requested information). It confirmed that it held information relevant to the scope of the request but it refused to provide the requested information under section 31, 41 and 40(2) FOIA.
6. The complainant requested an internal review. The GDC sent the outcome of its internal review on 2 June 2016. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 15 June 2016 to complain about the way her requests for information had been handled.
8. The Commissioner has considered whether the GDC was correct to apply section 31(1)(g) with subsection (2)(d), 40(2) or 41 FOIA in this case.

Reasons for decision

Section 40(2)

9. The Commissioner has considered the application of section 40(2) FOIA in the first instance.
10. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
11. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (DPA).
12. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.
13. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
14. In this instance the information in question is the personal insurance indemnity certificate of a particular registrant. The Commissioner does

consider that this is information from which the data subject (the registrant) would be identifiable and therefore does constitute personal data.

15. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.
16. When considering whether the disclosure of this information under the FOIA would be fair, the Commissioner has to take into account the fact that the FOIA is applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner is not able to take into account the unique circumstances of the applicant. Instead the Commissioner has had to consider that if the information were to be disclosed, it would in principle be available to any member of the public.
17. The GDC explained that whilst the withheld information relates to the data subject's professional life, he would have no expectation that the indemnity information provided in confidence to the GDC for its regulatory function, would be disclosed to the wider world under the FOIA for a purpose outside of the GDC's regulatory remit.
18. The GDC confirmed that it does not have the data subject's consent to disclosure and whilst it didn't seek to obtain this, based upon its experience it does not consider that consent would be provided.
19. In order to reach a view on whether the disclosure of this information would be fair or unfair, the Commissioner has considered the nature of the information itself.
20. The withheld information is the personal indemnity insurance certificate provided to the GDC by the registrant to enable the GDC to fulfil its regulatory functions. Whilst the indemnity certificate relates to the data subject's professional life, it was only provided to the GDC to enable it to fulfil its regulatory functions. The insurance indemnity was personal to the registrant and provided for this specific purpose, therefore the Commissioner accepts that he would have had the reasonable expectation that this would not be placed into the public domain.
21. The Commissioner has however gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subjects set out above.

22. Whilst the Commissioner understands that the complainant has a personal interest in the withheld information this is not a legitimate public interest. The Commissioner does consider however that there is a public interest in the GDC demonstrating that it is fulfilling its regulatory functions efficiently and effectively. In this case the GDC has confirmed that it holds an insurance indemnity certificate for the registrant and therefore the public can be assured that this was in place. Disclosing the indemnity certificate would not meet the legitimate public interest set out above in any significant way as it would not provide any explanation or reasoning behind the GDCs decisions relating to this registrant.
23. After considering the nature of the withheld information, and the reasonable expectation of the data subject, the Commissioner believes that the disclosure under FOIA would be unfair and in breach of the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subject in this case.
24. Therefore the Commissioner believes that section 40(2) FOIA is engaged, and provides an exemption from disclosure.
25. As the Commissioner considers that section 40(2) FOIA was correctly engaged in this case, he has not gone on to consider the application of section 31(1)(g) with subsection (2)(d) or 41 FOIA any further.

Right of appeal

26. 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

27. 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.
28. 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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF