

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 March 2017

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

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the Hudson report and a Professional Standards Association report.
2. The GDC provided the complainant with some of the information she requested, it applied section 12 FOIA to parts of the request and refused to provide some information under section 42 FOIA.
3. The Commissioner's decision is that the GDC was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request. It did not however provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with advice and assistance in accordance with the GDC's obligations under section 16 FOIA.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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6. On 13 March 2016 the complainant requested under FOIA and the DPA the following information:

1. Who was responsible for paying the fees of the solicitor who conducted the investigation/compiled the report?
2. How much does the GDC pay each year to that firm?
3. How many reports were altered?
4. How many of those who are affected from the alteration of the reports were struck off?
5. Please provide the original and amended transcripts relevant to [complainant's father].
6. Please identify the person responsible for making the amendments to [complainant's father's] reports and confirm their status.
7. Please provide all minutes of meetings relevant to [complainant's father].
8. Please provide full copies of your solicitor's files.

The complainant also asked why the GDC took certain actions after the publication of the PSA report

7. On 12 April 2016 the GDC responded to the FOIA elements of the request (that was parts 1-4 and 8 of the request and also the request as to why the GDC took certain actions after the publication of the PSA report). It provided the information requested, however in relation to part 3 of the request it applied section 12 FOIA as it said that it would exceed the cost limit to determine what was held.
8. The complainant requested an internal review on 14 April 2016 in relation to parts 3-4 and 8 of the request. The complainant disputed the application of section 12 to part 3 of the request and she did not consider that the GDC had responded fully to parts 4 and 8 of the request. The complainant provided clarification as to what information she required:

Part 3 of the request was for 'How many reports were altered?'

Part 4 of the request was for 'How many of those who are affected by the alteration of the reports were eventually struck off, irrespective of testing, legal parties involved, or having lodged an appeal?'

Part 8 of the request was for 'Please provide full copies of your solicitor's files (Pennington Manches and/or others), specifically those concerning information or advice with regard to any of the PSA reports, or any of the content therein, written about the GDC within the past five years.'

9. The GDC sent the outcome of its internal review on 17 June 2016. It upheld its original position in relation to part 3 of the request, it confirmed that it couldn't provide any further information to part 4 of the request for the same reason as part 3 (section 12 FOIA) and it applied the section 42 FOIA exemption to part 8 of the request.

## Scope of the case

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10. The complainant contacted the Commissioner on 15 June 2016 to complain about the way the request for information had been handled.
11. The Commissioner has considered whether the GC was correct to apply section 12 FOIA to parts 3 and 4 of the request and whether it was correct to apply section 42 to part 8 of the request.

## Background

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12. The Investigating Committee (the IC) is independent of the GDC, it meets in private (parties are not present nor represented) to consider cases on the papers, and to decide whether they should be referred to a Practice Committee case hearing (the PCC) which is a full public hearing.
13. The IC's decision is agreed between three IC panel members (two dental professionals and one lay member) at the meeting and recorded in a decision sheet. The IC secretary assists in drafting a fully reasoned decision for consideration and approval by the IC, which captures and fully reflects the IC's decision and its reasons for that decision. The IC secretary is a member of GDC staff who works in the IC department, which is a separate department to the GDC's Casework department that assesses cases and sends them to the IC for a decision.
14. There has been public criticism of weaknesses in the IC's procedures by the Professional Standards Authority (PSA) in 2013, following a whistleblowing complaint<sup>1</sup>, reviewing action taken by the GDC since the 2013 complaint.

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<sup>1</sup> <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Pages/General-Dental-Council-welcomes-PSA-report.aspx> and in 2015 (<http://www.gdc-uk.org/Newsandpublications/Pressreleases/Pages/GDC-responds-to-PSA-whistleblowing-report.aspx>)

15. In 2013 the GDC instructed its own independent review of IC procedures following the PSA's 2013 report, known as the Hudson report or Penningtons Manches report<sup>2</sup>, the terms of reference for, and a summary of the findings, is available on GDC website<sup>3</sup>.
16. The PSA's report of 21 December 2015 reviewed the action taken by the GDC since 2013 (including the review carried out by Penningtons Manches , and focused more on the GDC's whistle blowing procedures. The GDC has published a response and further updates to the PSA's 2015 report in February (and June) this year<sup>4</sup>.

## Reasons for decision

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### Section 12 – cost exceeds appropriate limit

17. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:

- either comply with the request in its entirety, or
- confirm or deny whether the requested information is held.

18. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

- (a) determine whether it holds the information
- (b) locate the information, or a document which may contain the

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<sup>2</sup> <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Pages/GDC-publishes-its-own-report-into-whistleblowing-allegations.aspx>

<sup>3</sup> <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Documents/Hudson%20Report%20July%202014.pdf>

<sup>4</sup> <http://www.gdc-uk.org/Newsandpublications/Pressreleases/Pages/GDC-publishes-its-improvement-plan-following-whistleblowing-report.aspx>

information

(c) retrieve the information, or a document which may contain the information, and

(d) extract the information from a document containing it.

19. The appropriate limit for the GDC is £450 or the equivalent of 18 hours work.

### **Part 3 of the request**

20. The GDC explained that the weakness in its Investigating Committee ('IC') process was investigated on the GDC's behalf by Penningtons Manches and also by the Professional Standard's Authority (PSA). Neither of these investigations sought to establish the exact number of IC decision notices that had been altered. The Penningtons Manches review, for example, carried out a sample of decisions made across five different days of hearings in order to see how decision notices had been altered.
21. It also explained that discussions the IC Committee has about a case are distilled into the decision document. It does not retain drafts or notes of the discussion for example. This means that in most cases it is likely that only the final version of the decision document is held by the GDC. This is why the decisions reviewed by Penningtons Manches required detailed specialist analysis and the creation of a comparative versions so they could see how the documents had been changed.
22. It said that given the specialist analysis required, there is a real question about the extent to which, for the purposes of the FOIA, the GDC can be said to be holding the information that the complainant is requesting. It said that this is not an activity that could be undertaken by an unskilled member of staff and is a matter of judgement. This is not a simple exercise in extracting the relevant documents from case folders. Nor, if it were to undertake this work, could it say how long it would take someone looking at a determination to reach a view on whether or not a determination had been 'altered' in the ways set out in the PSA and Penningtons Manches reports.
23. It said that when these factors are considered alongside the number of cases that it would need to review in order to be able to respond to the complainant then it is clear that the cost limit at section 12 should apply.
24. It said that 535 cases were considered by the IC in 2013 alone. It would also need to review the cases from preceding years as well. Even if the analysis of the decision notices in these 535 cases were possible within

15 minutes per case (it anticipates that the analysis would take much longer than this) then the work required would take over 130 hours.

25. Based upon the GDC's submissions, the Commissioner considers that due to the number cases that would need to be reviewed and the fact that this would require someone with experience in this area to analyse the reports to determine whether or not a determination had been altered (and therefore falling within the scope of the request), it would exceed the cost limit under section 12 FOIA to comply with part 3 of the request in this case.

#### **Part 4 of the request**

26. The GDC said that the complainant's request is based on the false premise that alterations to IC decision notices resulted in the decision itself being changed. However, the PSA report and the report by Penningtons Manches found nothing to suggest that the outcome of an IC hearing was affected where amendments had been made to decision notices.
27. Additionally, the IC Committee does not give a decision in respect of whether a dental professional should remain on the register (i.e. whether they should be 'struck off'). The IC Committee decides whether there is a case to answer and, if they conclude there is, they refer the matter to a Practice Committee to hear the case and decide what sanction, if any, should apply.
28. It said that these two points notwithstanding, as it is unable to establish 'how many reports were altered' within the time and cost limit at section 12, it cannot consider within the time and cost limit what the final outcome was (i.e. what the Practise Committee decided) in the 'altered' cases that the IC Committee referred to a Practice Committee Hearing.
29. As the Commissioner considers that the GDC is unable to establish how many reports were altered within the time and cost limit it would similarly be unable to establish how many of those who are affected from the alteration of the reports were struck off. The Commissioner therefore considers that section 12 FOIA was applied correctly to part 4 of the request.

## **Part 5 of the request and the part of the request relating to actions taken after the publication of the PSA report**

30. Whilst the GDC has only argued that parts 3 and 4 of the request would exceed the cost limit in this case, the Commissioner's Guidance on section 12 explains the following:

"When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days."

31. In this case part 5 of the request and the part of the request relating to actions taken after the publication of the PSA report, were made by the same person within a period of 60 days and they are for the same or similar information as parts 3 and 4. Parts 3, 4, 5 and the part of the request relating to actions taken after the publication of the PSA report of the request can therefore be aggregated.

32. As the whole of the request would therefore be covered by section 12 FOIA, the Commissioner has not gone on to consider the application of exemptions (specifically in this case section 42) any further.

## **Section 16 – advice and assistance**

33. Under section 16 FOIA the GDC is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.

34. The GDC has not written to the complainant to provide advice and assistance in this case.

35. The Commissioner therefore considers that the GDC has not complied with its obligations under section 16 FOIA in this case.

## Right of appeal

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36. 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)

37. 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.
38. 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**  
**Cheshire**  
**SK9 5AF**