

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2018

Public Authority: General Medical Council (GMC)

Address: 3 Hardman Street
Manchester
M3 3AW

Decision (including any steps ordered)

1. The complainant has requested information relating to 2012 GMC Quality Assurance of Basic Medical Education (QABME) Report and 2014 and 2015 Annual Returns for Warwick Medical School. The GMC refused to comply with the request under section 12 FOIA.
2. The Commissioner's decision is that the GMC was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request. The Commissioner also considers that the GMC provided the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 May 2017 the complainant requested information of the following description:

"With respect to the 2012 GMC QABME Report and 2014 and 2015 Annual Returns for Warwick Medical School.

Please provide the following:

(1) Details of the evidence reviewed by the QABME Team for provision of teacher training provided to teaching staff (educators) ****before**** the 'educators' commenced teaching duties at Warwick Medical School.

- (2) Details of the evidence reviewed by the QABME Team proving that the Phase 1 written assessment/exam used by Warwick Medical School had been authorised by the University of Warwick.
- (3) Details of the evidence reviewed by the QABME Team proving that the Phase 1 written assessment/exam process used by Warwick Medical School included different formats of examination; and that the content of written examinations complied with the conditions/requirements of the code of practice for assessments.
- (4) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of failing to credit all correct answers when determining performance in written examinations.
- (5) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of failing to ensure (and refusing) that all students had the same revision/preparation time between Phase 1 examinations.
- (6) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had validated the admissions process involving the use of the 'UK Clinical Aptitude Test' (UKCAT).
- (7) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of failing to provide exam revisions sessions directed by qualified teaching staff.
- (8) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of issuing out-of-date Personal Tutors Handbooks (containing the wrong details for the course, exams, support, procedures, and even wrong university).
- (9) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of demanding that 'students teach students' (formerly part of the contractual demand made on students) due to the lack of qualified educators.
- (10) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice failing to ensure anticipatory reasonable adjustment for delivery of lectures, group work, and examinations.
- (11) Details of the evidence of complaints made to the OIAHE.
- (12) Details of the evidence of how Warwick Medical School ensured 'Equality Diversity and Opportunity'.

(13) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had ceased the practice of teaching students that elderly patients should not expect or receive the same level of healthcare as younger patients.

(14) Details of the evidence reviewed by the QABME Team proving that Warwick Medical School had received evidence pertaining to whistleblowing.

(15) Details of the evidence reviewed by the QABME Team pertaining to Warwick Medical School bullying, harassing, victimising students.”

5. On 8 December 2017 the GMC refused to comply with the request as it said it would exceed the cost limit under section 12 FOIA to do so.
6. The complainant requested an internal review on 8 December 2017. The GMC sent the outcome of its internal review on 26 February 2018. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 23 January 2018 to complain about the way the request for information had been handled.
8. The Commissioner has considered whether the GMC was correct to apply section 12 FOIA to the request in this case.

Reasons for decision

Section 12 – cost exceeds appropriate limit

9. 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.
10. 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 information
- (c) retrieve the information, or a document which may contain the information, and
- (d) extract the information from a document containing it.

11. The appropriate limit for the GMC is £450 or the equivalent of 18 hours work.

12. In this case the GMC has argued that the 15 requests made on the 29 May 2018 can be aggregated.

13. The Commissioner's Guidance¹ 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."

14. In this case the Commissioner is satisfied that all 15 requests were made by the complainant, they all relate to the 2012 GMC QABME Report and 2014 and 2015 Annual Returns for Warwick Medical School and they were all made on the same day. The 15 requests can therefore be aggregated for the purpose of section 12 FOIA.

15. The GMC has explained the work that would be required to comply with all 15 requests in this case:

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Request 1

This request is about the level (or indeed the adequacy) of training that certain Warwick University staff members received before commencing their employment. It is very unlikely that the GMC will hold such information; however, it is not impossible that it has incidentally noted details about this during its communications with the organisation.

Should the GMC hold this information, this may form part of a larger document (e.g. a sentence within an internal memorandum) or over multiple documents. Given that it does not know if or where it would hold this information, it would need to identify relevant records and check these in full to ascertain its position accurately. This process would require a manual review.

Request 2

This request is about the University's own internal governance. For the same reasons as Request 1, the GMC might hold this information but it would not be able to locate the information without carrying out a manual check of all relevant records.

Request 3

This request requires clarification as to what the complainant means by "code of practice for assessments". It is, however, very likely that this is the University's own internal document in which case this too is a question about the governance of an external organisation.

In order to satisfy this request, the GMC's starting point would have to be to locate whether such document existed at the time the QABME report was being prepared. All subsequent searches would be dependent on what details arise from this initial search.

Request 4

This request consists of a leading question where misleading inferences could be drawn from the response. The complainant has not provided any evidence to support the premise from which he makes his request.

In order to respond to this request, the GMC would need to first locate evidence which confirms or otherwise the complainant's assertion about

the alleged past practice of Warwick Medical School as this is not referenced in the report.

All subsequent searches would be dependent on what information was found in relation to the allegation made by the complainant.

The information sought is not stored in a way which can be found or extracted without manual check of the relevant records in full. To determine whether the GMC holds this information, it would need to check all available information it holds to in order to respond to the query accurately.

Request 5

The GMC referred to its comments set out in request 4.

Request 6

The UKCAT is offered by UKCAT Consortium which is an independent company and charity (company no. 05620264 and charity registration no. 1133667). The following excerpt is taken from the UKCAT Consortium website <https://www.ukcat.ac.uk/ukcat-test/>:

“The UK Clinical Aptitude Test (UKCAT) is an admissions test used by a consortium of UK Universities for their medical and dental degree programmes.

The UKCAT helps Universities to select applicants with the most appropriate mental abilities, attitudes and professional behaviours required for new doctors and dentists to be successful in their clinical careers. It is used in collaboration with other admissions processes such as the UCAS application and academic qualifications.

It is also your opportunity to stand out from other applicants and demonstrate your aptitude for a demanding programme of study.

The UKCAT is a computer-based test delivered in Pearson VUE test centres throughout the UK and internationally.”

The GMC said this request is about an external organisation and therefore for the same reasons as Request 1, to determine whether it holds this information it would have to carry out a manual check of all relevant records.

Requests 7, 8, 9 and 10

The GMC referred to its comments set out in request 4.

Request 11

GMC said that OIAHE stands for 'the Office of the Independent Adjudicator for Higher Education' which is an independent organisation which reviews complaints by students against higher education providers. Further information can be found on their website <http://www.oiahe.org.uk/>.

This request is likely to relate to questions 5 and 2(a) of the 2014 and 2015 Annual Returns respectively, where the GMC asked Warwick Medical School whether they were investigated by the OIAHE or equivalent bodies in Scotland or Northern Ireland. In the published versions of the Annual Returns, the details of such investigations are redacted.

Notwithstanding the comments set out in the GMC's response contained in in the appeal stage and that it does not seek evidence in support of Annual Returns, it does hold unredacted versions of the annual returns.

In an email of 26 February 2018, the GMC said that it invited the complainant to clarify whether the scope of his request related to the redacted parts of the Annual Returns but the complainant has not provided clarification to date.

Request 12

In its email of 26 February 2018, the GMC directed the complainant to where he would be able to find the relevant information and invited him to let the GMC know if it misunderstood the scope of his request.

Request 13

The GMC referred to its comments set out in request 4.

Request 14

The Warwick University's whistleblowing process is not in the ambit of the QABME report.

For the same reasons as request 1, to determine whether it holds this information the GMC would need to carry out a manual check of all relevant records.

Request 15

The Warwick University's policy on bullying, harassment, and victimisation is not in the ambit of the QABME report.

For the same reasons as request 1, to determine whether it holds this information the GMC would need to carry out a manual check of all relevant records.

16. The GMC concluded that with the exception of requests 11 and 12, where it was able to identify some relevant information and therefore sought clarification, searching for the relevant information would entail a manual check of all documents that relate in any way to Warwick Medical School, the 2012 report, and 2014/15 returns.
17. It went on that as detailed in its initial response to the request on 8 December 2017, there are at least 1,200 documents which will require interrogation and it is estimated that it would take about two minutes per document. However the GMC said that this estimate may in fact be rather conservative, however, even if such a search could be carried out that quickly the request would still cost significantly more than the appropriate limit to process.
18. The GMC referred to paragraphs 28 and 30 of the ICO's guidance:

"28. A public authority is not obliged to search for, or compile some of the requested information before refusing a request that it estimates will exceed the appropriate limit..."

30. If a public authority does carry out some searches, it may wish to bear in mind the following points:

 - If a public authority starts to carry out some searches without an initial estimate, it can stop searching as soon as it realises that it would exceed the appropriate limit to fully comply with the request.
 - A public authority is not obliged to search up to the appropriate limit..."
19. It went on that further, in the guidance 'Determining whether information is held', the ICO directs:

"61. The scope of the search will depend on the analysis and interpretation of the request. The public authority will first need to understand what it is looking for. Only then can it decide where it is most logical to search..."

20. The GMC explained that the search function of its main repository can only identify words contained within the description of field of a saved document and/or within a document itself if its format allows text recognition.
21. The visit for the purposes of QABME report took place in 2011, some 6 years before the requests were raised. The event is not fresh in the memory of any members of staff to provide advice. There was a folder created within its internal system for this visit and it would have to review the entire contents of this folder in order, firstly, to determine whether the information the complainant requests is held. This folder contains 1,200 items. Further work would have to be undertaken in relation to the 2014/15 annual returns.
22. The GMC said that for requests 4, 5, 7, 8, 9, 10, and 13, the complainant has made allegations that certain events did or did not happen. Without extensive manual checking it does not know if it holds the information, especially given that the complainant has not submitted any evidence to support his position. With regards to requests 1, 2, 6, 14, and 15, these are fundamentally about governance of external organisations. To that end, the GMC considers that it has met the stipulations of the guidance given that it has given full consideration of the information sought and carried out searches accordingly and its estimate of time required is realistic.
23. In the GMC's email of 26 February 2018 to the complainant, it outlined how it had interpreted requests 11 and 12 and commented that these would be exceptions to the application of section 12 FOIA if its understanding was correct; to date, the complainant has not clarified this. Therefore, at this stage, the GMC submits that these two requests fall within scope of section 12 FOIA as they can be aggregated with the other requests.
24. The GMC acknowledged that in his email of 8 December 2018, the complainant argued that the disclosure should take place on the grounds of public interest. The GMC submitted that section 12 of the FOIA is not subject to the public interest test.
25. Based upon the GMC's submissions, the Commissioner considers that due to the age of the information and the fact that the entire contents of the folder on this matter (containing 1200 documents) would need to be reviewed to determine what information is held relevant to parts 1-10 and 13-15 of the request, it would exceed the cost limit under section 12 FOIA to comply with the request in this case. Even allowing an even more conservative time of 1 minute per document, this would take 20

hours to check 1200 items. This is before the GMC would undertake any work to locate, retrieve and extract any relevant information.

Section 16 – Advice and Assistance

26. Under section 16 FOIA the GMC 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.
27. The GMC confirmed that it has provided advice and assistance in relation to parts 11 and 12 of the request. It has asked the complainant to clarify its interpretation of these two requests to enable it to proceed which has not been forthcoming. It has confirmed that parts 11 and 12 would be exceptions to the application of section 12 if its understanding of those parts of the request is correct.
28. The Commissioner therefore considers that the GMC has complied with its obligations under section 16 FOIA in this case as it has identified the parts of the request it believes it could comply with within the cost limit subject to the clarification requested. The onus is upon the complainant to refine his request to parts 11 and 12 and provide the GMC with clarification that its interpretation of those parts to the request were correct.

Other Matters

29. During the course of her investigation, the GMC stated to the Commissioner that “We wish to mention that these requests could be deemed vexatious under section 14 of the FOIA, in the context of the numerous, extensive, requests we have received from [name redacted] on this and related matters over a number of years. We would of course oblige to provide a detailed explanation about this if invited to do so.”
30. As the Commissioner has concluded that section 12 was engaged in relation to this request, she did not consider it necessary or proportionate to seek the GMC’s further submissions on this point, but simply records the GMC’s stated position for completeness.

Right of appeal

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: GRC@hmcts.gsi.gov.uk

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

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

Gemma Garvey

Senior Case Officer

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF