

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 January 2019

**Public Authority:** General Pharmaceutical Council  
**Address:** 25 Canada Square  
Canary Wharf  
London E14 5LQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the General Pharmaceutical Council ('the GPhC') about service complaints submitted to it. The GPhC has categorised the request as vexatious under section 14(1) of the FOIA and has refused to comply with it.
2. The Commissioner's decision is as follows:
  - The request is not vexatious and the GPhC is not entitled to rely on section 14(1) to refuse to comply with it.
  - The GPhC has not breached section 16(1) as, in the circumstances of the request, it provided appropriate advice and assistance.
  - The GPhC complied with section 17(5) as it issued the complainant with a section 14(1) refusal notice within 20 working days.
3. The Commissioner requires the GPhC to take the following step to ensure compliance with the legislation:
  - Provide the complainant with a fresh response to his request of 25 June 2018 that complies with the FOIA but that does not rely on section 14(1).

4. The GPhC must take this step 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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5. On 25 June 2018 the complainant wrote to the GPhC and requested information in the following terms:

*"Under the Freedom of information act I'd like to request the following information:*

1. *A copy of the complaint register showing all complaints logged in the last 365 days.*
  2. *Details of any concerns or complaints raised in relation to the premises team or premises registration team in the last 365 days."*
6. The GPhC responded on 28 June 2018. It refused to comply with the request which it considered to be vexatious under section 14(1) of the FOIA. It did, however, also advise the complainant that it had two complaints associated with premises registration/renewal on its complaints register (in addition to his) and directed him to where information about complaints is published.
  7. The GPhC provided a review on 27 July 2018. It upheld its original position.

## Scope of the case

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8. The complainant contacted the Commissioner on 29 July 2018 to complain about the way his request for information had been handled.
9. In correspondence to the Commissioner the complainant has indicated that, in addition to section 14(1) he would like her to consider: the GPhC's compliance with sections 1, 16 and 17; whether it has committed a section 77 offence (altering records with intent to prevent disclosure) and whether it has followed the FOIA Code of Practice with regard to its request handling and records management.
10. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the

information and (b) to have the information communicated to him or her if it is held and is not subject to an exemption.

11. However, section 14(1) says that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. Since GPhC is relying on section 14(1) in this case, section 1(1) does not come into play and the Commissioner has therefore not included a consideration of section 1(1) in her investigation.
12. The Commissioner has briefly discussed the Code of Practice under section 45 and section 46 under 'Other Matters' and she intends to write to the complainant separately about his allegation of a section 77 offence.
13. Finally, the GPhC's complaints register may contain details of complaints that the complainant himself has submitted to it ie may be information that is the complainant's own personal data. The Commissioner will consider any data protection aspect of the complainant's request separately.
14. The Commissioner's current investigation has focussed on whether the GPhC can rely on section 14(1) of the FOIA to refuse to comply with the complainant's request. She has also considered whether the GPhC has complied with sections 16(1) and 17(5).

## Reasons for decision

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### **Section 14– vexatious and repeat requests**

15. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
16. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
  - Abusive or aggressive language
  - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent or overlapping requests
  - Deliberate intention to cause annoyance

17. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
18. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
19. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
20. The Commissioner understands that the background to this request concerns an application that the complainant and his business partner submitted to the GPhC to register a particular premises as a pharmacy. The GPhC has told the Commissioner that at the time of the request the complainant had requested an appeal of the GPhC's decision on this application; the appeal had not been heard at that point. The complainant had been in contact with the GPhC and raised a number of complaints and concerns about its processes and staff.
21. In its submission the GPhC has gone on to explain that it had previously received nine subject access and FOIA requests from the complainant (and his business partner) over a period of six months to June 2018. There was additional correspondence about the requests and the complainant and his business partner asked for internal reviews to be carried out for four of the requests. In addition, the GPhC says that the complainant and his partner had been in contact with the GPhC at least 48 times from February to June (2018) to raise complaints or query GPhC processes in connection with the decision on their application and the appeal, and to raise complaints about GPhC staff. In relation to the complainant's concerns around the appeal, the GPhC says that it explained to him that it could not advise him about the appeal because it was not acting for him as his representative. The GPhC says it was keen not to cause prejudice to the complainant, or to the appeal process.
22. The GPhC has advised the Commissioner that the volume of correspondence associated with the complainant (and his partner) is illustrated by in excess of 130 emails between the complainant or his business partner and the GPhC (some of which were chains and to multiple recipients) which, in April 2018, were released in response to a subject access/FOI request for information relating to the pharmacy and

the business partners. The GPhC says that 53 of the emails related to information requests and they do not include other internal correspondence which was exempt from disclosure because it contained discussion of ongoing regulatory appeal and legal advice.

23. The GPhC says that while the initial contact was mostly limited to six email addresses, information requests, complaints and other communication necessitated a web of supporting communication internally. Given what the GPhC considers to be the vexatious nature of the contact, the GPhC says that each communication had to be cross checked between all those involved to ensure that it was not duplicating resource or conflicting involvement through other complaints. For example, a complaint about one staff member meant that that staff member was then unable to respond to any further FOI or subject access requests or deal with internal reviews. This felt deliberate to the GPhC as it severely impacted its capacity to respond to requests. The GPhC says that, further, it was difficult to find independent senior staff to conduct internal reviews without being conflicted through other involvement in ongoing matters.
24. The GPhC therefore considers that this request formed part of a campaign by the complainant and his business partner to issue further complaints with the effect of disrupting its business. As a small regulator, with 80,000 registered pharmacy professionals and 14,000 registered pharmacy premises, the GPhC says that this ongoing correspondence for one application had a seriously disruptive effect; through both the volume of correspondence and the range of issues raised. It argues that it could not continue to spend such a disproportionate amount of time on a single issue that is, in its view, clearly part of an ongoing campaign of disruption.
25. The GPhC's submission advises that the pattern of contact with the complainant and his business partner has continued since it refused this particular request. It says there have been two further subject access requests, three further information requests and four internal reviews. At the time of the request that is the subject of this notice, the GPhC has noted that one of the requests had been the subject of a separate complaint to the Commissioner. The complainant subsequently challenged the Commissioner's decision and that case has proceeded to the First Tier Tribunal (Information Rights). Since then, the complainant has submitted two further complaints which includes the current complaint. The GPhC has advised that, in addition, it has received from the complainant (and his business partner) a further five organisational complaints, a fitness to practise concern about a member of staff and a substantial volume of other correspondence.

26. The GPhC has told the Commissioner that across all the information requests it has received it has provided all or part of the requested information in all except three requests and has relied on section 14(1) with regard to only one other request. That request related to copies of the GPhC's inspection manuals: current, past and drafts of future manuals. The GPhC says that, in connection with a different request about procedures, it had previously told the complainant of the existence of an inspection manual and it had explained why the inspection manual would be exempt from disclosure. Although the request for copies of inspection manuals was therefore not a repeat of a previous request, the GPhC says that it relied on section 14(1) on that occasion as it felt that request had a vexatious purpose. This was because it had already advised the complainant that it would not disclose this information.
27. Finally, the GPhC has told the Commissioner that it has answered other requests from the complainant on the basis that they were for information about the pharmacy application in question and the business partners, or they were for information more directly related to the ongoing appeal or complaints that had been raised.
28. The complainant has also provided the Commissioner with a submission to support his position that his request is not vexatious. The Commissioner has considered this and other correspondence she has received from the complainant and has summarised the complainant's arguments below:
  - The majority of the complainant's correspondence with the GPhC concerns his application for registration, inspections of the premises concerned, the GPhC's application decision and the complainant's service complaints; as such the complainant considers that particular correspondence can be considered a normal part of business.
  - The complainant says his appeal of the GPhC's decision has now been heard, and has been upheld. He has provided the Commissioner with a copy of the appeal decision – which is dated 7-8 November 2018 - and has noted that the appeals committee found there to have been '*serious irregularities*' in the GPhC's handling of the complainant's application for particular premises to be entered into the (pharmacy) register. The Commissioner has noted that the appeals committee has instructed that a fresh decision on the complainant's application must be taken by a new, independent decision-maker.
  - The complainant has requested information about the GPhC's complaints register and complaints about the GPhC's premises

team so that he can understand how many other complaints have been raised (as well as his own) and what these complaints concern. As a result of his experience, the complainant is concerned about how the GPhC conducts itself and would like to better understand how it makes decisions. He says his request would also provide him with information on whether his complaints had been listed on the register.

- The complainant has argued that the GPhC has not demonstrated that his request would take a long time to deal with or would be a disproportionate burden to it or is part of a deliberate campaign to disrupt GPhC. The complainant acknowledges that he has a business partner and that they both have an interest in the premises registration; as such he says they both have valid reasons to seek information.
  - The complainant says that the number of FOIA requests he has submitted since December 2017 is not excessive and that if responding to these has stretched GPhC's resources, that is not his 'fault' and the GPhC should review its own processes. He acknowledges that he has had to send follow-up correspondence to the GPhC on occasion but says that this has been when responses he received have not been clear. With regard to the current request, the complainant says that the GPhC also made an incorrect assumption as to why he is seeking this information – namely, that it is a general 'fishing expedition' – and did not consider the wider circumstances.
29. The Commissioner has considered all the circumstances of this case. Clearly, there has been a dispute on going between the GPhC and the complainant associated with the GPhC's rejection of his and his business partner's registration application. However, she has not been persuaded that the current request can be categorised as vexatious.
30. First, although a higher number than perhaps most people would submit in six months, the complainant had not submitted an excessive number of FOIA requests to the GPhC in the period from December 2017 to 25 June 2018.
31. Second, the GPhC may have had to deal with a lot of correspondence from the complainant (and his business partner) but the Commissioner accepts the complainant's position that most of this concerned the registration application, appeal and associated complaints. The complainant was concerned about how the GPhC handled his registration application – rightly concerned, as it turned out – and the Commissioner considers it was reasonable for him, in the circumstances, to seek clarity

from the GPhC and to seek information to help him understand its processes and decision-making - in his specific case and more generally.

32. Third, the Commissioner has not been persuaded that this request is part of a deliberate campaign being waged by the complainant and his business partner to disrupt and annoy the GPhC. As he has pointed out, the registration application in question is associated with both the complainant and his business partner and the Commissioner considers it is not unreasonable for both individuals to communicate with GPhC.
33. Finally, from its submission to her it appears that the GPhC has confirmed that it holds information falling within the scope of the complainant's request. The Commissioner considers that, although this information may be of interest to the complainant, it does not have a wider public interest. However, although the Commissioner appreciates that dealing with the complainant's correspondence may have stretched the GPhC's resources, she does not consider that now providing a response to the information request would be an onerous process. In her view the burden to GPhC of complying with this request is more or less equal to the request's value. On balance therefore, and in the interests of transparency, the Commissioner has decided that the GPhC cannot rely on section 14(1) to refuse to comply with the request.
34. The Commissioner advises that she considers all complaints brought to her on a case by case basis. On this occasion she has considered the circumstances as they were at the time of the request and has found that the complainant's request is not vexatious. This does not mean however that she would find that the GPhC could not rely on section 14(1) with regard to any similar complaint the complainant may submit in the future.

### **Section 16 – duty to provide advice and assistance**

35. Under section 16(1) of the FOIA a public authority has a duty to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
36. Section 16(2) says that any public authority which, in relation to the provision of advice or assistance in any case, conforms with the Code of



Practice<sup>1</sup> under section 45 will have complied with section 16(1) in that case.

37. With regard to the Code of Practice, the duty to provide advice and assistance arises in certain situations. These are broadly:
- a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds
  - b) if a request for information is not clear to the public authority
  - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit; and
  - d) transferring the request to another public authority.
38. Points b) and c) could be relevant in this case. With regard to point b) the GPhC did not indicate to him that the complainant's request was not clear and, in his request for a review, the complainant did not indicate that the GPhC had misinterpreted his request. The Commissioner therefore considers that an unclear request is not an issue here. With regard to point c), the GPhC responded to the complainant's request by relying on section 14(1) and not section 12.
39. As above, section 16(1) places an obligation on an authority to provide advice and assistance so far as it would be reasonable to expect it to do so. The GPhC refused to comply with the request not because the cost of doing so would exceed the appropriate limit, but because it considered the request to be vexatious.
40. The Commissioner notes, however, that notwithstanding this, in its response to the complainant the GPhC did provide him with some information within the scope of his request. It advised that it had two complaints associated with premises registration/renewal on its complaints register (in addition to the complainant's) and directed the complainant to where information about complaints is published.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

41. In the circumstances of this case the Commissioner is therefore satisfied that the GPhC complied with section 16(1) and was not obliged to provide the complainant with any more advice and assistance than it did.

### **Section 17 – refusing a request**

42. Section 17(5) says that a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
43. The time for complying with section 1(1) is 20 working days following the date of receipt of the request. In this case the complainant submitted his request on 25 June 2018 and the GPhC provided him with a section 14 refusal notice on 28 June 2018, well within the 20 working day time frame. The GPhC therefore complied with section 17(5).

### **Other Matters**

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44. The complainant is concerned that the GPhC has not followed FOIA Code of Practices in respect of its request handling and record management. Aspects of the GPhC's handling of the complainant's request under the FOIA - covered by the Code of Practice under section 45 of the FOIA - have been considered in this notice.
45. With regard to records management, covered by the Code of Practice under section 46 of the FOIA, this Code of Practice is a good practice guide that the Commissioner advises public authorities to follow. Following this Code of Practice is not a legal requirement, which is why the Commissioner has not included GPhC's compliance with it as part of her investigation. That said, the Commissioner has seen no evidence to suggest that the GPhC's general records management is inadequate and she has received very few complaints from individuals about the GPhC's handling of their FOIA requests.

## **Right of appeal**

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46. 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)

47. 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.
48. 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**  
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**Wilmslow**  
**Cheshire**  
**SK9 5AF**