

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 22 February 2023

Public Authority: General Medical Council
Address: The Grove
25 St. John's Street
Hythe
Hampshire
SO45 6BZ

Decision

1. The complainant requested information from the General Medical Council ("the GMC") relating to the authorship of a policy document.
2. The Commissioner's decision is that the GMC is entitled to rely on section 40(2) (personal information) of the FOIA to withhold the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 25 September 2022 the complainant wrote to the GMC in response to previous correspondence relating to other matters. Those matters are not included in this decision notice. The complainant made the following information request:

"Please can I also have a copy of data breach procedure".
5. The GMC responded on 20 December 2022 and provided a redacted copy of the requested information citing section 40 (personal information) of the FOIA as its basis for doing so.

Reasons for decision

6. This reasoning covers whether the GMC is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the redacted information.
7. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
8. Section 3(2) of the Data Protection Act 2018 defines personal data as:

“any information relating to an identified or identifiable living individual.”
9. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
10. In this case, the complainant has requested the names of individuals that contributed to the data breach procedure. In its internal review response, the GMC stated:

“Having reviewed the document I can confirm that those names redacted are all junior members of staff. Our usual position in relation to the disclosure of staff names under the FOIA is that those of manager level and above are discloseable and those in more junior grades would be exempted”.
11. Clearly the name of an individual is their personal data. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
12. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
13. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary to achieve that interest, and whether the interest overrides the rights and freedoms of the individuals whose personal information it is.

14. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
15. The complainant has argued that the GMC has not considered "the nature of the information and the responsibilities of the employee in question" and "It is clearly total expected that if you author a policy document...you take responsibility for that process and therefore that your name will be be linked to it. I also note that one can be quite a high level civil servant without being a manager which is the criteria for not being junior being used by the GMO."
16. The GMC explained that its usual position in relation to the disclosure of staff names under the FOIA is that those of manager level and above are discloseable and those in more junior grades would be exempted.
17. It is the Commissioner's view that the name of the author has been disclosed and the remaining names do not constitute that of 'authors' of the procedure. For example, the individual responsible for format changes will not have had any substantive input to the contents of the procedure, and will merely be ensuring that it adheres to the GMC's formatting standards.
18. Similarly, anyone responsible for providing updates to various departments is likely to have done so following instructions, rather than being the 'authors' responsible for those updates. It therefore follows that these individuals are generally administrative or support staff, and therefore not considered to be a senior grade.
19. As such, it would not be within the reasonable expectations of those individuals that their names would be disclosed.
20. The Commissioner has determined that the there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals whose names have been redacted. Therefore, he considers that there is no legal basis for the GMC to disclose the requested information and to do so would be in breach of principle (a).
21. The Commissioner's decision is that the GMC is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information.

Right of appeal

22. 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@justice.gov.uk

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

23. 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.
24. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF