

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific court case. The General Pharmaceutical Council ("the GPC") refused to disclose the requested information, citing section 32(1)(c)(i) (court records) of FOIA.
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 32(1)(c)(i).
3. The Commissioner does not require further steps.

Request and response

4. The complainant and the GPC had been corresponding about a specific court case and on 1 September 2023 the complainant requested:

"Please send me the transcript of the hearing – or the Determination – thank you."

5. The complainant then reiterated their request on 5 September 2023:
“[REDACTED]

Please send me the transcript of the hearing – or the Determination – thank you.”
6. The GPC responded on 2 October 2023, explaining that the request had been dealt with under FOIA. It confirmed the requested information was exempt under section 32.
7. The complainant requested an internal review on the same day.
8. The GPC provided the outcome to its internal review on 30 October 2023. It upheld its previous position.

Background information

9. The GPC operates a Fitness to Practise Committee (FPC) which is separate to the GPC but guided by its standards. The FPC decides whether a pharmacist is fit to work.
10. The Commissioner understands that this matter relates to a specific pharmacist and concerns that were raised about their fitness to practice.
11. The FPC made a determination in relation to this case. The High Court subsequently ruled that the FPC’s determination erred in law. It determined that the FPC must consider the matter afresh.

Reasons for decision

12. Section 32(1) of FOIA states that information is held only by virtue of being contained in:
 - “(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
 - (c) any document created by
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter”.

13. Section 32(1) is a class based exemption. This means that any information falling within the category described is exempt from disclosure, regardless of whether or not disclosure would, or would be likely to, cause any prejudice or harm. It's also an absolute exemption. This means there is no requirement to conduct the public interest test.
14. The GPC has confirmed the requested information is exempt under section 32(1)(c)(i).
15. There is a two part test that will determine whether information falls within this exemption:
 - Is the requested information contained within a relevant document created by a court, and
 - Is this information held by the GPC only by virtue of being held in such a document?
16. The Commissioner has considered the definition of 'court' in relation to section 32(1)(c). Section 32(4) specifically explains that "court" includes any tribunal or body exercising the judicial power of the State.'
17. The GPC has explained:

"The procedure the Fitness to Practise Committee must adhere to is set down within The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010¹... Article 62 of the Order provides that the Fitness to Practise Committee has the equivalent powers of a Court for the purposes of administering oaths and may apply to the High Court in England and Wales or the Court of Session in Scotland for the issue of a witness summons directing a person to attend the proceedings in order to give evidence or to produce a document."
18. The Commissioner is satisfied that the GPC, in its capacity carrying out Fitness to Practice hearings, is exercising the judicial power of the State, as outlined in The General Pharmaceutical Council (Fitness to Practice and Disqualification etc. Rules) Order of Council 2010. The requested information, the transcript of the hearing, was therefore created by Court. The first criteria at paragraph 15 is engaged.

¹ [The General Pharmaceutical Council \(Fitness to Practise and Disqualification etc. Rules\) Order of Council 2010 \(legislation.gov.uk\)](#)

19. Furthermore, the transcript of the hearing only exists as a result of the Fitness to Practice hearing. The transcript was originally created for the purposes of proceedings, with a view to assessing an individual's suitability to practice. It was not acquired by any other route. The second criteria at paragraph 15 is engaged.
20. At the time of raising their complaint, the complainant explained:

“Section 32 FOIA covers information held for the purposes of court, inquiry or arbitration proceedings. It does not cover records of proceedings in the past. Release of this transcript cannot affect the outcome of the case which has already been decided.”
21. However, the Commissioner's guidance² clarifies that:

“An authority may still claim section 32 after the relevant court, inquiry or arbitration proceedings have concluded. This was confirmed by the Supreme Court's decision in *Kennedy v The Charity Commission* [2014] UKSC 20 (26 March 2011).”
22. Overall, the Commissioner is satisfied that the requested information has been created by a court and is held only by virtue of the Fitness to Practice hearing. The Commissioner is satisfied that the requested information is exempt under section 32(1)(c)(i). Since the information engages the exemption, it means its exempt under FOIA.

² [paragraph 59] <https://ico.org.uk/media/for-organisations/documents/2014222/section-32-court-inquiry-arbitration-records.pdf>

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

Alice Gradwell
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