

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

### **Decision notice**

**Date:** 10 April 2024

**Public Authority:** General Medical Council  
**Address:** 3 Hardman Street  
Manchester  
M3 3AN

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

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1. The complainant has requested information about the number of complaints received concerning a named doctor. The General Medical Council ('the GMC') relied on section 40(2) of FOIA (personal information) to withhold the requested information.
2. The Commissioner's decision is that the GMC is entitled to rely on section 40(2) of FOIA to withhold the requested information
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 18 October 2023, the complainant wrote to the GMC and requested information in the following terms:  

"I wish to make a Freedom of Information request. It is specific to [NAME REDACTED]. Please could you confirm the dates of all complaint made against him irrespective of the outcome."
5. The GMC responded on 2 November 2023. It confirmed that it held the requested information and that there were interim conditions in place for the named doctor, but it advised that it was relying on section 40(2), by virtue of section 40(3A) to refuse the request.

6. Following an internal review the GMC wrote to the complainant on 4 December 2023 and upheld its position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 7 December 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if the Council is entitled to rely on section 40(2) of FOIA to withhold the information.

### **Reasons for decision**

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#### **Section 40(2) – personal information**

9. 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.
10. Section 40(3A) of FOIA applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
11. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
“any information relating to an identified or identifiable living individual.”
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
14. The complainant has requested information concerning complaints received about a named doctor. They have argued that dates of complaints do not constitute personal data. However, the Commissioner is satisfied that, as the doctor concerned is named in the request, the requested information both relates to and would identify the individual concerned. He therefore considers that the requested information falls within the definition of ‘personal data’ in section 3(2) of the DPA.

15. 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 focused here on principle (a), which states:  
  
"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
16. In the case of a 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.
17. 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, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
18. The GMC has acknowledged that there is a legitimate public interest in being aware of any regulatory actions taken against a doctor. It explained that as doctors hold a position of trust, where concerns are raised that could breach the public's trust in a doctor, there is a legitimate interest in the public knowing what these concerns are.
19. The GMC has explained that it has a legal obligation under section 34 of the Medical Act 1983 to maintain and publish a register of doctors (the Medical Register) and that the current electronic version is accessible from its website. It explained that the register allows members of the public to search for and find information about a doctor who is, or has been, registered with the GMC at any time since October 2005. Where applicable, the Medical Register includes certain details about a doctor's fitness to practise history since 20 October 2005, including any interim actions. The GMC considers that this and the information disclosed in line with its Publication and Disclosure Policy satisfies the wider public interest in complaints about doctors.
20. The GMC explained that its Publication and Disclosure Policy shapes the expectations of doctors, complainants and the wider public of the types of fitness to practise information it may disclose. It explained that it does not publish information about every complaint made against a doctor. The GMC considers that it would be unfair to doctors if the GMC were to depart from its own guidance, particularly where disclosure involves the release of information about complaints that have been closed before reaching the public hearing stage, or where no warnings or restrictions have been placed on a doctor's registration.
21. The Commissioner appreciates that the complainant has a legitimate interest in this information, and although some information about fitness

to practice is already publicly available, the dates of any complaints received would be obtained through disclosing the information.

22. However, given the guidance set out in the GMC's Publication and Disclosure Policy, the Commissioner considers that the individual named in this case would reasonably expect that their personal data would not be disclosed to the world at large under FOIA and that disclosure would therefore cause that individual harm or distress.
23. The Commissioner considers the wider public interest in complaints about doctors is satisfied through the information the GMC publishes in line with its Publication and Disclosure Policy.
24. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation.

## **Right of appeal**

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25. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**