



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
On appeal from the Information  
Commissioner's decision notice  
FS50619296 of 13 July 2016**

**Appeal Reference: EA/2016/0178**

**Heard at Cardiff Civil Justice Centre  
On 27 January 2017**

**Promulgation Date 27<sup>th</sup> February 2017**

**Before**

**CHRIS HUGHES**

**GARETH JONES**

**DAVE SIVERS**

**Between**

**JOHN BRIDLE**

**and**

**THE INFORMATION COMMISSIONER**

**and**

**GENERAL MEDICAL COUNCIL**

Appellant

Respondent

Second Respondent

## DECISION AND REASONS

1. The Appellant in these proceedings is an adviser to defendants in litigation relating to asbestos. He made a complaint to the Second Respondent, the General Medical Council (the "GMC") about a doctor. He subsequently sought information from the GMC about the way the complaint was handled. On 24 December 2015, he wrote to the GMC and requested information in the following terms:

*"May we know who your Assistant Registrar consulted as an asbestos expert able to understand the seriousness of the actions of [Dr A]."*

*'May we have some information as to their asbestos qualifications?'"*

2. There was some contact between the parties' out with the statutory framework of the Data Protection Act (DPA) and Freedom of Information Act (FOIA) and the GMC responded to the Appellant formally relying on s40 of FOIA which deals with personal information. S40 provides (so far as is relevant):-

### **"Personal information.**

*(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

*(2) Any information to which a request for information relates is also exempt information if—*

*(a) it constitutes personal data which do not fall within subsection (1), and*

*(b) either the first or the second condition below is satisfied.*

*(3) The first condition is—*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—*

*(i) any of the data protection principles, or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*

*(b) in any other case.....*

(4) *The second condition....*).

(5) *The duty to confirm or deny—*

*(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*

*(b) does not arise in relation to other information if or to the extent that either—*

*(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or*

*(ii)....*

*(6)....*

*(7) In this section—*

*“the data protection principles” means the principles set out in Part I of Schedule 1 to the M7Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;*

*“data subject” has the same meaning as in section 1(1) of that Act;*

*“personal data” has the same meaning as in section 1(1) of that Act.*

3. Relying on these provisions the GMC informed the Appellant that it would neither confirm nor deny that it held the information. This was in accordance with their standard procedure published as the General Medical Council – Publication and Disclosure Policy (bundle page 180-189) which is not to disclose the identity of doctors against whom a complaint is made unless formal regulatory action is taken such as a warning or referral for a disciplinary hearing by the Medical Practitioners Tribunal Service. Confirming under FOIA that such information existed would unfairly breach the data protection principles and cause distress to Dr A since it would have the effect of disclosing to the world that a complaint had been made against him.
4. The Appellant complained to the First Respondent, the ICO who after investigation upheld the approach of the GMC; explaining that the right of access to information placed two distinct duties on public authorities, to inform an applicant whether or not requested information was held and secondly to communicate that information. However FOIA provided that s40(5)(b)(i) allowed the public authority to neither confirm nor deny that information was held if to confirm whether or not it held information would reveal personal data of a third party in breach of a data protection principle. Revealing the information would disclose personal information about Dr A. Revealing the information would not be processing fairly and lawfully (first data protection principle) since Dr A had a reasonable expectation that their

personal data would not be revealed. Revealing the information would have some impact on Dr A and be unfair. The ICO then balanced Dr A's rights against the legitimate interest in confirming or denying that the information was held and concluded that while the information requested was of interest to the Appellant it did not outweigh Dr A's right to privacy.

5. The Appellant was dissatisfied with this and appealed; repeating in summary form matters he had put to the GMC in his complaint and arguing that the GMC should have come to a different conclusion "*we suspect he [the expert] must be a colleague of Dr A's and also involved...*" .
6. The ICO resisted the appeal relying on the decision notice and noting that there was no basis for the Appellant's claim of impropriety and therefore this claim had no impact on the balance of public interest. The GMC supported the reasoning of the ICO setting out the case law stressing the fundamental rights protected by the DPA. The GMC noted the absence of substantive grounds of appeal and reaffirmed that disclosure would reveal personal information about a living person, be in breach of Dr A's reasonable expectation and causing distress and so be unfair, there was no evidence of wrongdoing, and further arguing that there was no need to apply a public interest balancing test.
7. In his skeleton argument the Appellant made clear that his concern about Dr A arose from litigation where Dr A's evidence had been preferred to evidence put forward by his associates. In the light of these litigation failures he had complained to the GMC challenging Dr A's conduct. He argued that the GMC had handled the complaint incorrectly and disclosure of the information sought would help him and his associates understand how the GMC had made its error. In his oral argument he maintained his approach of misconduct by the GMC, the individual whose details he sought was "not impartial". He emphasised that he wanted to use this information so he could force Dr A to have a meeting and discuss issues with him.
8. Counsel for the GMC relied on the arguments put forward by the ICO and GMC. She drew attention to the careful explanation given to the Appellant of the reasoning behind the GMC's handling of his complaint (bundle page 103) and to the precedents of the High Court and Upper Tribunal (*Corporate Officer of the House of Commons* and *Goldsmith*) setting out when the legitimate interests of a third party could over-ride the privacy interest of a data subject. There was no pressing social need established by the Appellant.

### Consideration

9. In this case the appellant has in essence sought to re-argue cases which have been lost in the civil courts (which could have been subject to appeal) and to challenge the decision-making of the GMC (which may be done by judicial review). He has argued misconduct by the GMC or its staff but has not

produced a scintilla of evidence for it – save that it has come to a conclusion with which he disagrees. He has not disputed that the information is personal data nor has he addressed the fairness of the disclosure - his argument is focussed on the balance of public interest which he perceives. However the disclosure which he seeks does not assist in **his** public interest argument which relates to the civil litigation his associates are concerned with, nor does it help with his declared desire to have a meeting and discussion with Dr A; since he already knows who Dr A is. The tribunal is satisfied that the reasoning of the ICO in his decision notice is correct in law and dismisses this appeal.

10. Our decision is unanimous.

Signed Chris Hughes

Judge of the First-tier Tribunal

Date: 24/2/2017