

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 23 April 2007

Public Authority: General Medical Council
Address: Regent's Place
350 Euston Road
London
NW1 3JN

Summary

The complainant requested details of the number of complaints to the General Medical Council against a particular doctor and the dates of those complaints. The request was refused, except for the details of a complaint which had already been disclosed at a public hearing. The public authority claimed that the information was exempt from disclosure under section 40(2) as it was the personal data of the doctor in question and that to release the information would breach the data protection principles. The Commissioner found that the exemption contained in section 40 was correctly applied and that therefore the public authority was right to withhold the information requested.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. **On 17 July 2006.** The complainant made a request to the General Medical Council ("the GMC") for information on the number of times a particular doctor had been reported to the GMC under the various complaints systems over the years and the dates that any complaints were received by the GMC.
3. **On 8 August 2006.** The GMC wrote to the complainant providing information concerning a complaint against the doctor which had reached the adjudication stage and resulted in a Fitness to Practice Panel hearing. It refused to disclose further information in relation to the doctor's fitness to practice history on the basis that it was exempt under section 40(2). It believed that the requested information was the personal data of a third party, the doctor in question, and that

disclosure would be a breach of the first principle of the Data Protection Act 1998 ("the DPA") as it would not be fair and lawful.

4. **On 21 August 2006.** The complainant asked the GMC to carry out an internal review of its decision.
5. **On 29 August 2006.** The GMC wrote to the complainant to inform him that the result of the internal review was to uphold the original decision. It believed that the number of complaints recorded against a doctor in its system was that doctor's personal data. There was no expectation on the part of the doctor that this information would be placed in the public domain, until such time as the complaint was the subject of a public committee or panel hearing. Disclosure of the number of complaints would therefore be a breach of the first principle of the DPA as it would neither be fair or lawful.

The Investigation

Scope of the case

6. **On 11 October 2006.** The complainant wrote to the Commissioner to complain about the GMC's refusal to provide details of the number of times and dates of complaints against the doctor. He felt that, as the doctor concerned had been erased from the GMC register for serious professional misconduct following a public hearing, the disclosure of the number of complaints made against the doctor during his professional life would cause him little, if any, further distress or damage. He also argued that there was a significant public interest in the disclosure of this type of information in demonstrating that public health and safety were being adequately protected and in ensuring public confidence in the operation of the GMC's internal procedures.

Chronology

7. **On 3 January 2007.** The Commissioner wrote to the GMC asking for details of the number of complaints it had received about the doctor and how many of these had proceeded to a public hearing. He indicated that he would normally seek submissions from a public authority with regard to its application of exemptions but noted that the GMC had very recently made submissions to him on a very similar complaint (FS50064698 issued on 15 December 2006). He therefore asked whether the GMC was content to rely on the submissions made for the complaint he had already determined or whether there were further submissions it wished to make.
8. **On 26 January 2007.** The GMC wrote to the Commissioner to confirm that it wished to rely on the arguments which had been accepted by him in the previous complaint.
9. In subsequent correspondence the GMC confirmed to the Commissioner that there had been no hearings in relation to the doctor, except the hearing which it

had already informed the complainant had taken place. It reiterated its view that it was only appropriate to provide details of complaints against a doctor if these had been disclosed at a public hearing.

Analysis

10. The full text of the section of the Act which is referred to can be found in the Legal Annex at the end of this notice, however the relevant points are summarised below.

Exemption

11. Section 40(2) of the Act provides an exemption in relation to requested information where it constitutes the personal data of a person who is not the requester and where its disclosure would contravene any of the data protection principles under the DPA. In this case, the GMC has submitted that the information held on the doctor concerned would breach the first data protection principle which requires that the processing of personal data is fair and lawful.
12. In dealing with this case, the Commissioner would like to make it clear that discussing the complaints history of the doctor in question in this Decision Notice does not necessarily mean that the doctor has been the subject of a complaint or complaints, except for the complaint of which the complainant has already been informed.
13. In order to rely on this exemption, the information requested must constitute personal data. The Commissioner has therefore considered whether information about the number of complaints and the details of any such complaint received against a particular doctor constitutes personal data of the doctor. To establish this, section 1(1) of the DPA, which contains the definition of personal data, has been considered. Section 1(1) of the DPA provides the definition of personal data which is data that relates to a living individual and from which that person can be identified.
14. Taking into account the definition of personal data, the Commissioner has considered whether the information requested could constitute an individual's personal data. The conclusion is that the information requested by the complainant is the personal data of the doctor in question, as the information would relate to a living individual who could be identified from the substance of the complaint. The information contained within any complaint would also be likely to provide some significant and biographical information about a living individual.
15. In addition, the Commissioner finds that the number of complaints received against the doctor would also constitute his personal data. As above, details as to whether a complaint had been received against a particular doctor would also constitute significant and biographical information about a living individual. The GMC holds information concerning complaints against doctors by recording it against the register of doctors. Therefore, the information is recorded in such a

way that it is positively recorded that no complaints have been received against a doctor and this therefore constitutes his/her personal data.

16. Having established that the information requested does constitute personal data, the Commissioner has therefore gone on to consider whether its disclosure would breach the DPA, in particular the first principle which provides that disclosure must be fair and lawful. This is examined in detail below.

Potential disclosure of details of complaints

17. The Commissioner viewed the request by the complainant for the dates of any complaints against the doctor as a request for disclosure of some of the details of the complaints, as opposed to a request for the numbers of complaints, which is an issue which is addressed separately in paragraphs 27-40.
18. In coming to this decision, the Commissioner has reviewed the GMC's complaints handling functions. It has the power to investigate complaints in its statutory remit, including any complaint that a doctor's fitness to practise may be impaired by virtue of misconduct, ill-health, deficient performance, a conviction or as a result of a decision from another regulatory body. This means the GMC deals with a variety of complaints against doctors which cover both their professional performance and their private lives. Not only can the GMC investigate complaints about a doctor's professional judgment and treatment of patients, but it can look, for example, at complaints about allegations of criminal activity, as well as looking into health issues, such as mental illness and addiction.
19. The Commissioner is satisfied that disclosure of this type of information would breach the DPA in that it would be contrary to the first data protection principle. It would be unfair and unlawful to release the details of any complaints that may have been received against the doctor, except for that information already disclosed. The disclosure of any such complaints would be likely to infringe the data protection rights of the doctor, as well as potentially the complainant and any relevant third party. As any complaint will necessarily be focussed on the doctor in question, it would be impossible to redact the details of the complaint in such a way as to satisfy the first principle.
20. While doctors are acting in a public capacity in discharging their duties (whether in the private or public sector), the Commissioner recognises that complaints received and investigated by the GMC can involve details of a doctor's private life. Further, allegations regarding their professional performance may also be unfounded and/or malicious. Were such details publicly available, this may harm a doctor, even if it were subsequently found that there was no case to answer and this fact had been explicitly stated upon disclosure of the information.
21. The GMC's Fitness to Practise procedure's are divided into two separate stages, namely 'investigation' and 'adjudication'. During the investigation stage, it investigates cases to assess whether they need to be referred to adjudication. The adjudication stage consists of Fitness to Practise Panel hearing those cases which are referred forward.

22. Upon receiving a complaint, the GMC decides whether there are issues which require further investigation and, if so, what form this should take. If the issues raised in the complaint do not directly relate to the doctor's fitness to practice then the complaint can be referred for investigation at a local level, for example by the doctor's employer. Where concerns potentially raise questions about a doctor's fitness to practise, the complaint will be investigated further and the doctor and his/her employer will be provided with details of the complaint. Further investigation is dependent on the complainant's consent.
23. At the end of the investigation, there are a number of actions that can be taken, including issuing a warning to the doctor or referring the case to a Fitness to Practise Panel. This is the final stage of the procedure which takes the form of a hearing which is held in public, unless it is hearing confidential information about a doctor's health. A fuller explanation of these procedures can be found on the GMC's website.
24. It has been noted from the above outline of the GMC's procedure that disclosure of a complaint to a member of the public under the Act may create an anomaly whereby the doctor is not yet aware that a complaint has been lodged. Until the complainant provides consent for the doctor to be notified, the doctor would be unaware that a complaint had been made. It would clearly be unfair for a member of the public to be able to access details of complaints made against a doctor before the doctor was him/herself aware of a complaint being made.
25. Once the GMC has determined that there is a case to answer under its Fitness to Practise regime, details of the complaint would usually enter the public domain following the public hearing. However, where the GMC feels that it would be in the public interest to do so, it can exceptionally release details of the complaint into the public domain at an earlier stage. The Commissioner is satisfied that this is a proportionate approach. It should prevent malicious or unfounded complaints from reaching the public domain and unfairly prejudicing the ability of a doctor to attract and treat patients, while similarly allowing those complaints which warrant investigation to be publicised in due course.
26. At present, the doctor in question has no expectation that details of complaints would be made public if the complaint has been closed off at an early stage. In view of this, it would be unfair for details of the complaints to be released without first notifying the doctor of this.

Potential disclosure of numbers of complaints

27. The Commissioner has given some consideration as to whether the number of complaints received against the doctor could be disclosed, even where this number may be zero. Firstly, the Commissioner has studied whether the information on the doctor's complaints histories, namely the details of any complaints and the numbers of complaints received, can be separated.
28. Having considered the evidence, the Commissioner believes that it is possible to separate the number of complaints from the details of any complaints received. As stated above, it has been established that the number of complaints received

against a doctor is the personal data of that doctor. So, the Commissioner has gone on to consider whether to disclose this information would breach the first principle of the DPA. In considering this point, the Commissioner has again taken into account the wide range of complaints which the GMC can investigate and the information that is already in the public domain as regards doctors.

29. The GMC currently only places certain information about doctors into the public domain. This information is listed as being a doctor's name, medical qualification and date of registration, with a recent change meaning that the number of public domain complaints and their outcomes are also now publicly accessible. This implicitly creates an expectation that other information, such as complaints which are closed before they reach a public hearing, will be treated as confidential.
30. In reaching a decision in this matter, much thought has been given as to whether the disclosure of a bare number, in this case to represent the number of complaints received, could be unfair. The deliberations have considered whether the situation involving a doctor's complaint history is analogous to other statistical information which has been released into the public domain. Currently, only complaints which have proceeded to a public hearing are routinely made a matter of public record, but the total number of all complaints received is not disclosed to the public.
31. In particular, the Commissioner has studied whether the number of complaints received against a physician is similar to the mortality rates for surgeons, details of which are published in some circumstances. Having studied the publication of such statistics, the Commissioner is aware that the relevant public authorities provide some context when disclosing this information. For example, an explanation of the reasons for a high mortality rate could be provided where a surgeon works with a high risk group, such as the elderly or infants. These mitigating circumstances allow the public to develop a much clearer picture of the situation rather than assuming that a particularly high mortality rate means that a surgeon or hospital is underperforming.
32. Having investigated some possible comparisons with other potentially similar types of statistical information, the Commissioner is not satisfied that the requested information can be categorised in the same manner. While there are some similarities between a surgeon's mortality rates and the numbers of complaints received by a doctor, the statistics do not cover identical fields.
33. On the one hand, mortality rates are essentially factual and can be contextualised relatively easily. On the other hand, complaints to the GMC are not necessarily grounded in fact and could therefore be malicious or vexatious. There could also, for example, be multiple complaints about the same issue. Providing the number of complaints received by a particular doctor could therefore provide a misleading impression of the doctor without any context.
34. Having established this, the Commissioner has gone on to consider whether it would be possible to provide an appropriate context for the information. However, given the wide remit of the GMC in dealing with complaints about doctors, the Commissioner has concluded that it would be extremely difficult to

provide any kind of context for the information without revealing the nature of the complaint. Having already decided that disclosure of the details of the complaints would breach the first principle, the Commissioner could not accept this as a potential solution.

35. The Commissioner has gone on to consider whether it would be possible to provide some sort of generic context, detailing the types of complaints that it can investigate and providing reasons why individual doctors might have particularly high numbers of complaints against them. However, providing such details when disclosing numbers of complaints would be entirely artificial as it would not be providing a suitably accurate context. In other words, any explanation would, by the nature of the anonymising process, be largely hypothetical and not always based on the facts of the matter. Such conjecture would not provide a useful, factual basis for patients to assess the competence of a doctor and, in considering the potential consequences for the doctors of any such disclosure, the Commissioner does not believe that it would be fair.
36. In assessing the fairness of disclosing the information, the Commissioner has also taken into account the fact that the GMC are the body for regulating doctors. It has been argued that the GMC's procedures are flawed. The Commissioner is aware of the recent criticism of the complaints handling procedures of the GMC, and that steps are being taken to remedy this.
37. While there is a legitimate public interest in making sure that the public are protected from any malpractice by doctors, the Commissioner does not believe that the first principle rights of the doctors should be breached in order to make available information which would not particularly assist the public in assessing their competence. Notwithstanding allegations of the flawed nature of the current complaints handling system, there is a clear mechanism in place.
38. The Commissioner also acknowledges the complainant's argument that, as the doctor concerned has been erased from the GMC register for serious professional misconduct following a public hearing, the disclosure of the number of complaints made against the him during his professional life would cause him little, if any, further distress or damage. However the Commissioner is of the view that, simply because action has been taken against a doctor in relation to a particular complaint, it does not follow that details of any other complaints made against the doctor should be released. These complaints may be unfounded and/or malicious and could still cause harm to the doctor concerned.
39. Taking into account all of the above, the Commissioner is satisfied that it would breach the first principle of the DPA to disclose the bare numbers of complaints received against the doctor in question.

The Decision

40. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

41. The Commissioner requires no steps to be taken.

Right of Appeal

42. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 23rd day of April 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Personal information

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“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) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data 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.