

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

### **Decision notice**

**Date:** 14 January 2013

**Public Authority:** General Dental Council  
**Address:** 37 Wimpole Street  
London  
W1G 8DQ

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

---

1. The complainant has requested a copy of an expert report. The General Dental Council (GDC) withheld the requested information under section 31(1)(g) with subsection 2(c) and in part under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that section 40(2) is engaged in relation to the whole of the withheld expert report.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

---

4. On 7 February 2012, the complainant wrote to the GDC and requested information in the following terms:  
  
"... a copy of the expert report written by [name redacted], referred to as C1 in the transcript of the Interim Orders Committee meeting of 2nd December 2010."
5. The GDC responded on 6 March 2012. It refused to provide the requested information under section 31(1)(g) with subsection 2(c) FOIA.
6. The complainant requested an internal review on 28 March 2012. On 27 April 2012 the GDC sent the complainant the outcome of its internal review. It upheld its original position and also said that another exemption, section 40 FOIA, was applicable.

## Scope of the case

---

7. The complainant contacted the Commissioner on 5 June 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the GDC was correct to withhold the requested information under section 31(1)(g) with subsection 2(c) or section 40(2) FOIA.

## Reasons for decision

---

### Section 40(2)

9. Section 40(2) FOIA provides an exemption for information which is the personal data of any individual, aside from the requester, and where disclosure of that personal data would be in breach of any of the data protection principles.
10. The Commissioner has first therefore considered whether the information redacted under section 40(2) is the personal data of one or more third parties.
11. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:  
"data which relate to a living individual who can be identified –
  - (i) from those data, or
  - (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the 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. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
13. In this case the Commissioner considers that parts of the withheld information would constitute the personal data of the expert who wrote the report, parts of the withheld information constitute the patient's personal data and parts of the withheld information constitute the

personal data of the dentist who was under investigation. There is overlap, and some parts may constitute more than one data subject's personal data. The whole report would however constitute third party personal data. The Commissioner has therefore considered this exception first to the entire report even though the GDC has applied in a more limited way.

14. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

### **Likely expectation of the data subject**

15. In relation to the patient's personal data, the GDC explained that it used the dental records of 16 patients in order to conduct this investigation. The health records of these 16 patients are therefore contained in the expert report. It said the patients would have no expectation that elements of their health records would be disclosed into the public domain, particularly as this information falls within the definition of sensitive personal data. The Commissioner accepts that the patients whose health records were used as part of the expert report, would have no expectation that this information would be disclosed into the public domain.
16. In relation to the expert who wrote the report, the report includes a professional history or background to this individual. Whilst the expert was acting in a professional capacity in writing the report, and the withheld information relates to that individual's professional career, the Commissioner does not consider that this person would have expected this information to be disclosed into the public domain in the context of the requested report. This is because although an interim hearing was held in relation to this case and interim fitness to practice restrictions were put on the dentist's registration, these were ultimately removed and the case did not reach the full public hearing stage. Furthermore whilst a member of the public would have been able to attend the interim hearing, it was not publicised and listed as with the full or final public hearing. Whilst the expert report was shared by those directly involved in the interim hearing it has never been made publicly available. The Commissioner therefore does not consider that the expert would expect their name and professional history to be disclosed in the context of this report as it was not shared publicly and did not reach the final public hearing stage.

17. For the reasons provided at paragraph 18 above, the Commissioner likewise does not consider that the dentist would expect information relating to the investigation into that individual's professional conduct would be disclosed into the public domain.

**Would disclosure cause damage and distress to the data subject**

18. The Commissioner considers that it would cause significant damage and distress to disclose information relating to a patient's dental records into the public domain as it forms part of their health records and is therefore sensitive personal data.
19. The Commissioner also considers that it would cause damage and distress to disclose the dentist's personal data. This is because whilst there were interim restrictions on the dentist's registration during the investigation, these were removed and it did not go to a full and final public hearing. To disclose information relating to this investigation which ultimately did not find that it was necessary to proceed to a full and final hearing would cause damage and distress.

**The legitimate public interest**

20. The Commissioner considers that there is a legitimate public interest in ensuring the GDC are investigating dentists fully, and making well balanced decisions based upon all evidence provided.
21. This must however be balanced with the interests of the data subjects, and where an investigation has not been deemed appropriate to proceed to a full and final public hearing the Commissioner does not consider it would be fair to disclose information relating to such an investigation.
22. The Commissioner's decision is therefore that it would be unfair to disclose the withheld information in this case and section 40(2) was correctly applied by the GDC, and should actually have been applied to the whole withheld report in its entirety. The Commissioner has not therefore gone on to consider the application of section 31 FOIA any further.

## 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**