

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2013

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

Decision (including any steps ordered)

1. The complainant has requested information concerning the qualifications of a named dentist from the General Dental Council (the "GDC"). The GDC provided the primary qualification of the dentist as this is publically available on its GDC register. However the GDC refused to provide the other information requested under section 40(2) of the FOIA.
2. The Commissioner's decision is that the GDC has correctly applied section 40(2) to the withheld information.

Request and response

3. On 15 June 2012 the complainant wrote to the GDC and requested information in the following terms:
 - "1. *What is [name redacted]'s primary qualification and in which country did he obtain it from?*
 2. *In which European state did he live and practice as dentist to be eligible for exempt person status?*

3. *Is he registered with a regulatory authority of dentists in another European country? If so, which one?"*
4. The GDC responded on 8 June 2010². It provided the complainant with the information requested at point 1 above but refused to disclose the information requested at points 2 and 3 under section 40(2) of the FOIA.
5. Following an internal review the GDC wrote to the complainant on 17 July 2012. It confirmed its earlier response.

Scope of the case

6. The complainant contacted the Commissioner on 8 October 2012 to complain about the way his request for information had been handled.
7. The Commissioner considers that this case is concerned with the GDC's application of section 40(2) of the FOIA to points 2 and 3 of the request.

Reasons for decision

8. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.
9. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
10. The Commissioner is satisfied that the data requested relates to a living individual who may be identified from that data and that it constitutes personal data.

Would complying with section 1(1)(b) contravene the first data protection principle?

11. The first principle of the DPA states that personal data must be processed fairly and lawfully.

12. In considering whether it would be unfair to provide information concerning the qualifications of a named individual and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

13. The withheld information in this case relates to the past European experience of the dentist concerned. The GDC has explained to the Commissioner that it considers the dentist has a reasonable expectation that his personal data would not be disclosed to the public under the FOIA.
14. The information has been provided to the GDC in confidence as part of the process of applying for registration with the GDC and is not information which is made public on the GDC's register. The GDC would not routinely make public such information and the individual in this case has not consented to such a disclosure.
15. The complainant has argued that although the dentist is not a senior public figure, he has a huge responsibility with regards patient safety which is of a great public interest. His qualification and European experience are the basis of his being granted a permanent registration with the GDC.
16. The Commissioner appreciates that the requested information relates to the dentist's professional life and, therefore, while there is an expectation of privacy, his role as a dentist is a public-facing role with inherent responsibilities to his patients.
17. However, the Commissioner considers that details of the dentist's European experience have been provided to the GDC in confidence. Therefore he considers that the dentist would have a reasonable expectation that the information would remain confidential and not be disclosed to the public under the FOIA.

Consequences of disclosure

18. The GDC has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure. However, it has stated that as disclosure would be contrary to the dentist's expectations and therefore unfair, it considers that disclosure would cause some distress to him.
19. The Commissioner is satisfied that the named dentist would have a reasonable expectation that the information in question, that had been passed to the GDC in confidence as part of its registration and validation process, would not be placed into the public domain by disclosure under the FOIA. Therefore he considers that disclosure of this information would be an invasion of the privacy of the dentist, and as such may cause him some distress.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

20. The complainant has argued that the dentist's past European experience and the name of the European regulatory body he was registered with are the prerequisite and basis of him being granted permanent registration with the GDC. Therefore, he has argued, this information is on a par with his qualification which is in the public domain. The primary qualification is available and is therefore considered to be of public interest.
21. The complainant has argued that for UK dentists, the GDC publishes the information it holds regarding the basis of its decision to grant registration and that it should do the same for dentists who qualified in a non-EEA country. He considers that the public has a right to know the qualification and experience behind the registration of a dentist and the granting of a licence to practice. He has argued that, as regulator, the GDC has a duty to safeguard patient safety. He has also argued that when a registrant undergoes disciplinary proceedings all such information is made public.
22. The GDC acknowledges that there is a tension between public access to information and the need to protect personal information. However it cannot see any legitimate public interest in disclosure in this case.
23. The GDC has argued that it publishes information about GDC registrants in accordance with its legislation, rules and regulations and includes on its register information which it considers to be necessary for patient protection. This includes registered address, date of first registration and current fitness to practise status.

24. Although the GDC publishes a dentist's primary dental qualification it does not publish all the additional information which it takes into account when deciding whether an individual is eligible for registration. The GDC has clarified that it publishes the standard information required in relation to all registrants, regardless of their route to registration.
25. The GDC therefore does not consider that there is any legitimate public interest in disclosing additional personal information in relation to this particular dentist's work history and previous registration.
26. The GDC has also argued that although the dentist is a GDC registrant, he is not an employee of the GDC and does not carry out any public function on its behalf. It therefore considers that the requested information concerns his private life. However, the Commissioner does not accept that this is the case as the past European dental experience of the dentist is clearly related to his professional life.
27. It could be argued there is a legitimate public interest in publishing information about an individual offering medical (or dental) services to the public. Disclosing information of this nature often promotes transparency and accountability. The Commissioner also considers that there is a legitimate interest in the public being confident that a dentist is appropriately qualified to carry out their profession. However, he considers that this legitimate interest is met by the information already published on the GDC's website, and by the GDC carrying out its regulatory role.
28. Although the Commissioner considers that the requested information relates to the dentist's professional role and not his private life, he notes that a dentist is not a senior public figure and does not hold an elected public office. The role of a dentist is not comparable to other public roles where members of government or other public bodies carry out functions which involve a greater degree of public accountability.
29. The Commissioner is satisfied that the dentist in question would have no reasonable expectation that the information in question would be disclosed to the world at large. The information was provided in confidence and the GDC does not routinely publish such information.
30. The Commissioner is therefore satisfied that providing information concerning the past professional experience of a named dentist would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual in question.

Conclusions

31. The Commissioner is satisfied that it would be unfair to provide information concerning the past experience of the named dentist. Such disclosure would contravene the first data protection principle and would not be fair.
32. The Commissioner is therefore satisfied that the GDC was correct to refuse to disclose this information under section 40(2) of the FOIA.
33. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Right of appeal

34. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF