

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

### **Decision notice**

**Date:** 24 August 2018

**Public Authority:** General Pharmaceutical Council

**Address:** 25 Canada Square  
London  
E14 5LQ

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

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1. The complainant requested from the General Pharmaceutical Council (GPhC) information relating to her own property. The GPhC disclosed some information, but the complainant believed that further information was held.
2. Whilst it was not cited by the GPhC, the Commissioner has exercised her discretion and considered the exemption provided by section 40(1) (personal data of the requester) of the FOIA. The Commissioner's conclusion is that all of the information falling within the scope of the request is the complainant's own personal data and so is exempt under section 40(1). Therefore, the GPhC was not obliged to disclose the requested information to the complainant under the FOIA.

#### **Background**

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3. The request is for information which relates to inspections that had been carried out by a GPhC inspector at the complainant's property. Those inspections related to an application to open a pharmacy within the complainant's residence.

#### **Request and response**

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4. On 11 January 2018 the complainant wrote to the GPhC and requested information in the following terms:

*"Under the freedom of information act and Data Protection Act (if applicable) I would kindly request details of the following:*

- *Details all correspondence internal and external, files notes or other information in relation to our property at [postcode redacted].*
  - *Please ensure this includes all electronically stored data and any information contained offline."*
5. On 5 February 2018 the GPhC responded. It provided the complainant with information in relation to the request which included correspondence between the GPhC and the complainant, internal correspondence and pages from the inspector's notebook. However, the GPhC withheld some other information under section 40(2) (personal information) of the FOIA
  6. On the same date the complainant asked the GPhC for an internal review. Following an internal review, the GPhC wrote to the complainant and confirmed that no other documents relating to her request had been withheld or deleted. The GPhC stated the information provided was complete.
  7. On 6 February 2018 the complainant requested further information from the GPhC which she considered missing from the response. She remained dissatisfied with the information provided and disputed the information was complete. This resulted in subsequent correspondence between the complainant and the GPhC.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 19 February 2018 to complain about the way her request for information had been handled. In particular, the complainant was concerned that the GPhC had not identified all the information it held that fell within the scope of her request.
9. The Commissioner has discretion to consider exemptions that were not cited by the public authority. Upon review of this case, the Commissioner's view was that it was appropriate to exercise her discretion to consider whether the information requested by the complainant would constitute her own personal data and hence would be exempt under section 40(1) of the FOIA. The following analysis covers section 40(1).

## Reasons for decision

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### Section 40 – personal data

10. Section 40(1) of the FOIA provides an exemption for information that is the personal data of the requester. Consideration of this exemption requires a single step; if the requested information constitutes the personal data of the requester, it is exempt.
11. At the time that the request was dealt with, the Data Protection Act 1998 (DPA) remained in force. Section 1(1) of the DPA defines personal data as:

*"...data which relate to a living individual who can be identified*

  - a) *from those data, or*
  - b) *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 from that information. 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 or has them as its main focus.
13. The complainant is seeking information about her application to the GPhC to open a pharmacy within her own residence. It is clear from the wording of the complainant's information request that all information falling within its scope must be about her own application to open a pharmacy in her property.
14. The Commissioner's view is that there are two grounds on which this information relates to the complainant; first as it relates to her property and, secondly, as it relates to her application to open a pharmacy. The approach of the Commissioner is that addresses are the personal data of the occupiers. Information about an individual's property is linked to them and has biographical significance for them.

15. As to the second ground – that the requested information relates to her application to open a pharmacy – the Commissioner considers it clear that information about that application is also linked to the complainant and has biographical significance for her. For these reasons, the Commissioner is satisfied that the requested information relates to the complainant.
16. Turning to the issue of whether the information identifies the complainant, the Commissioner has seen some of the information identified by the GPhC. As would be expected given the purpose of that information, the complainant is identified in this information by name. The Commissioner is also satisfied, therefore, that the complainant is identifiable from this information.
17. Having found that the requested information relates to the complainant and that the complainant is identifiable from this information, the Commissioner's conclusion is that the requested information is the personal data of the complainant. This information is, therefore, exempt under section 40(1) of the FOIA and the GPhC was not obliged by the FOIA to comply with the complainant's request.

## **Other matters**

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18. Whilst the Commissioner cannot in this notice order the GPhC to reconsider the complainant's request as a subject access request made under the GDPR / Data Protection Act 2018, she does expect the GPhC to now take that action. The Commissioner would also stress to the GPhC that in any case where an individual has made a request for their own personal data, it should process that as a subject access request. This remains the case even where the complainant has ostensibly made their request under the FOIA.
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## Right of appeal

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19. 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: 0870 739 5836

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

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

20. 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.
21. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**