

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2019

Public Authority: General Medical Council
Address: 3 Hardman Street
Manchester
M3 3AW

Decision (including any steps ordered)

1. The complainant has requested information regarding a particular individual ("the Individual") being removed from the Medical Register.
2. The Commissioner's decision is that the request was vexatious and therefore the General Medical Council ("the GMC") was entitled to rely on Section 14 to refuse it.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 9 June 2018, the complainant wrote to the GMC and, referring to the individual by name and by GMC registration number, requested information in the following terms:

"Please provide me with a full copy of the GMC documents pertaining to the following person being erased from the GMC Register."
5. The GMC responded on 14 June 2018. It refused to provide the information and cited Section 40(2) of the FOIA (Third Party Personal Data) as its reason for doing so.
6. Following an internal review the GMC wrote to the complainant on 10 August 2018. It revised its position and now refused the entire request

as vexatious, thus indicating that it was relying on section 14(1) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 13 August 2018 to complain about the GMC's use of Section 14 to refuse his request.
8. The scope of the investigation and this notice is to determine whether the request was vexatious.

Reasons for decision

Was the request vexatious?

9. Section 14 of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

10. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
11. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: "*...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*" (paragraph 45).

13. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
14. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies"*.
15. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
16. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."*

The complainant's position

17. The complainant has argued that disclosure of the requested information was *"in the overriding Public Interest."* He argued that Section 40(2) had been misapplied in the initial response and, when he attempted to challenge that by means of an internal review, the GMC *"instead engaged in unlawful acts against the requester."*
18. The complainant further argued that the GMC's response contravened the Data Protection Act 2018, the Public Interest Disclosures Act 1998 and the Equality Act 2010. He argued that he had been "victimised" because of a Public Interest Disclosure he had made.
19. He further described the GMC's response as an *"unlawful malicious personal attack"*, as *"vague and misrepresented and false"* and an attempt *"to victimise, bully, harass and degrade and demean the requester."*

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

20. Finally the complainant noted that the Individual had previously been subject to a "Fitness to Practice" sanction which had been published on the Medical Register but had now been removed. It therefore followed, he argued, that there could be no good reason to refuse the request.

The GMC's position

21. The GMC set out to the Commissioner that it considered that the request in question was part of a long-running campaign, by the complainant, to advance a personal grievance against both the Individual and Warwick Medical School.
22. In its internal review, the GMC noted that:

"As we have explained previously, it is our view that over the last decade you have made frequent and repeated requests about Warwick Medical School. We believe these requests have been made in order to continue corresponding on matters that have been investigated and closed."

23. The GMC further explained to the Commissioner that the complainant was engaged in litigation proceedings against a number of medical schools, including Warwick, where the GMC was named as a co-respondent.
24. During the period 2006-2015, the GMC noted that it had received no fewer than 23 complaints from the complainant against various doctors. It stated that none of these complaints had resulted in either a sanction or a warning for the doctors concerned and that 16 of the 23 complaints had not met the threshold for a full investigation.
25. The Commissioner was provided with a schedule of the complainant's requests spanning the years 2008-2018. The complainant had submitted a total of 23 which had, in total, incorporated a total of 134 separate questions. 11 of these requests had mentioned Warwick Medical School, with 42 questions having been submitted about the School (plus several others about parties connected to the School).
26. The GMC's view is that the complainant was:
- "using the [FOIA] as a means to cause annoyance or embarrassment to an individual with whom he has a personal grievance and also to prolong corresponding with us about staff members at Warwick Medical School having already raised complaints about them."*

The Commissioner's position

27. The Commissioner's position is that the request was vexatious.
28. The requests that the complainant has made are frequent and there is an underlying theme of the GMC "failing" (in the complainant's view) to exercise its statutory and regulatory functions. There are also a significant number of requests that relate to Warwick Medical School and to the Individual. The requests for information (and for internal reviews) therefore tend to be lengthy and worded in pejorative terms.
29. The Commissioner considers that the GMC has provided her with ample evidence to suggest that the complainant is using the FOIA as means to re-open, re-visit and re-litigate matters which have already been closed. Allowing such requests to continue would serve only to prolong the grievance the complainant has with the GMC, with Warwick Medical School and with the Individual.
30. The Commissioner struggles to see the "overriding public interest" which the complainant believes applies to this information. Indeed, whilst the Commissioner is happy to accept that the complainant himself has an "overriding interest" in the information, she takes the view that any wider public interest is negligible and outweighed by the ongoing burden to the GMC in dealing with the requests.
31. The events which he alleges took place would have taken place more than ten years before the request was made. The allegations appear to have been looked at some time ago and a conclusion reached that no further action was required. It is difficult for the Commissioner to see why answering this particular request is likely to advance matters.
32. The Commissioner therefore concludes that it is time that a line is drawn. Whilst, at least at the outset, the complainant's earlier related requests may have had some merit, this is no longer the case. The complainant's focus seems to have shifted from acquiring information to keeping his personal grievance alive. This is an inappropriate use of the FOIA process.
33. The Commissioner thus concludes that the request was vexatious and therefore the GMC was not obliged to comply with it.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

**Ben Tomes
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