

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

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

Decision (including any steps ordered)

1. The complainant submitted a complaint to the General Medical Council (GMC). The GMC considered her complaint but refused to take any action. The request is for the evidence base for the GMC's refusal to investigate her concerns. To the date of this notice, the GMC has not responded to this request in accordance with its obligations under FOIA.
2. The Commissioner has considered the request. She is satisfied that it is a valid request for information, which meets the requirements of section 8 of the FOIA. As the GMC has not to date responded to it, the Commissioner has found the GMC in breach of section 10 of the FOIA.
3. The Commissioner requires the GMC to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's information request of 28 November 2018 in accordance with the FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. On 14 January 2018 the complainant lodged a complaint with the then Chair of the GMC. The correspondence was passed to the GMC Fitness to Practise Directorate which considered whether a formal investigation should be opened. On 26 July 2018 the GMC informed the complainant that it would not be taking any action into the concerns she had raised.
6. On 1 September 2018 the complainant requested the following information:

"Please can you send me all in information relevant to my recent correspondence, ref above, with the GMC.

The relevant window of time is 14 January 2018 to date."

The GMC acknowledged the request on 4 September 2018 and advised the complainant that it would consider her request under the Data Protection legislation, as it was a request for her own personal data. On 20 November 2018 a response to this request was provided together with a 709 page bundle of documents.

7. The complainant responded on 28 November 2018 and amongst other things made the request for information cited below, which is the subject of this decision notice.

Request and response

8. On 28 November 2018, the complainant wrote to the GMC and requested information in the following terms:

"So, please can you help me by answering these questions:

 - 1--If an evidence base [ie 'facts' and 'information'] for the GMC refusal to investigate exists then please show this to me.
 - 2--If there is no such evidence base, then please state such."
9. Further correspondence took place but no formal response to the above request has to date been provided.
10. The GMC has explained since then to the Commissioner that it responded on 3 December 2018 and advised the complainant that her ongoing concerns would be passed to the Rule 12 Review Team. The Rule 12 Review concluded on 26 February 2019 upholding the original decision not to investigate her complaint. It considers there were no signs of a genuine desire or expectation that the email of 28 November

2018 would be considered under the FOIA or General Data Protection Regulations (GDPR) and it stated that it is entitled to respond to queries as part of its normal course of business. It also made the point that the complainant had commented on the matter on her own website on 9 January 2019. She made reference to her complaint, the outcome and her judicial review but there was no mention of her waiting for a response to her request of 28 November 2018 under the FOIA and/or GDPR.

Scope of the case

11. The complainant first contacted the Commissioner on 21 March 2019 to complain about the way her request for information had been handled. Initially the Commissioner did not have the necessary documents she required to investigate the matter. It then took some time to establish when the above request (the request referred to in paragraph 8 above) was made and whether it had been responded to in any meaningful way by the GMC. The Commissioner has then been in recent discussions with the GMC over the request and whether it has a duty to respond. The GMC has been unwilling to date to informally resolve this matter and issue a response to the request under FOIA, as the Commissioner has suggested.
12. This notice is therefore required to first establish whether the request of 28 November 2018 is a valid request under FOIA and if it is, second, to establish whether the GMC has met its obligations under FOIA in relation to this request. If it is a valid request and it is found that the GMC has not met its obligations under FOIA, this notice will order steps compelling the GMC to comply with the legislation.

Reasons for decision

13. Section 8 of the FOIA states that any reference to a "request for information" is a reference to such a request which –
 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
14. The Commissioner considers that if a request meets the above requirements it is a valid request for information under the FOIA and the

public authority has an obligation to respond to it within 20 working days.

15. Looking at paragraph 8 above, the request clearly describes the information requested. It was made in writing, submitted by email to the GMC and the correspondence provided the name of the complainant and the email address to use for its response.
16. It meets the requirements of section 8 and so is a valid request for information under FOIA.
17. Section 10 of the FOIA requires a public authority to respond to information requests promptly and in any event no later than 20 working days from receipt.
18. Being a valid request the GMC is obliged to respond in accordance with FOIA and as it has not to date issued its response, the Commissioner has found it in breach of section 10 of the FOIA.
19. She requires the GMC to issue a response to the request in accordance with its obligations under FOIA.

Other matters

20. It is disappointing that the Commissioner has had to resort to a decision notice to compel the GMC to meet its duties under the FOIA. It is appreciated that in practice some information requests can be missed, particularly if there is other correspondence between the GMC and the complainant going on. It is also appreciated that some correspondence is dealt with during the normal course of business.
21. However, in this case, the request clearly meets the requirements of section 8 of the FOIA and it is disappointing that the GMC has been unwilling to date to engage with the Commissioner on an informal basis to try and resolve this matter for the complainant and ensure that a response is issued to the request in accordance with its obligations under FOIA.

Right of appeal

22. 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@justice.gov.uk

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

23. 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.
24. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF