

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 8 September 2011

**Public Authority:** Health Professions Council  
**Address:** Park House  
184 Kennington Park Road  
London  
SE11 4BU

### Summary

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The complainant requested information relating to a complaint made against a health professional. Specifically, he asked for a copy of the health professional's response in regard to the complaint. The public authority refused to disclose this information under sections 30, 31, 40 and 41 of the Act. After investigating the case the Commissioner decided that section 40(5)(b)(i) applied, and the public authority was therefore excluded from its duty to confirm or deny whether the information was held. The Commissioner does not require the public authority to take any steps.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 1 October 2010 the complainant wrote to the Health Professions Council (the "HPC") and requested the following information,

*"...the responses [named health professional] gave to the Investigating Committee panel."*

3. The HPC responded on 13 October 2010. It confirmed that this information was held, but stated that it was exempt under sections 30 and 41.
4. The complainant wrote to the HPC and requested an internal review. This was acknowledged by the HPC on 29 October 2010.
5. The HPC carried out an internal review, and responded on 25 November 2010. It stated that the requested information was exempt under sections 30, 31, 40 and 41.

## The Investigation

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### Scope of the case

6. On 27 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

### Chronology

7. On 20 July 2011 the Commissioner wrote to the complainant and informed him of the likely outcome of the case. He asked the complainant whether, after considering the points raised in the letter, he wished the case to continue to a decision notice.
8. On 1 August 2011 the complainant contacted the Commissioner and confirmed that he wished to proceed to a decision notice.

## Analysis

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### Exemptions

#### Section 40

9. Sections 40(1) to (5) provides exemptions for information which falls under the definition of personal data, as set out in the Data Protection Act 1998 (the "DPA"). In this case the Commissioner has first considered the application of section 40(5)(b)(i).
10. In relation to a request for information that is the personal data of an individual other than the applicant section 40(5)(b)(i) states that a public authority is not under a duty to confirm or deny whether that information is held if to do so (other than under the Act) would be in breach of the principles of the DPA.

11. The 'duty to confirm or deny' is set out in section 1(1)(a) of the Act. This states that,

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request..."*

12. Therefore if to comply with the duty to confirm or deny whether it holds requested information a public authority would disclose personal data of a third party, and if that disclosure would (in itself) be in breach of the data protection principles, section 40(5)(b)(i) would apply.
13. If a public authority is exempt from the duty to confirm or deny whether information is held, it does not have to go on to consider whether that information should be disclosed.
14. The full text of section 1 and section 40 of the Act can be found at <http://www.legislation.gov.uk/ukpga/2000/36/content>.
15. The Commissioner notes that strictly speaking, the request was not to know whether a complaint had been made against the named health professional. However, the nature of the request was such that even by confirming or denying whether it held relevant information the HPC would inevitably reveal whether or not such a complaint had been made.
16. Therefore the Commissioner considers that the proper approach is to first consider whether or not the Trust was excluded from the duty to confirm or deny whether relevant information was held, by virtue of section 40(5)(b)(i).
17. In order to consider the application of section 40(5)(b)(i), the Commissioner has to first consider whether the requested information, if held, would be the personal data of a third party (i.e. the named health professional). If so, he has to consider whether or not confirming or denying whether a complaint had been made about the named health professional would contravene any of the data protection principles – in particular the first data protection principle.
18. In reaching a view on this the Commissioner has had to bear in mind that the Act is applicant blind, except in a few limited scenarios, none of which are applicable in this case. In other words, the potential disclosure of information under the Act has to be considered as a potential disclosure to the world at large. Consideration cannot be given to the identity of the applicant.

### **Is it the personal data of a third party?**

19. The Commissioner has first considered whether the information, if it were held, would be the personal data of the named health professional.
20. Personal data is defined in the DPA as information 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, or is likely to come into the possession of, the data controller.
21. In this instance the requested information, if held, would relate to a complaint that had been made against a named health professional.
22. The Commissioner is satisfied that, at the time of the request, the named health professional was alive. Therefore the requested information would, if it were held, relate to a living individual. He is also satisfied that that individual would be identifiable from this information.
23. Furthermore the Commissioner is of the view that whether or not a complaint has been made against a named individual acting in their professional capacity is information which constitutes the personal data of that individual.
24. Therefore the information, if it were held, would be the personal data of the named health professional.

### **Would confirming or denying whether the requested information was held contravene the first data protection principle?**

25. The first data protection principle requires (amongst other things) that personal data should be processed fairly and lawfully.
26. As noted above, the nature of the request in this case is such that even by confirming or denying whether it held relevant information the HPC would inevitably reveal whether or not such a complaint had been made.
27. In considering whether or not confirming or denying a complaint had been made would contravene the first data protection principle, the Commissioner has taken into account the reasonable expectations of the named health professional, the legitimate interests of the public, and the rights and freedoms of any named individual.

28. The HPC's website sets out details of its process for investigating fitness to practise complaints.<sup>1</sup> In summary, it explains that when a complaint is received, details are sent to the health professional concerned. The health professional is asked to respond. Once that response is received (or if the health professional chooses not to respond) the details of the case are then passed to an Investigating Committee to decide whether there is a case to answer. This is carried out in private. The Committee can decide that more information is needed, that there is a case to answer, or that there is no case to answer. If it is decided that there is a case to answer, the matter is then passed on to another HPC committee. If this happens, some details of the case and the hearing are placed in the public domain prior to the hearing taking place. However, if it is decided that there is no case to answer, the matter is then closed and no information about the complaint is placed into the public domain.
29. Bearing this in mind, the Commissioner is satisfied that in relation to fitness to practice complaints, the health professionals about whom complaints have been made would have a reasonable expectation of privacy and would not expect the public to have access to information which discloses whether or not a complaint had been made about them – unless that complaint had advanced to a stage where details had been made public.
30. The Commissioner considers the public has a legitimate interest in knowing that health professionals are fit to practise. For instance where an allegation against a health professional's fitness to practice has been proven to be founded via a complaints investigation process, then the public has a legitimate interest in knowing that such an allegation was made, as well as the details of the allegation and actions taken as a result by the relevant public bodies. Therefore there is, in effect, a legitimate interest in knowing whether or not an individual was the subject of a complaint to the extent that it confirms that there have been legitimate and proven concerns about their fitness to practise.
31. The Commissioner is however aware that it is inherent in the nature of their role for health professionals to be the subject of complaints (founded or unfounded). The public interest is in knowing they are competent enough in their roles and meet all the expected standards. In the Commissioner's view this interest is not satisfied by merely knowing their complaints history, rather, it is the existing regulatory mechanisms ensuring standards are maintained that satisfy the public's legitimate interest.

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<sup>1</sup> <http://www.hpc-uk.org/complaints/raiseaconcern/investigations/>

32. It is the role of the HPC to ensure that health professionals maintain the required fitness to practice standards. Generally speaking therefore, the public interest in ensuring these standards are maintained is satisfied by the role carried out by the HPC and its committees, rather than by knowing an individual's complaints history. Specifically in this case, the legitimate interest of the public would not be satisfied by responding to a request for information in a manner which would reveal whether or not the named health professional had been the subject of a complaint. The disclosure is therefore not necessary for the purposes of satisfying the legitimate interests of the public.
33. In addition to this, whilst it may be true that the release of information confirming that a complaint had been made would be useful for the public when it had been found that there was a case to answer, the Commissioner considers it important to distinguish this from complaints which are unfounded or have not been upheld. Bearing in mind the role and function of the HPC, he is satisfied that disclosing whether or not named parties were subject to complaints and subsequently investigated is not necessary for the purposes of the legitimate interests pursued by the public – where those complaints are unfounded or have not been upheld.
34. Therefore, the Commissioner is satisfied that disclosing whether or not the named health professional was the subject of a complaint is not necessary for the purposes of legitimate interests of pursued by the public, and this disclosure would be unwarranted by reason of prejudice to the rights and freedoms and legitimate interests of the professional in question.
35. The Commissioner is satisfied that any response which confirmed or denied whether the requested information was held would contravene the first data protection principle.
36. The Commissioner therefore finds that the HPC was not obliged to confirm or deny whether it held the requested information by virtue of the provisions of section 40(5)(b)(i).

## **The Decision**

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37. The Commissioner's decision is that the HPC did not have a duty to comply with section 1(1)(a) of the Act on the basis of the exemption contained at section 40(5)(b)(i).

## **Steps Required**

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38. The Commissioner requires no steps to be taken.

## **Other matters**

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39. The Commissioner acknowledges that this has been a complex case and can understand the HPC's failure to correctly apply section 40(5)(b)(i) on this occasion. However he would encourage the HPC and other public authorities to always consider the application of section 40(5)(b)(i) when considering its response to a request of this nature in the future.

## Right of Appeal

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40. 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,  
Arnhem House,  
31, Waterloo Way,  
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)

41. 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.

42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 8<sup>th</sup> day of September 2011**

**Signed .....**

**Pamela Clements  
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Information Commissioner's Office  
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