

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2013

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Health and Care Professions Council (HCPC) for information it obtained or issued in relation to a fitness to practice complaint she had previously made against a psychologist. The HCPC refused the request under the exemptions in sections 30 (investigations), 31 (law enforcement), 40(1) (personal data of the applicant), 40(2) (personal data of a third party) and 41 (information provided in confidence) of FOIA. The Commissioner has investigated the complaint and found that the requested information is the personal data of the complainant and therefore is exempt under section 40(1).
2. The Commissioner requires no steps to be taken.

Request and response

3. On 4 December 2012 the complainant contacted the Health and Care Professions Council (HCPC) to request all evidence or information obtained or issued by HCPC concerning her in the context of a fitness to practice investigation. The complainant had previously complained to the HCPC about a registered Psychologist which had resulted in the investigation referred to in the request.
4. The HCPC responded to the request on 10 January 2013 when it confirmed that it held information falling within the scope of the request. However it said that the information was exempt from disclosure under the exemptions in sections 30 (investigations), 31 (law enforcement),

40(1) (personal data of the applicant), 40(2) (personal data of a third party) and 41 (information provided in confidence) of FOIA. In the case of the qualified exemptions the HCPC said that it had concluded that the public interest in maintaining each exemption outweighed the public interest in disclosure.

5. The complainant subsequently asked the HCPC to carry out an internal review of its handling of her request and it presented its findings on 1 February 2013. The HCPC now confirmed its earlier decision that the request was exempt from disclosure under sections 30, 40 and 41. It clarified that if section 30 was found to not be engaged then the section 31 exemption would apply in the alternative.

Scope of the case

6. On 2 February 2013 the complainant contacted the Commissioner to complain about the decision to refuse her request for information.

Reasons for decision

7. HCPC has provided the Commissioner with a very large bundle of information which amounts to the case file held in relation to the complaint against the registered psychologist. As noted above, the HCPC maintains that the information falls under a number of exemptions. However, as the information would appear to relate to the applicant and the individual she complained about the Commissioner considers it appropriate to consider the section 40 exemption in the first instance. Section 40 is also an absolute exemption and so if it applies there will be no public interest test to apply.
8. In this case it is apparent that the information falling within the scope of the request is the personal data of the complainant. The information focuses on the complaint she made against the psychologist, and discusses her mental health and behaviour. As one might expect, the information also includes the personal data of other individuals namely, the psychologist as well as witnesses who were approached during the course of the investigation. However, in the Commissioner's view the information focuses much more on the complainant rather than the psychologist complained about as it discusses her mental health and state of mind and the circumstances that led her to make her complaint. Where the documents include information about the psychologist or other witnesses this is in the context of discussing their relationship and

involvement with the complainant. Indeed the complainant makes it clear in her request that she is seeking information "concerning me".

9. It should be noted that where requested information constitutes the personal data of more than one individual, then both individuals are data subjects for the purposes of section 40. However, in situations like this, where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.
10. There is no right of access to personal data about oneself under FOIA, as section 40(1) of FOIA provides that information is exempt if it constitutes personal data of which the applicant is the data subject.

Personal data is defined in the Data Protection Act 1998 as:

"personal data" means 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 intentions of the data controller or any other person in respect of the individual;

11. As explained above, the complainant was the person who submitted the complaint to the HCPC and the information contains detailed information about the complainant and her mental health. Where the information relates to evidence provided by witnesses this discusses their knowledge of the complainant's personal history including expressions of opinion on her mental health and well-being.
12. The complainant is clearly identifiable from the information and the information is significant and biographical to her. Indeed the complainant makes it clear in her request that she is seeking information "concerning me". The Commissioner has no hesitation in finding that the information is the personal data of the complainant and therefore the section 40(1) exemption applies.

Other matters

13. As the Commissioner has decided that the information is the personal data of the complainant he will consider whether she has a right to access this information under section 7 of the Data Protection Act 1998 as part of a separate investigation under that legislation.

Right of appeal

14. 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

15. 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.
16. 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

Pam Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF