

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

### **Decision notice**

**Date:** 27 October 2022

**Public Authority:** Health and Care Professions Council

**Address:** 184-186 Kennington Park Road  
London  
SE11 4BU

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

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1. The complainant has requested information from the Health and Care Professions Council ("the HCPC") relating to information about a complaint they submitted regarding a request for information about specific files held by the HCPC in relation to fitness to practise. The HCPC treated part of the request as a Subject Access Request (SAR) and refused to disclose the information they assessed under FOIA, citing sections 30(2)(a)(iii) and 40(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the HCPC has correctly applied section 30(2)(a)(iii) to the requested information, therefore the Commissioner has not considered section 40(2) and requires no steps to be taken.

#### **Request and response**

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3. On 23 October 2021 the complainant wrote to the HCPC and requested information in the following terms:

"I am writing to make a SAR for the two referrals I made [specified reference numbers]-please note, I do not want any information I have already sent, but rather the investigation materials and the responses from the registrants."

4. The HCPC responded on 18 November 2021. It stated that, although some of the requested information was the complainant's personal data, it was refusing to disclose it under Schedule 2 Part 2 paragraph 7(2) of the Data Protection Act 2018, as it was personal data being processed in connection with regulatory activities.
5. The HCPC also stated that some of the requested information was the personal data of third parties and had been considered under FOIA. The HCPC applied section 40(2) of FOIA and also section 30(2)(a)(iii) as the information was held by it for the purposes of a 'fitness to practise' investigation.
5. The complainant requested an internal review on 18 November 2021, to which the HCPC responded on 16 December 2021, explaining that it was maintaining its position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 9 April 2022 to complain about the way their request for information had been handled.
7. The Commissioner has considered the HCPC's handling of the complainant's request, in particular its application of the specified sections of FOIA. The part of the request which was handled under the Data Protection Act 2018 is being dealt with under a separate reference number and does not form part of this decision notice.

### **Reasons for decision**

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8. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to apply section 30(2)(a)(iii) of FOIA to the relevant part of the complainant's request.
9. Section 30(2)(a)(iii) of FOIA allows a public authority not to disclose information if it is held for investigations for certain purposes specified in section 31(2) of FOIA. In this case the HCPC has stated that the requested information is held for the purposes of ascertaining a person's fitness or competence in relation to any profession or other activity which he is, or seeks to become, authorised to carry on (section 31(2)(d) of FOIA).
10. The Commissioner from his reading of the complainant's request and the HCPC's submissions is satisfied that the requested information is held by

the HCPC as part of an investigation into the fitness to practise of specified individuals. Therefore the HCPC has correctly applied section 30(2)(a)(iii) of FOIA according to the Commissioner's guidance on the application of section 30 of FOIA.<sup>1</sup>

### **Public interest test**

11. As section 30 is a qualified exemption, a public authority is required to balance the factors in favour of maintaining the exemption against those in favour of disclosing the requested information. This is known as the 'public interest test' as set out in section 2(2) of FOIA.
12. The Commissioner has considered all factors both in favour of maintaining the exemption and of disclosure. In favour of maintaining the exemption, the HCPC has argued that maintaining the confidentiality of the information provided is essential in order to enable it to correctly assess a registrant's fitness to practise and thereby protect the public. If the information were to be disclosed into the public domain, the HCPC argues that this would have a negative effect on its relationships with registrants and other third parties e.g. registrants' employers, which would lead to involved parties being less willing to assist in its investigations.
13. The HCPC did not show evidence that they had balanced the above factors against any factors in favour of disclosure. However, the Commissioner considers that the factors in favour of disclosure in this case, e.g. the importance of transparency and accountability in the decision-making of public authorities, are outweighed by the necessity to protect the public by being able to thoroughly and without impairment investigate and assess a registrant's fitness to practise. Therefore the Commissioner considers that in all the circumstances of the case the public interest is in favour of maintaining the exemption at section 30(2)(a)(iii) of FOIA.
14. As the Commissioner considers that section 30 (2)(a)(iii) of FOIA has been correctly applied in this case, he has not considered the HCPC's application of section 40.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

## Right of appeal

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15. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

16. 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.
17. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**