

16 December 2021
Our ref: IR1-3287283464

3 Hardman Street
Manchester M3 3AW

Dr S Ali

Email: gmc@gmc-uk.org
Website: www.gmc-uk.org
Telephone: 0161 923 6602
Fax: 0161 923 6201

By email only to: request-773247-9248ee8c@whatdotheyknow.com

Dear Dr Ali

Information request review

Further to your email of 30 November raising a number of concerns about our response of 29 November 2021 provided to you under the Freedom of Information Act 2000 (FOIA). I am now in a position to respond to you.

Chronology

The chronology of this request is somewhat lengthy and I have summarised this below:

Your original request sent on 10 July 2021 asked the following:

'Please can you provide legal opinions, reasonings or internal investigations in relation to the MPTS publishing prior to a hearing untested allegations'

My colleague Matthew McCoig-Lees responded to your request on 11 November 2021 informing you that he *'asked the relevant departments and they have not been able to locate anything which could be reasonably described as 'legal opinions, reasonings or internal investigations' to explain the underlying rationale of publishing allegation information in our website notices.'* He went on to inform you:

'We also hold operational guidance about how and what to include in website notices and information about specific instances where we chose not to publish website notices or provided them in a nonstandard way. Finally, as you can see in the guidance, we have a discretionary power to publish or disclose any information about a doctor where we believe it to be in the public interest, which is the power under which we publish website notices. We have taken legal advice about what we can and should publish under Section 35B(2) of the Medical Act 1983 but not in relation to the specific practice of publishing website notices.'

And:

'I would conclude by stating that, in part based on the advice we have received in relation to publishing other information under Section 35B(2) of the Medical Act 1983, the rationale of publishing information about allegations prior to a hearing is that it is a justifiable interference with the legal rights of individuals which is necessary and proportionate to meet our statutory objectives.'

In your emailed response of the same date you state as follows:

'In relation to CONTENT, you also confirm the GMC and or MPTS have taken legal advice about what you can and should publish under Section 35B(2) of the Medical Act 1983 - which underpins this and other publishing content. A copy of this would be appreciated to satisfy this FOI request.'

This email was considered to be a new request on the basis that Mr McCoig-Lees had made clear that this legal advice did not fall within the scope of your original request and was set up accordingly (our ref: IR1-3268180841). Mr McCoig-Lees responded on 29 November 2021 providing some clarification from his perspective and confirmed that the legal advice you specifically requested in your email of 11 November 2021 was subject to the exemption at S42 of the FOIA on the basis that it attracted legal professional privilege.

In your email response received on 30 November 2021 you comment on the administrative process followed in relation to your request, put forward arguments that the FOIA exemption is not applicable and go on to ask for the identity of the legal adviser.

My review

I have carefully reviewed the full chain of emails in relation to this matter.

Your initial email of 10 July 2021 asked for legal opinions, reasonings or internal investigations relating to the MPTS publishing allegations about doctors prior to a hearing. Hearings are listed in date order identifying the doctor and the allegations that the doctor is facing. Here's a link to the relevant section of the MPTS website: <https://www.mpts-uk.org/hearings-and-decisions/medical-practitioners-tribunals?page=1#hearingsTabLink>

In Mr McCoig-Lees' response of 11 November 2021 he informed you that we do not hold any information that fall within the parameters of your request. He expanded on this response by informing that we do have legal advice on the publication and disclosure requirements of Section 35B(2) of the Medical Act 1983:

(2) The General Council may, if they consider it to be in the public interest to do so, publish, or disclose to any person, information - (a) which relates to a particular practitioner's fitness to practise, whether the matter to which the information

relates arose before or after his registration, or arose in the United Kingdom or elsewhere; or

(b) of a particular description related to fitness to practise in relation to every practitioner, or to every practitioner of a particular description.

He made clear that this didn't touch specifically on the practice of publishing website notices focussing instead on the publication of information post-hearing.

In your follow-up email of 11 November 2021 you asked for a copy of this legal advice. This was subsequently refused by Mr McCoig-Lees.

Firstly I am satisfied that we do not hold information which falls within the scope of your original request.

Further, I have reviewed the legal advice referred to by Mr McCoig-Lees and having done so I am satisfied that it is subject to the legal advice element of the legal professional privilege exemption at S42(1) of the FOIA. I can confirm that the advice was provided by external Counsel to the GMC and therefore I am entirely content that the required adviser/client relationship existed.

As you may be aware this is a 'qualified exemption'. That is to say it is subject to a public interest test. It is my view that the public interest falls in favour of withholding the legal advice. There is an in-built strong public interest in maintaining the exemption in respect of legal advice given the relationship between a legal adviser and their client. I do not consider that the arguments for the public disclosure of the full advice on this issue are sufficient to outweigh the public interest in maintaining the exemption. I also recognise, as has been made clear, that the legal advice does not specifically relate to the original question you posed.

You go on to ask for the identity of the legal adviser. I have assumed that you mean the author of the legal advice as opposed to the individual who made the decision to apply the FOIA exemption. Should you mean the latter I can confirm that the decision was taken by Mr McCoig-Lees. If you were seeking the identity of the author of the legal advice it is my view that this information would be subject to the FOIA exemption as follows:

Section 40(2), by virtue of section 40(3A)(a) - This exemption applies where the information is the personal data of a third party and where releasing the information would breach any of the principles relating to the processing of personal data listed at Article 5 of the General Data Protection Regulation (GDPR). In this instance disclosure would breach the first principle, which requires the processing of information to be lawful, fair and transparent. I do not believe that any of the legal bases for processing listed at Article 6 of the GDPR are met and therefore giving you the information would be unlawful.

Further action

Should you continue to be dissatisfied with our response you do as you are aware, have a further right of complaint to the Information Commissioner's Office. Their contact details are as follows:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Tel. no: 0330 414 6649

Email: icocasework@ico.org.uk

We will not engage further with you in respect of this particular request unless or until the Information Commissioner's Office orders us to do so.

Yours sincerely

Julian Graves

Information Access Manager

Tel. no: 0161 923 6351

Email: julian.graves@gmc-uk.org