

11 May 2011

Our ref: F11/3626/LG

General
Medical
Council

Mrs Ann Reeves

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By email only to: request-63609-5cafb5b9@whatdotheyknow.com

Dear Mrs Reeves

Freedom of Information Act 2000 (FOIA) appeal

Further to your email sent on 30 March 2011 appealing against our refusal to provide certain information to you under the FOIA, I have now reviewed this matter. Firstly I should apologise for the delay in providing this response to you.

In your email sent on 27 February 2011 you asked various questions under FOIA regarding Dr Jane Barton focussing on her recent application for voluntary erasure from the Medical Register. Having reviewed the response provided by my colleague Louise Gormley on 29 March 2011, it is clear that we have applied a FOIA exemption to your request for a copy of Dr Barton's application for voluntary erasure "along with accompanying documents" and your request regarding the conditions placed on Dr Barton's registration. In your appeal you have cited Section 35 of the Data Protection Act 1998 (DPA) as your justification for appealing.

Having considered this matter I believe that the original refusal notice was accurate and appropriate. I do not believe that Section 35 of the DPA can be used to legitimise disclosure under these circumstances. Firstly Section 35(1) covers disclosure where it is "required by or under any enactment, by any rule of law or by the order of a court". I do not believe that to be the case here. Section 35(2) covers personal data where "the disclosure is *necessary* (my emphasis) (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or (b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights."

I believe that the word 'necessary' in this context should reflect the meaning attributed by the European Court of Human Rights when considering an interference with a Convention right. That is to say there should be a "pressing social need" and the interference should be "both proportionate as to means and fairly balanced as to ends".

We have provided you with a blank copy of the voluntary erasure form and therefore you are fully aware of the nature of the information likely to have been provided to us by Dr Barton. Equally there is clearly an expectation on the part of any doctor that, having

completed such a form, it will not be publicly disclosed. This expectation applies equally to those questions you posed regarding Dr Barton's registration.

I do not therefore believe that the disclosure of the completed form to you in order for you to make a "balanced assessment of legal proceedings" meets the criteria to be regarded as 'necessary' in the context of Section 35(2).

Should you remain dissatisfied with my response on this matter you do, as you know, have a further right of complaint to the Information Commissioner's Office, the regulator of the FOIA and the DPA. Their contact details are as follows:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel. no: 0303 123 1113
Email: mail@ico.gsi.gov.uk

Yours sincerely

A handwritten signature in black ink, appearing to read 'Julian Graves', with a long horizontal flourish extending to the right.

Julian Graves
Information Access Manager
Tel. no: 0161 923 6351
Email: jgraves@gmc-uk.org