

Ms Barbara Jones

By email: request-404358-3bb7e3d9@whatdotheyknow.com

13 June 2017

Dear Ms Jones

I write further to your email of 2 May 2017 requesting information relating to the expert advisor or witness used in CAS-174594-D2X3Z8 under the Freedom of Information Act 2000 (the FOI Act). We respond to your requests in turn below.

**1) Who was the person who gave his/her opinion concerning the serious complaint made against the dentist in this case? In the event the identity is not provided, please state the gender of the person involved.**

A clinical advisor gave their opinion concerning the complaint made against the dentist in this case. Clinical advisors provide clinical advice at the early stages of our fitness to practise process and are subject to terms and conditions (Please see <https://www.gdc-uk.org/about/who-we-work-with/expert-advisors> Clinical Advisors - Terms and conditions Section 3 The Clinical advisor's role and responsibilities).

We are unable to disclose the name of the clinical advisor used as we consider that it is personal information (as defined in the Data Protection Act 1998) and the exemption under section 40(2) and 40(3)(a)(i) of the FOI Act applies to it. Section 40(2) provides an exemption from disclosure for information which is the personal data of any individual, aside from the requester, and where disclosure of that personal information would be in breach of any of the data protection principles. In our view, the information you have requested is third party personal information and to disclose it to you, or any other member of the public, would breach the first data protection principle, which states that personal data shall be processed fairly and lawfully. We can, however, confirm that the clinical advisor used for the case was male.

**2) What qualifications did this person hold to advise the GDC?**

The qualifications held by the clinical advisor used in this case was an MFDS (Membership of the Faculty of Dental Surgery) and BDS (Bachelor of Dental Surgery).

**3) What checks were made to ensure there were no conflicts of interest, or that this person would give impartial advice?**

As part of the recruitment process, advisors complete an application form which requires them to declare any conflicts and is reviewed as part of the application process (Please see <https://www.gdc-uk.org/about/who-we-work-with/expert-advisors> Advisors and Experts Application Form Question 6). Once the advisor is on the list, they are required to adhere to the terms and conditions. (Please see <https://www.gdc-uk.org/about/who-we-work-with/expert-advisors> Clinical Advisors - Terms and conditions Section 10.2 Conflicts of Interests). Point 10.2 sets out that 'The clinical advisor shall, as soon as possible after it arises, notify the GDC of any interest which s/he has that might conflict in any way with his/her obligations as a clinical advisor and shall thereafter act in accordance with any directions given by the GDC'. The caseworker also asked the advisor concerned whether there were any conflicts of interest with the registrant. No conflicts of interests were declared at any stage.

**4) When the person who made the complaint raised objections to the findings and decision, did the GDC obtain a second opinion as to the advice given by the expert advisor, or witness?**

- 5) **Given it can be proved the expert advisor, or witness, failed to give appropriate advice and this was notified to you, why were no further steps taken to remedy matters?**
- 6) **Since the dentist undertook work on the wrong tooth which was demonstrated in X-Rays and advice from another dentist seen by the patient whom you consulted, please explain how the expert witness found the dentist responsible for the grossly negligent work was fit to practise?**
- 7) **) When the patient consulted an endodontist to have the dentist's work remedied and he supported the fact the dentist had undertaken work on the wrong tooth, why was this not taken into consideration?**

I can confirm that the GDC does hold information relating to questions 4 to 7, but is withholding it. The information that you have requested relates to an Investigating Committee (the IC) case. IC proceedings (the IC was replaced by the Case Examiners stage in the fitness to practise process in November 2016) were held in private. The IC decided on the papers, and the parties did not attend.

Dental professionals (and people making a complaint) have a reasonable expectation that details of complaints made against them in the first three stages of the GDC's fitness to practise complaints procedure, which are private, will remain confidential, and will not be publicly disclosed or discussed, unless a complaint proceeds to a Fitness to Practise Committee (i.e. public) hearing, being the fourth (and final) stage of GDC's fitness to practise complaints procedure, and/or action is taken on their registration. A description of the stages of the GDC fitness to practise process is available on our website (<https://www.gdc-uk.org/patients/raising-a-concern/how-we-investigate>).

We are therefore withholding the information you have asked for as we consider that the information is exempt from disclosure under Section 40(2) and 40(3)(a)(i) of the FOI Act, in that it is the personal data of third parties; the complainant, and dentist, whose data protection rights would be contravened by such a disclosure. Discussing the details of any complaint made by a patient, how it was handled by the GDC, and the fact that a dental professional is subject to a complaint which has not proceeded to a public hearing and/or in relation to which no action has been taken (published) on their dental professional registration would be to disclose personal information (given and discussed in private), about the parties in public. This would contravene the First Data Protection Principle, which requires personal information is processed 'fairly and lawfully'. This is an absolute exemption.

The GDC also considers that the exemption under Section 31 of the FOI Act would apply, in particular, section 31(1) (g) and section 31(2)(d), as disclosure of private and confidential information to the wider world under the FOI Act would be likely to prejudice the GDC's regulatory activity.

We have considered the public interest test and are of the view that, in all the circumstances of the case, the public interest in maintaining this exemption outweighs the public interest in disclosing the information. The GDC considers that the balance of the public interest lies in withholding this information because to disclose it would be likely to prejudice our regulatory function. We consider that disclosing private and confidential information about complaints that have not come into the public domain would concern dental professionals and would be likely to result in them being less candid and unwilling to share confidential information with us during the course of an investigation. This would be likely to result in less effective investigations which would not be in the interests of the public at large.

Although we are unable to disclose or discuss substantive case information, you may find it helpful to know more about how challenges and appeals against a decision by the IC or Case Examiners may be handled.

From 1st November 2016, Rule 9 of the Fitness to Practise Rules 2006 allowed a person to request a review of certain decisions made by the Registrar or the Case Examiners. These decisions are:

- A decision by the Registrar not to refer a complaint to the Case Examiners, having decided that complaint does not amount to an allegation and closing the case.
- A decision by the Case Examiners/Investigating Committee that a case should not be referred to a Practice Committee (and closing the case with either advice, a warning or taking no further action).

More information about this appeals process is available on the GDC's website here: <https://www.gdc-uk.org/professionals/ftp-prof/rule9-reviews>.

### **Internal review and complaints procedure**

In accordance with the FOI Act, you can ask that an internal review be carried out if you would like to complain about this response, or the way your request has been handled.

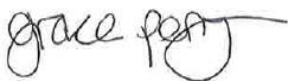
Complaints should be addressed to:

Principal Legal Adviser  
General Dental Council  
37 Wimpole Street  
London  
W1G 8DQ  
Email: [foirequests@gdc-uk.org](mailto:foirequests@gdc-uk.org)

If, at the end of the review process, you are not satisfied with the response that you receive, you may write to the Information Commissioner, who is appointed to consider such complaints, at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Tel: 0303 123 1113  
Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

Yours sincerely



Grace Perry  
Information Officer  
Email: [foirequests@gdc-uk.org](mailto:foirequests@gdc-uk.org)

Tel: 0207 167 6000