



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2014/0066
Appellant: Miguel Cubells
Respondent: The Information Commissioner
Second Respondent: General Medical Council
Judge: NJ Warren

DECISION NOTICE

1. The Tribunal has received applications from both respondents for this appeal to be struck out on the ground that it has no reasonable prospect of success.
2. Some years ago Mr Cubells made a complaint to the General Medical Council (GMC) against ten doctors who had been involved in the care and treatment of his late mother. In respect of seven of those doctors the GMC decided that there was insufficient material to start an investigation; in respect of the other three, the GMC decided to make further enquiries and accordingly they instructed an expert, who has been referred to as “Dr Y” to prepare a report in respect of their conduct. That report was broadly favourable to the three doctors.
3. On 17 October 2011 Mr Cubells made a complaint to the GMC about Dr Y. He alleged bias and bad faith.
4. On 6 June 2012 the GMC wrote to Mr Cubells notifying him of a “Registrar Rule 4 decision”. That decision was to the effect that a GMC investigation into Dr Y’s fitness to practice was not warranted. The letter enclosed a copy of a lengthy decision from the assistant registrar.
5. Mr Cubells then asked the GMC for the names of the staff or legal advisors involved in taking the Rule 4 decision. In answering that request, the GMC

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disclosed that the legal advisor had been an external barrister. On 15 September 2012 Mr Cubells asked the GMC for the name of the barrister's chambers at which the external barrister who gave legal advice in Dr Y's case was working. He also wanted to know the town or city in which that chambers was situated.

6. The GMC refused to confirm or deny that it held the requested information. Mr Cubells unsuccessfully complained to the Information Commissioner (ICO). He was then again unsuccessful in an appeal to this Tribunal.
7. On 2 December 2013 the Tribunal, in dismissing his appeal, observed that it involved two separate data protection issues: the personal data of Dr Y and the personal data of the barrister. In the end the Tribunal felt it necessary only to consider the first of these issues. They found that the public identification of Dr Y as having been the subject of a dismissed complaint would be unfair. It was therefore unnecessary for the Tribunal to consider the issue of the barrister's personal data.
8. Shortly after lodging that unsuccessful appeal, Mr Cubells made another request to the GMC. This time he asked for the name of the barrister's chambers involved in advice provided in respect of the Rule 4 letter sent to him on 6 June 2012. He also asked for the town or city in which the chambers is situated. It will be seen therefore that this information request was for precisely the same information as the September 2012 request. If there is a distinction between them, it is that the later request, dated 29 April 2013, does not directly name Dr Y. This request met with the same response from the GMC as the September 2012 request. Mr Cubells again complained unsuccessfully to the ICO. He now appeals to the Tribunal against the ICO decision.
9. I should deal first with a point raised by Mr Cubells in connection with Article 2 ECHR. He submits that the question of the release of this information under the Freedom of Information Act (FOIA) requires heightened scrutiny because of the State's duty in Article 2 circumstances. The last Tribunal dealt with this at para 24 of their decision. The State apparatus for investigation in this case has already included referral to a coronor, a police investigation, an investigation of police

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conduct, a complaint to the ombudsman and High Court proceedings. I accept the submission of the GMC that Article 2 has no relevance to this appeal.

10. Mr Cubells argues that this request for information is different from his previous one because it does not expressly refer to Dr Y. On the question of legitimate purpose, he says that he wishes to trace any connection between Dr Y and the barrister's chambers. He also wishes to make a complaint against the barrister to his or her professional body.
11. Having carefully considered all the material, I am satisfied that the written submissions of the GMC dated 30 May 2014 (the response) and 12 June 2014, on which Mr Cubells has had an opportunity to comment, are unanswerable. Put simply, either the request relates to Dr Y's data, on which the last Tribunal's decision is clearly correct, or, if not, they involve the personal data of the barrister and no reasonable tribunal could conclude that disclosure would be lawful and fair.
12. I therefore conclude that the appeal has no reasonable prospect of success. It would be unfair to the ICO and to the GMC to allow it to continue and I therefore strike it out.

NJ Warren

Chamber President

Dated 16 July 2014