



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2014/0142

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50530580
Dated: 20 May 2014

Appellant: Dr M S Humayun

1st Respondent: The Information Commissioner

2nd Respondent: The General Medical Council

Heard at: Manchester

Date of Hearing: 24 October 2014

Before
Chris Hughes
Judge

and

Malcolm Clarke and Dave Sivers
Tribunal Members

Date of Decision: 29 December 2014

Representation:

Appellant **In person**

First Respondent **not represented**

Second Respondent **T. Pitt-Payne QC**

Subject matter

Freedom of Information Act 2000

Data Protection Act 1998

Case

IC v Magharefelt District Council [2012] UKUT 263 AAC.

REASONS FOR DECISION

Introduction

1. On 29 October, 28 November and 30 November 2013 Dr Humayan made requests for information from the GMC. The requests covered two distinct issues, information about doctors referred to the GMC by a specific NHS body (the Heywood, Middleton and Rochdale PCT) and information about expert witnesses used by the GMC in its proceedings. The GMC provided certain information. It informed Dr Humayan that for the period it had computerised records (2006-2013) there had been a total of 12 referrals from the Trust (giving the number referred each year) one doctor had been referred three times, three were “Asian or British Asian”, one “Mixed”, three “Unspecified” and three “White”. It resisted providing the other information about both the Heywood doctors and its expert witnesses relying on exemptions FOIA contained in s31 (prejudice to its work as a regulatory body in considering fitness to practice a profession) and s40 (personal information). Dr Humayan complained to the First Respondent (“the ICO”) who upheld the decision of the GMC on the basis that the information requested was personal data. On that basis he did not need to consider the possible prejudice to the functions of the GMC as a regulator nor the question (raised by the GMC) that finding the information would exceed the relevant cost limit.
2. The withheld information was summarised in the decision notice at paragraph 21. With respect to the doctors referred by the PCT the withheld information from the requests was:-
 - The dates when the doctors were referred (29 October)
 - The ethnicity of origin, race and religion of those doctors (29 October)
 - Regarding ethnicity of origin: Please provide ethnicity of origin like British, Indian, Pakistani, Bangladeshi etc (30 November)
 - Age of the doctors who were referred to the GMC by Heywood, Middleton and Rochdale Primary Care Trust and the CCG (30 November)
3. With respect to the expert witnesses:-

- The list of witness experts on the panel of the GMC – Ethnicity of origin, race and religion of those doctors (29 October)
4. In his statement of appeal Dr Humayun formulated his criticisms of the GMC; that it was “*framing the allegations, giving false and misleading information to the Fitness to Practise Panel and destroying the livelihoods of innocent doctors, which is against Human Rights*”.. He noted that the ICO had found that there was a legitimate interest in the disclosure of information about the working of the GMC which demonstrated that its regulation was carried out effectively. He stated that he believed that “*The GMC is destroying the professional history and livelihood of the doctors which I believe is mostly Muslim doctors.*”
 5. In the appeal Dr Humayun argued that he wanted the information in order to take action against the GMC whom he accused of double standards. In respect of the referred local doctors, he wanted to know their ethnicity and religion. In respect of the expert witnesses used by the GMC, he wanted to know their name, ethnicity and speciality. In a letter dated 30 September 2012 to the GMC (in connection with another information request) he stated that:- “*I know at least four Muslim doctors over the age of 65 who were referred to the GMC by the Heywood, Middleton and Rochdale Primary Care Trust*”. In his argument before the Tribunal Dr Humayun repeated his grievance against the GMC for what he considered was unjustly instituting professional proceedings against him. He argued that the GMC was biased against ethnic minority doctors and that the GMC presented “misleading and false” information to the panel considering his case.
 6. The ICO resisted the appeal relying on the reasoning of the decision notice. The data was sensitive personal data and the individuals would have a reasonable expectation that the information would not be disclosed.
 7. The GMC also resisted the appeal. In oral argument Counsel noted that even if the requests were limited to the “name, ethnic origin and speciality” (as Dr Humayun indicated in oral argument was what he sought) of the doctors who were experts for the GMC the information could not be disclosed as it would be in breach of the Data Protection Act. With respect to the doctors referred by the PCT the effect of disclosing the information which Dr Humayun requested would be to give sufficient information for him to determine their identities using investigative techniques as a

“motivated intruder” as discussed in *IC v Magharefelt District Council [2012] UKUT 263 AAC*. Dr Humayun had already confirmed his ideas about who at least some of them were in his letter of 30 September 2012, the further information would help him ascertain the identities of the individuals. The GMC does not routinely collect information on race or religion of doctors on the medical register (the vast majority of the expert witnesses are such doctors); however approximately data on the ethnicity of the 70% of doctors on the register is held. The list of expert witnesses does not hold data on ethnicity. To find such data would require searching of their CVs and other records connected with their activity as experts for the GMC. There are 290 experts used by the GMC. On the basis of 10 minutes to examine each record the cost limit would be exceeded – the time to examine the records and obtain the information would be approximately 48 hours which would exceed the £600 limit by a substantial margin. The disclosure of the names of the Heywood doctors would cause them distress, the disclosure of the identities of the doctors used as experts, could render them liable to being approached improperly by a doctor who had been referred to the GMC, this could both prejudice the regulatory work of the GMC and cause the doctors approached distress.

The questions for the Tribunal

8. The questions for the Tribunal are, whether the cost of disclosing the information with respect to experts used by the GMC would exceed the relevant financial limit under FOIA; whether the disclosure of the information would either breach one of the data protection principles or s10 of DPA (the right to prevent processing likely to cause damage or distress).

Analysis

9. It is common ground between the parties that the information sought is personal data subject to the DPA. Schedule 1 to the DPA sets out the data protection principles. The First Data Protection principle provides that:-

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) At least one of the conditions in Schedule 2 is met, and..”

10. The position with respect to the Heywood doctors is quite straightforward. The GMC procedures mean that the identity of a doctor who is referred to the GMC is not publicly revealed unless and until some step is taken which results in a restriction of the doctor's practice or the doctor is referred to a fitness to practice panel. Preliminary steps in an investigation do not result in the public naming of the doctor. Doctors in this situation have every expectation that their identities will not be revealed. The disclosure of the dates of referral would with the other information lead to the identification of the individuals concerned. To do so would be unfair to the individuals and a breach of the DPA.
11. With respect to the experts used by the GMC, even in the limited way sought by Dr Humayun at the Tribunal, where he wished to restrict his request to "name, ethnic origin and speciality" the information requested is sensitive personal information. For such information to be disclosed, not only must one of the conditions in Schedule 2 be met, but also one of the conditions in Schedule 3 of the DPA must be met.
12. The conditions for the processing of personal data set out in Schedule 2 to the DPA are:-
- 1The data subject has given his consent to the processing.*
- 2The processing is necessary—*
- (a)for the performance of a contract to which the data subject is a party, or*
- (b)for the taking of steps at the request of the data subject with a view to entering into a contract.*
- 3The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.*
- 4The processing is necessary in order to protect the vital interests of the data subject.*
- 5The processing is necessary—*
- (a)for the administration of justice,*
- (aa)for the exercise of any functions of either House of Parliament,*
- (b)for the exercise of any functions conferred on any person by or under any enactment,*
- (c)for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or*

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

13. Clearly none of the first five conditions apply. While Dr Humayun has argued that he wishes to challenge the decision-making of the GMC which he has indicated he considers is biased and has ruined his reputation; “*I won’t be able to get a job because of what they have done*”, the disclosure of the information sought is not necessary in order to achieve this. He has been able to dispute the GMC’s arguments in the GMC process; such process is subject to challenge in the courts. The disclosure of the names and ethnic origins of the experts used by the GMC is simply not necessary to enable Dr Humayun to pursue his legitimate purpose. The provisions of Schedule 2 of the DPA prevent the disclosure. Schedule 3 of the DPA also prohibits disclosure. In respect of the expert witnesses the Tribunal is also satisfied that the costs of collating the information requested would exceed the statutory limit and could prejudice the regulatory functions of the GMC.

Conclusion and remedy

14. The Tribunal is therefore satisfied that the decision of the ICO is correct that there is no lawful basis to disclose the personal data requested and further that the costs of providing the data with respect to the experts would exceed the relevant financial limit. Given these findings it was not necessary to come to a conclusion with respect to the GMC’s arguments in relation to s.31 FOIA. The Tribunal upholds the decision of the ICO and rejects the appeal.

15. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 29 December 2014