IN THE FIRST-TIER TRIBUNAL **EA/2009/0063**
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

ON APPEAL FROM:

Information Commissioner's Decision Notice: FS50241410
Dated: 20 July 2009

Appellant: WILLIAM THACKERAY

Respondent: THE INFORMATION COMMISSIONER

Additional Party: THE GENERAL MEDICAL COUNCIL

On the papers

Date of hearing:18 January 2010

Date of Decision: 23 February 2010

Before

Annabel Pilling (Judge)
Suzanne Cosgrave
and
Andrew Whetnall

Attendances:

For the Appellant: William Thackeray
For the Respondent: Clare Nicholson
For the Additional Party: Timothy Pitt-Payne

Subject matter:
FOIA Absolute exemptions – Personal data s.40

Cases:
Johnson v Medical Defence Union [2006] EWHC 321 (Ch)
Blake v Information Commissioner and Wiltshire County Council EA/2009/0026
Common Services Agency v Scottish Information Commissioner [2008] UKHL 47
Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP (EA/2006/0015 and 0016)
Corporate Officer of the House of Commons v Information Commissioner (EA/2006/0074)
Corporate Officer of the House of Commons v Information Commissioner, Brooke and others (EA/2007/0060) and [2008] EWHC 1084 (Admin)

IN THE FIRST-TIER TRIBUNAL **EA/2009/0063**
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

DECISION OF THE FIRST -TIER TRIBUNAL

The Appeal is allowed and the Decision Notice dated 20 July 2010 is substituted by the following notice:

SUBSTITUTED DECISION NOTICE

Dated 22 February 2010

Public authority:

THE GENERAL MEDICAL COUNCIL

Address of Public authority:

3 Hardman Street

Manchester

M3 3AW

The Substituted Decision

For the reasons set out in the Tribunal's Decision and Annex to the Decision, the substituted decision is that the public authority failed to deal with the request for information in accordance with the Freedom of Information Act 2000; the disputed information does not fall within the exemption in section 40(2) and should have been disclosed.

Action Required

The General Medical Council must now disclose to the Requestor the information identified in the Annex to the Decision to ensure compliance. The authority must do so within 35 calendar days from the date of this Substituted Decision Notice.

Dated this 22 February 2010

Signed

Annabel Pilling
Judge

Reasons for Decision

Introduction

1. This is an Appeal by Mr. William Thackeray against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 20 July 2009. The Decision Notice relates to a request for information made by Mr. Thackeray to the General Medical Council (the 'GMC') under the Freedom of Information Act 2000 (the 'FOIA').

Background

2. The GMC was first established under the Medical Act 1858. It is the independent statutory regulator for doctors in the UK. Its overall purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. It is a registered charity both in England and Wales. Its constitution and function are now governed by the Medical Act 1983, as amended, which sets out the four main functions of the GMC:

    i) keeping up-to-date registers of qualified doctors;
    ii) fostering good medical practice;
    iii) promoting high standards of medical education;
    iv) dealing firmly and fairly with doctors whose fitness to practise is in doubt.

3. The GMC's current fitness to practise procedures came into effect in November 2004. Prior to that date, when an allegation was made to the GMC that a registered practitioner was guilty of serious professional misconduct the allegation was first considered by a screener and referred to the Preliminary Proceedings Committee if it was considered sufficiently serious. If that Committee considered that there was a case to answer, the case was referred to the Professional Conduct Committee (the 'PCC').

4. Under the provisions extant at the time of the events giving rise to Mr Thackeray's request for information, if the PCC determined that a registered practitioner was guilty of serious professional misconduct, it had a number of options open to it. These included, in certain cases, directing that the registered practitioner's name be removed for the Register which prevented the individual from practising medicine, unless and until he was restored to the Register.

5. At the relevant time, the constitution of GMC committees was governed by The General Medical Council (Constitution of Fitness to Practice Committees) Rules Order of Council 1996, as amended. The GMC maintained a list of medical and lay persons entitled to sit on various Fitness to Practise Panels (Committees), including the PCC.

6. The quorum for the panel (committee) was three, to include a chair, who could be either medical or lay, a medical panellist and a lay panellist. The policy of the GMC was that five persons would be empanelled in order to protect the quorum. The procedure for selecting panellists for individual hearings depended on the length of hearings but in all cases was based on information provided by panellists about their availability, the need to meet statutory requirements relating to the constitution of committees and the GMC's policy that panels should be diverse in terms of gender and ethnicity.

7. Medical and lay panellists were, and still are, appointed by open competition against certain identified competencies. Although not public appointments, an independent assessor from the Office of the Commissioner for Public Appointments (the 'OCPA') directly monitors the recruitment process. At the time panellists were appointed for a five year term of office that could be renewed for a further term of office, subject to satisfactory performance.

8. Mr. Thackeray's request for information concerned a fitness to practise hearing relating to a particular doctor, referred to in this Decision as Dr. A, and a particular lay panellist, referred to in this Decision as Mr. B. Mr. B. served as a lay panellist on the PCC and a number of other fitness to practise committees from 21 September 2001 to 21 June 2004. The fact that he no longer sits as a panellist is

information that is in the public domain; on 1 April 2009 this information was disclosed to Mr Thackeray by the GMC following a separate request for information under FOIA.

9. Between 19 January 2004 and 18 June 2004 a PCC sat to consider the case of Dr. A. At the start of that hearing, Mr. B was one of the panellists of that PCC. The hearing extended over 11 days, 10 days of which were conducted in public. There was then a resumed hearing of the case, lasting a single day, on 1 July 2005.

10. Dr. A was a consultant psychiatrist. The allegations against him before the PCC in summary related to: failure properly to monitor certain patients to whom Dr. A had prescribed medication; adverse comments made by Dr. A about certain other medical professionals; and other connected matters.

11. On the morning of the first day of the hearing on 19 January 2004, Counsel for Dr. A raised an allegation that one of the complaints against Dr. A was fraudulent, in that it did not emanate from the person from whom it was purported to come (namely the mother of the child patient), but instead came from an organisation called the Citizens' Commission on Human Rights (the 'CCHR') which was described by Counsel as "the Church of Scientology's organisation".

12. The Chairman of the PCC stated, having checked with the other panellists during the open hearing, that none of them had links with the Church of Scientology. The PCC then adjourned until 2pm. At the recommencement of the hearing, the Chairman of the PCC informed the parties that one member of the PCC had, in the course of previous employment, looked at some work that the Church of Scientology was involved in with regard to drug addiction. As a result of an application by Counsel for Dr. A that the committee member in question step down, Mr. B stood down from the PCC and played no further part on the hearing. Since it was Mr. B who stood down, it would have been apparent that it was Mr. B whose contact with the Church of Scientology had been referred to.

13. On 26 January 2004 (day four of the hearing of the PCC) an issue was raised as to whether Mr. B was the same individual whose name appeared on the letterhead

from the CCHR as being a Commissioner of that organisation. On 27 January 2004, the Chairman of the PCC, having spoken to Mr. B, informed the parties that Mr. B had been a Commissioner of the CCHR but had resigned that position on 1 January 2001.

The request for information

14. By e-mail dated 5 February 2009 Mr. Thackeray made the following request for information to the GMC:

    a) *Please provide the minutes of Fitness to Practise Panel case of [Dr. A], held in June/July 2006.*

    b) *Please provide details of any other cases in which [Mr. B] served on the panel.*

    c) *Please provide copies of internal communications relating to [Mr. B] in connection with Scientology organisations over the past 5 years.*

    By 'Scientology organisations' I mean organisations which promote, recruit members for, or raise money for, Church of Scientology, Religious Education College Incorporated (a US corporation which has been denied charitable status in the UK).

    To the best of my knowledge a list of such organisations would include:

    Citizens Commission on Human Rights (United Kingdom) Ltd/ Citizens Commission on Human Rights International/ Jive Acres/ Church of Scientology Inc/ Greenfields School/ Greenfields Educational Trust/ Hubbard Foundation/ ABLE/ Applied Scholastics International/ Narconon/ Criminon/ The Way to Happiness Foundation International/ Church of Scientology Religious Education College Inc/ Office of Special Affairs (OSA)/ Sea Org/ Youth for Human Rights International.

15. On 5 March 2009 the GMC provided the information requested in part (a) of the Request. It also provided the information in part (b) except for the names of the complainants in the private hearings that Mr. B sat on. In relation to part (c), the

GMC confirmed that it held the requested information, but withheld it on the basis that it was exempt from disclosure under section 40(2) of FOIA, applying section 40(3)(a)(i); that is, the information was personal data of Mr. B and its disclosure would breach the first data protection principle set out in the Data Protection Act (the 'DPA').

16. Mr. Thackeray was dissatisfied with the response in relation to part (c) of his Request and requested an internal review on 5 March 2009. He asked for more information to be provided about why disclosure would breach the first data protection principle. He also made a new Request for the transcript of the hearing covered in part (a) of his Request.

17. On 20 March 2009 the GMC provided Mr. Thackeray with the transcripts of the hearing in relation to the Fitness to Practise Panel of Dr. A.

18. On 24 March 2009 the GMC responded to the request for an internal review. It provided more detailed reasons as to why it considered that disclosure of this information would breach the first data protection principle and upheld the initial decision that the information requested is exempt through the provisions of section 40(2) of FOIA.

19. On 25 March 2009 Mr. Thackeray asked if it was possible to redact the documents in order not to reveal the withheld information. The GMC responded on 30 March 2009, concluding that redaction would not enable it to avoid a breach of the first data protection principle.

The complaint to the Information Commissioner

20. Mr. Thackeray contacted the Commissioner on 30 March 2009 to complain about the way his request had been handled. He specifically asked the Commissioner to consider the following points:

    a) That section 40(2) of FOIA should not apply because the information may relate to an individual's improper conduct in a public role.

b) That the Commissioner considers whether there is the possibility of the GMC releasing a redacted copy of the withheld information to show the internal process of the public authority.

c) That the Commissioner notes that he was satisfied with the procedural matters in this case and the way the staff of the GMC had engaged with him.

21. On 19 May 2009 the Commissioner wrote to Mr. Thackeray to set the scope of his investigation at the handling of part (c) of the original Request. On 21 May 2009 Mr. Thackeray confirmed that he was satisfied with the scope of the case.

22. The Information Commissioner then investigated the substantive complaint, receiving additional arguments from Mr. Thackeray and the GMC.

23. He issued a Decision Notice on 20 July 2009.

24. The Commissioner found that the following facts were already in the public domain:

- Mr. B had been connected to the Citizens' Commission on Human Rights (the 'CCHR')
- Mr. B had been a Commissioner of the CCHR but had resigned on 1 January 2001
- Mr. B served as a Panellist between 21 September 2001 and 21 June 2004.

25. The Commissioner concluded that the disputed information was the personal information of Mr. B. As to the data protection principles, the Commissioner considered the requirement in the first data protection principle that data should be processed fairly. He concluded that disclosure would be unfair processing, as it would be contrary to Mr. B's legitimate expectations, and would cause him unnecessary or unjustified damage. The Commissioner did not address any other aspects of the data protection principles, such as whether disclosure would satisfy any of the conditions in Schedule 2 or (if applicable) Schedule 3 to the DPA. The Commissioner therefore concluded that the GMC was correct in applying section 40(2) of FOIA (by virtue of section 40(3)(a)(i)) and dismissed the complaint.

The Appeal to the Tribunal

26. Mr. Thackeray appealed to the Tribunal on 30 July 2009.

27. The issue raised in the grounds of appeal is whether disclosure of the disputed information would breach the data protection principles.

28. The Tribunal joined the GMC as an Additional Party.

29. The Appeal has been determined without a hearing on the basis of written submissions and an agreed bundle of documents. A large part of this bundle contained material about Scientology and the CCHR. Mr. Thackeray requested that this information be included in order to demonstrate the significance of Mr. B's failure to declare his link with the CCHR and the Church of Scientology when sitting as a Panellist. In particular, we have read extracts from the "Enquiry into the Practice and Effects of Scientology" report prepared by Sir John Foster in 1971 for the government of the United Kingdom[1], a copy of the Church of Scientology "Religious Services Enrollment Application, Agreement and General Release"[2] and viewed a short film about the Church of Scientology's 2006 "Campaign for the Global Obliteration of Psychiatry".

30. In addition, the Tribunal was provided with a Closed bundle of documents. This bundle included pages of the transcript of the fitness to practise hearing of Dr. A which have already been disclosed to Mr. Thackeray.

31. The Closed bundle also contained a copy of the disputed information. This was not made available to Mr. Thackeray , as to disclose it to him would defeat the purpose of this Appeal.

32. In order to preserve the confidentiality of the disputed information pending any Appeal, we have not referred to its contents in this Decision but have prepared an Annex to this Decision. This Annex is to be kept confidential pending the resolution of any Appeal from our Decision or is to be disclosed upon the expiry of time within

[1] For example, at Chapter 7 paragraph 184: "The Scientology leadership sees in psychiatrists an especially virulent class of enemy.." and references to the attempt by Scientologists to take over the National Association for Mental Health in 1969 which resulted in High Court action.
[2] Which states at paragraph 2(g): "Scientology is unalterably opposed, as a matter of religious belief, to the practice of psychiatry…"

which any Appeal should be lodged. Mr. Thackeray must be joined as a party if there is an Appeal against this Decision.

33. Although we may not refer to every document in this Decision, we have considered all the material placed before us. The GMC considers that "much" of the material provided by Mr. Thackeray concerning the Church of Scientology to be very old and "all of it" to be remote from the issues with which this Appeal is concerned. We disagree with this submission and are of the opinion that this case must be considered in light of the factual background concerning the Church of Scientology in connection with psychiatry.

34. We have considered in detail the written submissions from the parties although we do not begin to rehearse every argument in this Decision.

The Powers of the Tribunal

35. The Tribunal's powers in relation to appeals under section 57 of the FOIA are set out in section 58 of the FOIA, as follows:

> *(1) If on an appeal under section 57 the Tribunal considers-*
>
> *(a) that the notice against which the appeal is brought is not in accordance with the law, or*
>
> *(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
>
> *the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

36. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives and hears evidence, which is not limited to the material that was before the Commissioner. The Tribunal, having considered the evidence

(and it is not bound by strict rules of evidence), may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts. Nevertheless, if the facts are not in dispute, the Tribunal must consider whether FOIA has been applied correctly. If the facts are decided differently by the Tribunal, or the Tribunal comes to a different conclusion based on the same facts, that will involve a finding that the Decision Notice was not in accordance with the law.

37. The question of whether the exemption in section 40(2)(a) of FOIA is engaged, is a question of law based upon the analysis of the facts. This is not a case where the Commissioner was required to exercise his discretion.

The Legal Framework

38. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

39. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of FOIA. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)). Section 40(2)(a) of FOIA is an absolute exemption. Information that falls within this section is therefore exempt from disclosure regardless of the public interest considerations.

40. The issue for determination in this Appeal is whether the disputed information is exempt under section 40(2) of FOIA.

41. The relevant part of section 40(2) of FOIA provides:

> *(2) Any information to which a request for information relates is also exempt information if-*

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or second condition below is satisfied.

(3) The first condition is –

(a) In a case where the information falls within any of the paragraphs (a) to (d) of the definition of 'data' in section 1 (1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress)…..

42. Section 1(1) of the DPA defines "personal data":

"..data which relates to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."

43. There is no dispute that the disputed information, held by the GMC as the data controller, constitutes "personal data" and does not fall within subsection 1 (personal data of the Requestor).

44. Under section 40(2), personal data of third parties is exempt if disclosure would breach any of the data protection principles set out in Part I of Schedule 1 of the DPA (as interpreted in accordance with Part II of Schedule 1), or section 10 of the DPA (right to prevent processing likely to cause damage or distress).

45. The data protection principles regulate the way in which a "data controller" (in this instance, the GMC) must "process" personal data. The word "process" is defined in section 1(1) of the DPA and includes:

"disclosure of the information or data by transmission, dissemination or otherwise making available."

46. The first data protection principle provides:

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

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

47. So far as the second requirement of the first data protection principle is concerned, the DPA does not specify what is meant by "lawful" processing. We consider that disclosure where that disclosure is prohibited by statute would certainly not be lawful processing. Disclosure of information that would give rise to a civil liability, for example, because it would amount to a breach of confidence, also might not constitute lawful processing. In this Appeal, no party has argued that disclosure of the disputed information would be unlawful.

48. The relevant condition in Schedule 2 of the DPA is said by the Commissioner and the GMC to be condition (6) which provides:

"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."

Submissions and analysis

49. There is an inherent tension between the objective of freedom of information and the objective of protecting personal data. It has been observed that section 40(2) of FOIA is a "complex provision"[3]. There is no presumption that openness and transparency of the activities of public authorities should take priority over personal privacy. In the words of Lord Hope of Craighead in *Common Services Agency v*

[3] *Blake v Information Commissioner and Wiltshire County Council* EA/2009/0026

Scottish Information Commissioner[4] (referring to the equivalent provisions in the Freedom of Information (Scotland) Act 2002 (the 'FOISA'):

> *"In my opinion there is no presumption in favour of the release of personal data under the general obligation that FOISA lays down. The references which that Act makes to provisions of DPA 1998 must be understood in the light of the legislative purposes of that Act, which was to implement Council Directive 95/46/EC. The guiding principle is the protection of the fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data…."*

Fair processing

50. Part II of Schedule 1 of the DPA includes matters to be taken into account in interpreting the data protection principles. Paragraphs 1 to 4 of Part II of Schedule 1 provide interpretive guidance as to the requirement to process fairly. Paragraph 1 is concerned with the manner in which the data are obtained, including in particular whether any person from whom the data are obtained is deceived or misled as to the purpose or purposes for which they are to be processed; Paragraphs 2, 3 and 4 set out circumstances in which personal data are either not to be treated as processed fairly or to be treated as processed fairly, and relate to requirements to provide certain information to data subjects. These matters are not exhaustive and the test of fairness is a general one and is not confined to a consideration of whether those requirements have been met. Even where there is compliance with paragraph 2 then the processing may still be unfair on general grounds (*Johnson v Medical Defence Union* [2006] EWHC 321 (Ch) paragraph 114 onwards.) No party directly addressed Part II of Schedule 1, either in submissions or in evidence, but we have taken these matters into account when considering the issue of fairness in this case.

51. The Commissioner and the GMC submit that there would be a breach of the first data protection principle if the disputed information were disclosed as the processing, that is, disclosure under FOIA, would not be fair. In considering

[4] [2008] UKHL 47

whether the processing would be fair, the Commissioner took the following matters into account[5]:

(i) Mr. B's reasonable expectation of what would happen to his personal data and whether disclosure would be compatible with the purpose(s) for which it was obtained;

(ii) Whether Mr. B's seniority (or otherwise) would affect his expectations as to disclosure;

(iii) Whether the information in the public domain (as set out in paragraph 16 of the Decision Notice and repeated at paragraph 24 of this Decision) would reduce Mr. B's expectation of privacy in this case;

(iv) Whether disclosure of the disputed information would cause any unnecessary or unjustified damage to the individual; and

(v) The legitimate interests of the public knowing about any possible process in force, and the necessity for the public to have confidence in Fitness to Practice panellists.

52. Mr. Thackeray, who was unrepresented in this Appeal, disagrees with the weight given to the arguments in favour of disclosure in respect of these issues. As he has not seen the disputed information, necessarily his submissions are generalised and speculative. Having read the disputed information we would record that it is, in fact, much narrower in scope than Mr. Thackeray assumes.

53. Mr. Thackeray submits that Mr. B's expectations of the way his personal data would be treated in his role as a panellist for the GMC's PCC would be governed by his:

- Employment contract,
- Conditions of service,
- Code of Conduct for Panellists,
- Pre-existing expectations of the way his personal data would be treated, and the way that this might be affected by his conduct, in a role in public life.

[5] Decision Notice paragraphs 22-34

54. He submits that by not declaring his connection to Scientology, in light of the published opposition to psychiatry and psychiatrists, Mr. B may have breached the ethical conditions of his new role and committed misconduct; that is, it is a conflict of interests for an individual connected with a Scientology organisation to sit as a panellist on PCC matters for the GMC, even where the CCHR is not the subject of an allegation of fraud as in the case of Dr. A. Mr. Thackeray submits that Mr. B can have no reasonable expectation that such misconduct would be kept private.

55. He submits that the following matters should be taken into account when considering the legitimate interests of the public in disclosure:

- Possible prejudice to any previous hearing where Mr. B was a panellist;
- Possible future "misconduct" or undeclared conflict of interest if Mr. B remains employed in the public sector;
- Doctors and the public need to have confidence that the GMC's professional standards committees are both objective and independent;
- The public should prevent "manipulation" of health bodies and professional standards processes by members of an "organised campaign against psychiatry" that is well-financed and global;
- It is not in the wider public interest of society for the religious views of Scientology to have a disproportionate influence on public policy or the careers of individual doctors;
- The public has an interest in knowing about attempts to influence public policy and public perceptions of mental health practitioners and to influence the careers if individual psychiatrists;
- The scrutiny of GMC internal processes concerning:
    (i) appointment of panellists;
    (ii) selection of panellists for a particular hearing;
    (iii) action taken by the GMC once the "non-declaration" became known.

56. The GMC drew our attention to a number of cases decided by differently constituted panels of this Tribunal in which the first data protection principle in the context of

section 40(2) of FOIA had been considered, notably in a series of cases involving MPs' expenses[6]. We were directed to paragraphs 61- 65 of the *Baker* case which summarised the arguments put forward by the Commissioner in that Appeal[7].

Our Findings

57. Although, in their submissions, the Commissioner and the GMC approached the question of whether section 40(2) of FOIA is engaged by considering first whether the processing is fair before commencing a consideration of whether a condition in Schedule 2 (or, if applicable, Schedule 3) is met, we have reached our decision by considering first whether a condition is met and, taking that into account "in particular", whether the processing is fair and lawful[8]. This is in line with the Awareness Guidance notes issued by the Commissioner[9] which, in the detailed Guidance, advises that:

> *"In the context of the FOIA, we recommend that you consider whether disclosure satisfies one of the specific conditions [in Schedule 2, or 3 as appropriate] first, before moving on to the general consideration of fairness and lawfulness."*

58. In the *Brooke* case, the Panel gave useful guidance on applying paragraph 6 of Schedule 2[10]. This was upheld on appeal by the High Court and can be summarised as the following three part test:

(1) There must be a legitimate public interest in disclosure;
(2) The disclosure must be necessary to meet that public interest; and
(3) The disclosure must not cause unwarranted harm to the interests of the individual.

[6] (see *Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 and 0016 ("the *Baker* case"), *Corporate Officer of the House of Commons v Information Commissioner* (EA/2006/0074) ("the *Moffat* case") and *Corporate Officer of the House of Commons v Information Commissioner, Brooke and others* (EA/2007/0060) ("the *Brooke* case")and [2008] EWHC 1084 (Admin)).
[7] Counsel for the Commissioner in the Baker case was Mr. Pitt-Payne who represents the GMC in the present Appeal.
[8] Following *Common Services Agency v Scottish Information Commissioner*, paragraph 30.
[9] Awareness Guidance on "The exemption for personal information" (Version 3 11 November 2008)
[10] At paragraphs 60 and 61.

59. In deciding whether disclosure satisfies one of the conditions in Schedule 2, that is, condition 6, we must therefore consider the balance between competing interests, a test that is similar to the balance that applies under the public interest test for qualified exemptions under FOIA. We adopt what was said in the *Baker* case and approved in the *Moffat* case, that this test requires a consideration of the balance between (i) the legitimate interests of those to whom the data would be disclosed (which in this context are members of the public) and (ii) prejudice to the rights, freedoms and legitimate interests of the data subject (which in this case is Mr. B). However because the processing must be "necessary" for the legitimate interests of members of the public to apply we find that only where (i) outweighs (ii) should the personal data be disclosed.

60. The GMC accept that there is a legitimate public interest: (i) in understanding how Dr. A's case was dealt with and (ii) more generally, in understanding how the GMC's panel system operates. It submits that disclosure would contribute nothing of value in relation to (i) and very little in relation to (ii) and therefore disclosure is not necessary. The GMC goes on to address how disclosure is unwarranted as it would defeat Mr. B's expectations about the use of information and would cause him unnecessary and unjustified damage. We consider that the legitimate public interest in disclosure goes further than the GMC submits. The public interest can be said to be particularly significant in relation to the GMC and its operation and in particular in relation to the time the panel involving Mr B took place. Although no party referred to the Shipman Inquiry[11] we are aware that in the period of its duration, from February 2001 until June 2005, the focus was on the issue of how doctors were regulated and in our opinion indicates that there was a considerable amount of public interest in the topic. The Inquiry's Stage 4 involved consideration of "*Disciplinary rules for general medical practitioners and the operation of the disciplinary processes operated within the NHS and by the General Medical Council*. " The Inquiry's 5th Report was published in November 2004 addressed specifically the GMC's Fitness to Practise procedures. (for example, chapters 15).

[11] Established by Parliament and chaired by Dame Janet Smith DBE, a High Court Judge.

61. Having considered all these interests, we find that the legitimate interests of members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of Mr. B. Our detailed reasoning is given in the Annex to this Decision and, for the reasons given, we therefore find that condition 6 of Schedule 2 is met.

62. In deciding whether the processing is fair, we have also considered the general factors as identified by the parties. The legitimate interests of the public are a relevant consideration in both the consideration of whether the processing is fair and also whether condition 6 of Schedule 2 is met.

63. We agree with the findings of previous Tribunals that there is a distinction to be drawn between personal data relating to an individual's public and his private life. This is a proper consideration to take into account when making the generalised assessment of fairness that is required under the first data protection principle. But we also agree with the comments made in the *Baker* case that "where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives. This principle still applies even where a few aspects of their private lives are intertwines with their public lives but where the vast majority of processing of personal data relates to the data subject's public life."

Mr. B's reasonable expectations as to disclosure

64. We were not provided with a copy of the GMC's Data Protection Register – Entry Details but one Panel member obtained a copy in time for our deliberations. This sets out the 13 purposes for which data is held by the GMC and we consider that it is essential to examine this to draw a conclusion as to what reasonable expectation Mr. B would have regarding the disclosure of his personal data. Looking at Purpose 9, along with the Conditions of Service for Non-GMC Members of the Professional Conduct Committee and Committee on Professional Performance, we fail to understand the basis upon which the GMC and Commissioner argue that Mr. B would have had the expectation that data such as the disputed information would be kept confidential. We acknowledge that the argument appears to be correct

intuitively but we find no evidence to support it in light of the Data Protection Register entry.

65. We consider that the word "reasonable" is the guiding principle here. We were mindful of the seven principles of public life, now referred to as the Nolan Principles, which are clearly stated to apply to *all those who serve the public in any way*. If an individual's conduct or behaviour falls below the acceptable standard in connection with a public role, they cannot reasonably assume that details about that behaviour would be kept private. In this case, Mr. B had undertaken a public role of particular sensitivity; protecting the public from doctors who are not fit to practise. Undertaking a role that involves sitting in judgment of others requires high standards of behaviour and propriety, avoiding acting in a way which does or may give rise to a conflict of interests. We do not consider that Mr. B can have had any reasonable expectation of privacy concerning the disputed information. We give further reasons for this conclusion in the Annex to this Decision.

Seniority

66. We agree with the Commissioner[12] that a distinction can be drawn between the information which senior staff should expect to have disclosed about them compared to what information junior staff should expect to have disclosed about them. The rationale for this distinction is that the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds. The GMC submits that Mr B's individual role should not be overstated because he was a lay (i.e.non-medical) panellist, and usually would sit as one member of a five person panel. We agree with Mr Thackeray's submissions that lay members do not have a lesser 'voice' on a panel than other members. The Commissioner also recognised that Mr. B is a "relatively senior figure" and that this must be considered as a factor that suggests that the release of information might not be unfair. We agree.

[12] Paragraph 29 of the Decision Notice.

Does the information in the public domain reduce the expectation of privacy

67. The information in the public domain shows Mr. B's link with the CCHR, the fact that he had to stand down from Dr. A's Panel, the fact that he did not volunteer information about his link and initially made only partial disclosure of his connection with the Church of Scientology. The Commissioner acknowledges[13] that Mr. Thackeray is correct that any failure to declare interests implies improper conduct and that there is a clear public interest in knowing whether or not people in significant public roles act with probity. He concedes that this factor also suggests that the release of the disputed information might not be unfair. We agree.

Whether disclosure would cause unnecessary or unjustified damage to Mr. B.

68. The Commissioner considered that the release of the information *"could potentially cause unnecessary and unjustified damage in this case. His view is that while it is right that an individual in such a role should be subject to a degree of public scrutiny, the Commissioner believes that the potential detriment to the data subject outweighs the interest in this instance"*[14]*.*

69. We disagree with this conclusion for the reasons given in the Annex to this Decision.

The legitimate interests of the public in knowing about the disputed information

70. In considering the legitimate interests of the public, we find that there are more factors of relevance than those considered by the Commissioner in his Decision Notice. In particular, we consider that the Commissioner failed to consider the significance of the obvious conflict caused by Mr. B being appointed to, and sitting on, the PCC. Mr. Thackeray complains that the Commissioner failed to consider the nature of CCHR and the Church of Scientology, and the impact of Mr. B's suitability as a Panellist in light of this. We agree that this is a significant matter that should have been given weight by the Commissioner.

71. The Conditions of Service referred to above, include the following provisions:

[13] Paragraph 30 of the Decision Notice.
[14] Paragraph 31 of the Decision Notice.

> *17. You must inform the GMC immediately of any information which might call into question your fitness and suitability for remaining a member of the PCC or CPP.*
>
> *…..*
>
> *19. If you have or may appear to have any interest in or association or connection with any person (whether financial, organisational or personal) which may or does give rise to a conflict of interest or the suspicion of a conflict of interest, you must notify the GMC as soon as possible.*

72. From the facts which are not in dispute, Mr. B had such significant involvement with the CCHR that his name appeared on its formal letterhead as a "Commissioner". He may have stepped down from that organisation on 1 January 2001, prior to commencing his sittings as a Panellist for the GMC, but it seems to us that the connection ought to have been disclosed by Mr. B during the appointment process and volunteered without prompting at the time when the allegations of fraud by the CCHR were made in the hearing of Dr. A.

73. Although it may not amount to "misconduct" under a statutory definition we consider that it was wrong of Mr. B to have withheld this connection from the GMC. Part c) of the information request did not ask for papers more than five years before February 2009, and are focussed on the GMC's internal papers linking Dr B and Scientology and related organisations *after* Mr B's connection with the CCHR came to light at the hearing in the case of Dr A in 2004. We have not therefore examined any matters to do with earlier proceedings and the initial appointment of Mr B in 2001. The public interest in the disputed information relates to the possibility that if Mr B's one time connection with the CCHR had been declared, it may be that his fitness to sit on other cases involving psychiatrists would have been questioned, or that the GMC would not have considered him a suitable panel member for such cases, or that he would not have been appointed to a responsible position in the GMC at all. It is not our task to speculate on these possibilities, but they are material to the first two limbs of the balancing test set out by the Tribunal in the *Baker* case and approved by the High Court: there is a legitimate public interest in

disclosure to reveal what the GMC did about the facts once they had come to light, and disclosure is necessary to inform that interest.

74. We consider that if he had made his involvement with the CCHR known it is unlikely that he would have been considered suitable for appointment as a Panellist or, at the very least, not suitable to sit on hearings involving psychiatrists.

75. Taking all the relevant factors into account, we conclude that processing of the disputed information, that is, disclosure, would be fair.

76. As we said at paragraph 47, no party argues that processing would be unlawful and we are satisfied that processing would be lawful.

77. Therefore, disclosure would not breach first data protection principle and the exemption in section 40(2) of FOIA is not engaged.

Conclusion and remedy

78. For the reasons given above and in the Annex to this Decision we find that condition 6 of Schedule 2 of the DPA is met, and we find that none of the general factors that might have rendered the processing unfair are present.

79. Therefore the exemption in section 40(2) of FOIA is not engaged and the GMC should have complied with its duty under section 1(1)(b) of FOIA to make the disputed information available to Mr. Thackeray.

80. The GMC must now disclose the disputed information within 35 calendar days from the date of the Substituted Decision Notice.

81. Our decision is unanimous.

82. An appeal against this decision may be submitted to the Upper Tribunal. A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal within 28 days of the receipt of this decision. Such an application must identify the error or errors of law in the decision and state the result

the party is seeking. Relevant forms and guidance for making an application can be found of the Tribunal's website at www.informationtribunal.gov.uk.

Signed

Annabel Pilling

Judge Date 22 February 2010

IN THE FIRST-TIER TRIBUNAL **EA/2009/0063**
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

ON APPEAL FROM:

Information Commissioner's Decision Notice: FS50241410
Dated: 20 July 2009

Appellant: WILLIAM THACKERAY

Respondent: THE INFORMATION COMMISSIONER

Additional Party: THE GENERAL MEDICAL COUNCIL

On the papers

Date of hearing: 18 January 2010

Date of Decision: 16 February 2010

Before

Annabel Pilling (Judge)
Suzanne Cosgrave
and
Andrew Whetnall

Between

WILLIAM THACKERAY

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

THE GENERAL MEDICAL COUNCIL

Additional Party

ANNEX TO THE DECISION

Additional cases:
Waugh v Information Commissioner and Doncaster College (EA/2008/0038)
Blake v Information Commissioner and Wiltshire County Council (EA/2009/0036)].

1. This Annex must be read in conjunction with the Decision of the Tribunal. It is to be kept confidential until the expiry of the period within which an Appeal against the Decision may be lodged.

2. We note at the outset that the disputed information amounts to information or data obtained for the disciplinary proceedings against Mr. B. and relate to nothing more than the narrow issue that led to Mr. B. recusing himself from the Panel hearing the case against Dr, A. The disputed information reveals that Mr. B was the subject of an internal GMC procedure for dealing with concerns about Panellists. His case was considered at a meeting on 16 June 2004[1]. As a result, the GMC determined that he should no longer sit on any FTP panel. He ceased to be a Panellist on 21 June 2004 and since then has not been eligible to sit on any FTP panels.

3. The Request for information by Mr. Thackeray was specifically for this information. It appears to us that Mr. Thackeray expected his Request to reveal whether there had been any investigation of the appointments process or the possibility that a former connection with CCHR should have been declared in other cases involving psychiatrists that took place before the disclosure made at Dr A's hearing. No such investigation appears to have been carried out and it is beyond the scope of our jurisdiction to comment on that omission by the GMC.

4. Mr. Thackeray submits that to his knowledge Mr. B. has never been consulted as to whether he consents to disclosure of the disputed information or not. The Tribunal is in the same position. No evidence

[1] New procedures for dealing with concerns about panellists had been adopted by the GMC in March 2004 and this was the first time a sub group had met under those procedures,

has been provided as to whether he consents or not to the disclosure of the disputed information nor any evidence of what Mr. B's expectations were regarding disclosure of that information.

Condition 6 of Schedule 2: the balancing test

5. We consider that the main legitimate interests of the members of the public can be summarised as follows:
    - The process by which GMC panellists are appointed[2] and any failings in ensuring that appropriate questions are asked to avoid any conflict of interests;
    - The process by which Panellists are selected to sit upon individual cases or recuse themselves from cases;
    - Confidence in Panellists;
    - Whether the GMC was aware that individuals with links to Scientology sat upon the PCC[3];
    - Knowledge that the GMC deals with any conflict of interests that has arisen and the action taken as a result;
    - Whether there has been or may have been bias in other cases on which Mr, B. has sat.

6. The main prejudices to the rights, freedoms and legitimate interests of Mr. B as the data subject can be summarised as follows:
    - It would be unfair to Mr. B for this information to be made public, given his reasonable expectations as to its confidentiality (in particular with regard to letters he had drafted);
    - It might cause him distress, damage or embarrassment;
    - The matters the disputed information relate to occurred in 2004.

[2] The Request for information was for material "over the past 5 years", therefore from 2004 to 2009; Mr. B was appointed in 2001 and information concerning the appointment process, if held, would not fall within the scope of this Request.
[3] An article in the BMJ in December 2003 referred to there being "evidence… that there are Scientologists working in the Fitness to Practice Directorate of the General Medical Council of the UK."

7. Mr. Thackeray submits that Mr. B. cannot have expected that information about his “misconduct” or “inappropriate conduct” would be kept confidential. On the contrary, he submits that if there was any matter calling into question Mr. B’s suitability as a Panellist, Mr. B. must have had the reasonable expectation that it would be disclosed.

8. We are aware from the material in the Closed bundle that Mr. B should have been expected to declare a potential conflict of interests prior to the hearing of Dr.A. This was not the first PCC hearing involving psychiatrist that he has sat on and, in light of the former link between Mr. B, the CCHR and the published aims of the Church of Scientology regarding psychiatrists inevitably there will a concern that there either was bias or, at the very least, the perception of bias. The fact that Mr. B. has sat repeatedly on cases involving psychiatrists without declaring the link makes his failure to disclose more serious. The GMC submits that there is no evidence put forward of any hearing other than that of Dr. A. where an issue of conflict of interest arose because of Mr. B’s connection with the CCHR. We reject that submission. It is clear from the material provided to us in the Closed bundle that Mr, B. sat on at least 9 cases involving psychiatrists prior to the hearing of Dr.A. We consider that a conflict of interests may well have existed in those cases also, even if they did not involve allegations brought by the CCHR, because of the published beliefs and aims of the Church of Scientology concerning psychiatrists. Those medical practitioners facing disciplinary hearings before the GMC, at risk of being struck off the Register, are entitled to an open and fair hearing in accordance with their rights under the European Convention on Human Rights and the Human Rights Act 1998.

9. The allegation of inappropriate conduct by Mr. B goes beyond his connection with the CCHR, and extends to what we regard as his disingenuous answers to the Chairman during the hearing of Dr.A when the allegations of fraud by the CCHR were made. First, Mr. B

failed to declare his former role in the CCHR when panel members were asked by the panel Chairman whether they had any links with Scientology to declare. From the information available, it appears that he then admitted no more than, during previous employment, he had looked at some work that the Church of Scientology was involved with in regard to drug addiction. At no stage before a direct question was asked did he admit the most significant fact, that of his involvement with the CCHR, the organisation accused of fraud in the relevant hearing. In fact, Mr. B only stood down on the application of Counsel for Dr. A. Even then, he continued to conceal the extent of his role with the CCHR and only when challenged directly about his name appearing on its letterhead did he admit to being involved prior to 1 January 2001. We have a concern that Mr. B either did not consider the concept of bias or perception of bias, or more worryingly, intended to remain on the Panel hearing the fitness to practise hearing considering whether Dr. A, a psychiatrist, should remain on the Register or not. We are of the opinion that in the light of this history there is a significant public interest in disclosing parts of the disputed information, and this is a necessary part of informing a legitimate public interest, not least because of the absence of any public statements by the GMC about the action it took and the conclusions it reached.

Fair processing

10. Our attention is drawn to two earlier decisions of this Tribunal[4] that were concerned with internal disciplinary investigations and found that disclosure of the information would represent a significant invasion of privacy and would be unfair. It was said in Waugh that:

> *"there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters."*

[4] *Waugh v Information Commissioner and Doncaster College* (EA/2008/0038) and *Blake v Information Commissioner and Wiltshire County Council* (EA/2009/0036)

11. In a public role such as the one Mr. B fulfilled, we consider that instead of a strong expectation of privacy, there would be a strong public expectation for the disclosure of disciplinary matters. The two Tribunal cases drawn to our attention can be distinguished as they deal with what we consider to be disciplinary matters in an almost private contractual situation rather than regarding someone in a public role.

12. There is no evidence as to the expectations of either Mr. B. or the GMC as to whether this information would be disclosed or not. Certainly it is not well established that these proceedings are confidential or secret. The GMC submits that we should note the context of confidentiality in which the disputed information was generated.

13. We consider that there will be different 'layers' of information concerning a disciplinary process:
    - The name of the individual concerned;
    - The fact that they are subject to a disciplinary investigation;
    - The details of the investigation;
    - Exchanges during the process; and
    - The outcome.

14. While it would not be determinative, there is no evidence that all or any documents were marked as confidential or that Mr. B. had any legitimate expectation that they or the process would be kept confidential, either at the time or once the investigation had ended. We draw a distinction and consider that confidentiality of all these layers can be inferred while the process is ongoing, but, as with FTP hearings themselves, we do not consider that there is a basis upon which to assume it would remain confidential once the process was complete At the time of the Request in this case, the process had been completed and an outcome reached; that outcome had been acted upon several years previously.

15. At paragraph 66 of Decision we address the point of seniority. In addition, from information contained within the Closed bundle, it is clear that Mr. B. was considered sufficiently senior to be appointed as Chair for hearings of both the PCC and the CPP. This is a further factor in reaching our decision that release of the disputed information might not be unfair.

Would there be damage or distress to the data subject

16. Again we note that there has been no evidence from Mr. B, either directly or indirectly and the submissions of the Commissioner and the GMC must be regarded as speculation.

17. Mr. B's link to and involvement with the CCHR is information that is already in the public domain and therefore release of the disputed information that shows the extent of his involvement with the CCHR, even if that involvement is now historic, is not going to damage his reputation in itself.

18. We accept that disclosure of this information after the passage of time may cause distress to Mr. B. Firstly because it is clear that Mr. B maintained that he had a limited connection with the CCHR and not the Church of Scientology and the significance of that connection may not have been clear to him at the time, and also because the passage of time may mean that he has "put this episode behind him"

19. We are not able to assess whether disclosure of the disputed information would cause specific damage. Mr. Thackeray suggests that Mr. B remains employed in the public sector but we have seen no evidence as to this and it is inappropriate for us to speculate.

20. We accept that there might be potential detriment to Mr. B in that he might find embarrassment or difficulty in securing another public role. However, it seems to us that the error of judgment shown by Mr. B in

the episode involving Dr. A. is such as to be incompatible with the *Nolan* principles; Mr. B accepted the appointment as a Panellist apparently without declaring this conflict of interests *per se*, sat upon at least 9 cases involving psychiatrists, failed to take the first opportunity to state the extent of his connection with the CCHA and Scientology during the hearing of Dr. A., even when he was aware that an allegation involving the CCHR was being made. He recused himself only after further exposition of the concerns by Counsel, and failed to disclose the extent of his link to the CCHR until faced with written evidence of it. It is the fact of Mr. B's behaviour that would lead to this detriment rather than the disclosure of the disputed information.

21. We are not satisfied any damage or distress would be unjustified in the circumstances of Mr. B's own conduct.

Legitimate interests of third parties

22. We consider that this concerns the interests of not just the requestor, but the public at large, including, for example doctors who may have been affected by decisions of Panels of the PCC on which Mr. B sat, particularly psychiatrists.

23. The public, including within that term the medical professionals, need to have confidence in the GMC, and confidence that there is no bias or perceived bias or conflict of interest in those appointed as Panellists.

24. The Commissioner and GMC acknowledge that there is a legitimate interest in knowing about the processes of the GMC but submit that the disputed information sheds no light on this.

25. We disagree. The fact that Mr. B. was sitting on Fitness to Practise panels, and so had a role in deciding whether an individual doctor, including a psychiatrist, should be struck off the Register, is of concern in light of his involvement with the CCHR, the openly acknowledged

views and mission of that organisation, the methods of vilification they and the Church of Scientology espouse, and the consequent public perception of possible bias that must attach to that. We are not impressed by the GMC's submission that some of the events and practices concerning CCHR and the Church of Scientology, as documented in Mr Thackeray's submissions, occurred many years ago. No evidence was submitted of a change in practice or mission, and some of the evidence, for example from the CCHR's website, is current. It is not for us to take a view on whether Mr B's performance of his duties was in fact biased. We have no evidence one way or the other and it would not be our function to assess. Nor is it for us to investigate or reach a view on the circumstances of his appointment. The possibility of public and professional concern about the circumstances of the case are sufficient grounds to support our view that there is a significant public interest in the extent, nature and outcomes of the action taken by the GMC following the revelation of Mr B's association with CCHR. The fact that the public interest has not been informed by any announcement or account of events published by the GMC supports our conclusion that disclosure is necessary to inform a legitimate public interest.

26. We are aware that there was much public concern and public interest in the GMC at the time of the events with which this Request for information is concerned. This public interest and concern was not for its audit or financial functions but for its Professional Conduct Committee; that is, how it was handling complaints against medical practitioners and whether it should be dealing with issues of fitness to practice or whether another body should be established. No other health regulator has been through inquiries into its disciplinary processes in the same way as the GMC in the wake of the events surrounding the murders of patients by Dr Harold Shipman. We consider that the claim of the witness for the GMC that any public benefit in disclosure is very limited to be an extraordinary claim in light of this.

27. The disputed information reveals that, regarding Dr. A at least, the PCC panel selected to hear his case was not "fair and independent" and reveals what the GMC did about that issue subsequently.

28. There is also interest in what happened to Mr. B. in light of the events that led him to recuse from Dr. A's hearing. The final stage in the process to remove him as a Panellist should have been for the matter to have been reported to the Council. We were not been provided with evidence that this was done or what publication scheme arrangements exist for the Council's Minutes

29. Graziella Oregano, in her witness statement, indicated that the procedure for dealing with concerns about panellists was available on the GMC's website from March 2004. This seems to refer to powers to "co-opt" members and to adopt a process for dealing with issues arising from co-opted members; Mr B. was appointed via an appointments system[5] and was already in post in March 2004. We have seen no evidence as to what information was, in fact, available to the public or otherwise in the public domain. In his witness statement, Julian Graves indicated that neither the Conditions of Service nor the Code of Conduct for Panellists were in the public domain. The disputed information reveals something of what procedures were in place, were followed and what action the GMC took following the Dr. A hearing.

Action to be taken

30. We have concluded that disclosure of the disputed information would not breach the first data protection principle and that, therefore, the information is not exempt from disclosure under section 40(2) of FOIA. We have directed the GMC to disclose the information within 35 calendar days.

[5] According to Julian Graves, "the recruitment process was carried out in line with guidance issued by the Office of the Commissioner for Public Appointments.

31. We note that, unhelpfully, the material within the Closed bundle does not equate to the disputed information in this case. There is material in the bundle that is already in the public domain (for example, the transcript of Dr. A's hearing) and also material that does not fall within the scope of the Request for information[6], either because it does not amount to an "internal communication" or because it falls outside the period covered by the Request.

32. The following Schedule identifies the information that must now be disclosed:

Closed Bundle p.	**Brief Description**	**Comments**	**Disclose?**
1-8	Internal memorandum re Mr. B 25.3.04	This sets out the nature and scope of the GMC's process and Annexes the new procedures	Disclose
40-41	Internal note re Mr. B	This sets out events concerning Dr. A's hearing	Disclose
42-47	Conditions of Service and Code of Conduct	Confirms Mr. B's awareness of his obligations	Disclose
48	Biographical details of Panel Members	Already disclosed	
49	Internal statement	Statement of concerns	Disclose
50	Internal File note	Internal record of issues/actions	Disclose

[6] *"…copies of internal communications relating to Mr.B in connection with Scientology organisations over the past 5 years."*

Closed Bundle p.	Brief Description	Comments	Disclose?
51-55	Internal documents regarding action to be taken re Mr. B	These represent a continuation of the process	Disclose
56-57	e-mail	Schedule 2 condition not met therefore processing would not be fair and would be in breach of first data protection principle	Section 40(2) exemption engaged
62 -63	Documents from Chairman of FPC	Part of the process	Disclose
65-69	List of cases Mr. B sat on	Already disclosed with names redacted. These remain confidential.	
70-75	Memorandum concerning appointment of sub group	Part of the process. Disclosure of the names and other details of the nominees would not meet a condition in Schedule 2 and would be unfair to those individuals.	Disclose- but redact names and details of sub group nominees
94	Terms of reference of sub-group		Disclose
95-96	Index to bundle of documents for the sub group	Part of process – what material the sub group considered	Disclose
97-156	Material from bundle of documents for the sub group	Already disclosed.	
157-164	Information about CCHR from bundle of documents for the sub group	Part of process – what material the sub group considered.	Disclose

Closed Bundle p.	Brief Description	Comments	Disclose?
202-204	Decision of sub group	Outcome of process	Disclose
207	Letter confirming decision of sub group	Outcome of process	Disclose

33. If we are incorrect in our conclusion that material falls outside the scope of the Request because it does not amount to an internal communication, we consider that in relation to that information, processing would breach the first data protection principle as no condition in Schedule 2 of the DPA would be met. The processing of that information is not necessary for legitimate public interests and the processing would otherwise be unfair.

Signed

Annabel Pilling, Judge Dated: 16 February 2010