

**Draft response – Gillian Mackenzie – [FOI response only]**

39734657

Dear Mrs Mackenzie,

I refer to your email of 24 February 2011 in which you requested copies of the papers submitted to the GMC by Hampshire Police in connection with the investigation into Dr Jane Barton.

As my colleague, Code A stated in her acknowledgement to you we are considering your request for this information in accordance with both the Freedom of Information Act 2000 (FOIA) and Data Protection Act 1998 (DPA). Please note that this email addresses your request in terms of the FOIA only. I will be writing to you separately regarding the consideration of your request under the DPA.

I should firstly explain that the FOIA provides a general right of access to information held by a public authority. We are unable to take into account the identity of the requestor. Disclosures of information under FOIA are 'public disclosures'; we would have to provide the same information to any other person making a request.

In accordance with section 1(1)(a) of the FOIA I confirm that the GMC hold copies of information provided by Hampshire Police in connection with Dr Jane Barton. However, for the reasons given in the paragraph above, we believe that we are unable to supply you with a copy of this information under the FOIA. We believe the following exemptions listed in the FOIA apply:

**Section 40(1) of FOIA - Personal information of the requestor.** This relates to information requested which is the personal data of the requestor. The effect of this exemption is that the requestor should apply for the information they seek under the subject access provisions of the Data Protection Act 1998 (DPA) rather than the Freedom of Information Act. As previously advised in relation to your own personal data which has been provided to us by the police we are currently consider the release of this to you in accordance with the DPA. I will be writing to you shortly under separate cover regarding this.

**Section 40(2) by virtue of section 40(3)(a)(i) - Personal information of a third party.** This relates to information requested which relates to a third party, and the disclosure of which would be in breach of the Principles of the Data Protection Act 1998 (DPA). In this instance we believe that the disclosure of this type of information would breach the First Principle, which requires that the processing of data is fair and lawful. We consider that the conditions in Schedule 2 of the DPA, relating to the processing of personal data, are not met and that, therefore, the release of the information you have requested, would be unlawful.

**Section 41 – Information provided in confidence.** This relates to information supplied to the GMC by any person, the disclosure of which would constitute a breach of confidence actionable by that or any other person.

**Section 21– Information reasonably accessible by other means.** This exemption is applied in connection with the copies of your late mother's medical records. The Access to Health Records Act 1990 provides a right of access, where a patient has died, to the patient's personal representative. I understand that you have already obtained a copy of these records, however should you require additional copies please contact the GP/Hospital who hold the records for more information as to you access rights.

All the above exemptions are absolute which means that they are not subject to a public interest test (in order to assess if the public interest is greater served by disclosing the information than maintaining the exemption).

You have the right of appeal against this decision not to supply the information to you in accordance with the FOIA. If you wish to apply please set out your grounds for doing so in writing and send to Julian Graves, Information Access Manager, at the address at the bottom of this response or email Code A

You also have the right of appeal to the Information Commissioner. If appropriate, Mr Graves will provide the relevant contact details.

Yours sincerely

**Code A**