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Code A

Subject:

RE: Jane Barton

Our ref: Code A

Dear Mr Wilson

I write regarding your request for a copy of the testimonials handed to the panel during Dr Barton's Fitness to Practise Panel hearing. Firstly, I sincerely apologise for the time taken to respond to you on this matter. Your request has now been considered in accordance with the Freedom of Information Act 2000 (FOIA).

We have carefully considered disclosure of these letters under the FOIA, and in doing so have taken into account the privacy rights of the contributors, who include patients, professional colleagues and other acquaintances of Dr Barton. We have reviewed the letters in detail and have taken into account the, often sensitive, contents. We have also considered whether the public interest in disclosure overrides the privacy rights of the contributors.

I must confirm that we do not believe that disclosure of these letters is appropriate. We believe that the following exemption, listed in the FOIA, applies:

Section 40(2) by virtue of Section 40(3)(a)(i) – Personal Information. This relates to information requested which is about 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 consider that the disclosure of the letters of support would breach the First Principle of the DPA, which requires that the processing of personal data is fair and lawful. We consider that the conditions listed in Schedule 2 of the DPA, relating to the processing of personal data, are not met and therefore the release of the information you have requested would be unlawful. In addition, a number of the letters contain 'sensitive personal data' as per section 2 of the DPA, and therefore a condition listed in Schedule 3 of the DPA must also be met. We do not consider that any of the conditions listed in Schedule 3 of the DPA apply in this case.

I should add that we do not consider these letters to be in the public domain by virtue of being referred to, and used in evidence, at a public hearing. The letters were not read into the transcript and we do not believe that the authors would have had the expectation that their letters would be subsequently disclosed to the public.

In your telephone call of 10 March 2010 you raised concerns about the legitimacy of these letters. The majority of these letters were requested by, or supplied to, Dr Barton's solicitors, not the GMC. Any unsolicited letters received by the GMC were forwarded on to Dr Barton's solicitors. We understand your reasons for making this request; however, we do not feel that we are able to disclose the names of the contributors for the reasons stated above. We do not believe that their expectations would extend to subsequent disclosure of their letters to the public (as all disclosures under the FOIA are 'public' disclosures).

I understand that you require this information to contribute to an appeal against the decision of the panel. In this regard I should add that this case is currently being considered by the Council for Healthcare Regulatory Excellence as to whether they wish to formally appeal the panel's decision.

I am sorry I could not provide the information requested. You do have the right of appeal against this decision. If you wish to appeal please set out in writing your grounds, and send to Julian Graves, Information Access Manager, at Code A You also have the right of appeal to the Information Commissioner, the independent regulator of the FOIA, at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF
Telephone: 01625 545 700
Website: www.informationcommissioner.gov.uk

Yours sincerely

Code A

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-----Original Message-----

From: [redacted] Code A

Sent: 02 Feb 2010 16:25

To: Julian Graves [redacted] Code A

Subject: Jane barton

I have been informed that I must apply to you in my request for copies of the 184 testimonials handed to the panel sitting to consider the fitness to practice of the above named doctor by Timothy Langdale Qc. He said they were made by colleagues and patient who were aware of both the charges she was guilty off and the media attention this hearing had attracted, therefore I believe, they gave those testimonials in full knowledge and awareness that they were likely to be made public.

Therefore under the FOI act I request that you release and forward copies of the testimonials to me in their entirety. I look forward to your early response in this matter.

Iain Wilson

Sent via BlackBerry® from BT