

18 April 2011

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COUNCIL

Dr Code A

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Dear Code A

Freedom of Information Act 2000 (FOIA) - Request

I refer to your e-mail of 22 March 2011 in which you raise a number of queries in connection with voluntary erasure from the register and, specifically, information about Dr Jane Barton's voluntary erasure from the register.

You ask about the number of doctors who were granted voluntary erasure from the register prior to a planned fitness to practise panel hearing. You have asked for this information since 1991.

I should explain that an electronic case management system was introduced in April 2006 in respect of our fitness to practise work. We do not have a system prior to that date that enables me to identify the cases you are interested in. The position since April 2006 until late 2010 is shown in the table below. This shows the number of doctors in each year who had a planned fitness to practise panel hearing but who were granted voluntary erasure prior to that hearing. As you will see, there are a total of 55 such doctors and the total allegations against them was 184.

Year	# of Doctors	# of Allegations
2006	8	22
2007	7	24
2008	14	46
2009	13	39
2010	13	53
Total	55	184

You also ask about any checks that would be made should Dr Barton choose to apply to restore her name to the register. I should explain that we treat every application in accordance with the relevant restoration legislation. You can view the General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004 on our website. We are not in a position to hypothesise about an individual application in the way you ask.

You ask about the probability of Dr Barton restoring her name to the register without any conditions on her registration. In accordance with Section 1(1)(a) of the FOIA I can confirm that we do not hold this information.

You also ask for a copy of the VE judgment in respect of Dr Barton. I assume that you refer to paperwork we hold in respect of this application. That being so I must explain that I consider that the following exemptions, set out in the FOIA, applies to this part of your request:

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.

These 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 also ask for the case law used for this judgment. In this regard I would refer you to the Voluntary Erasure Regulations mentioned above.

Finally, you ask about a doctor failing to pay their [annual retention fee] after a [fitness to practise] hearing resulting in conditions being attached to their registration. I should clarify that we don't have a contractual relationship with a doctor. The query you raise appears to be a question about whether a doctor is registered or not (as it is their registration which gives us jurisdiction to take any action under our fitness to practise procedures) and not a question about whether they have paid their fee or not. That said, our Fees Regulations are explicit about when fees are due; these regulations also outline our fees position whilst a doctor is suspended. Regulation 4(6) states:-

Any person whose registration has been suspended under Part V of the Act shall not be required to pay a fee under this regulation in respect of the period during which his registration is suspended.

Doctors with conditions (and so who are still able to work) are required to pay the appropriate fee, and all the provisions of our Fees Regulations would apply. Finally, our procedures for non payment are also detailed in these Regulations, but it is worth noting that they explicitly state that the Registrar **may** erase for non payment i.e. – it isn't automatic. This means that a doctor who is under investigation and who doesn't pay their fee, isn't automatically erased.

Finally, as you are aware, you have the right of appeal against our decision in respect of the FOIA exemptions outlined above. If you wish to appeal please set out your grounds for doing so in writing and send it to Julian Graves by e-mail at: As you are also aware, you have the right of a further appeal to the Information Commissioner. If applicable, Mr Graves will provide you with details of this further right of appeal.

Yours sincerely

Code A