

Code A

39777891
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From: Julian Graves [Code A]
Sent: 23 March 2011 09:09
To: [Code A]
Subject: Internal review of Freedom of Information request - Professor Christopher Bulstrode - response

Our ref: [Code A]

Dear [Code A]

I have now conducted a review of your request for the number of complaints we have received regarding Professor Bulstrode's non-declaration of conflict of interests regarding his sister Dr Jane Barton.

Having done so I am satisfied that the original decision to refuse to provide this information citing the FOIA exemption at Section 40(5)(b)(i) was correct. In my view disclosure of this information would breach the First Principle of the Data Protection Act 1998 (DPA) as the processing of personal data in this matter would be neither fair nor lawful. In this case there would be a requirement for a condition in Schedule 2 of the DPA to be met and I do not consider that to be the case.

In your request for internal review you have cited various sections of the DPA which, in your view, would allow for disclosure of this information. I have reviewed each of these and reject your argument on each.

Firstly, you cite Schedule 2, Section 3:

"The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract."

I do not consider there to be any legal obligation in place that necessitates the disclosure of this information.

Secondly, you cite Schedule 2, Section 5(a):

"The processing is necessary—
 (a) for the administration of justice"

I have not identified any reason why the disclosure of the requested information would be 'necessary' for the administration of justice.

Thirdly, you cite Schedule 2, Section 5(d):

"The processing is necessary – (d) for the exercise of any other functions of a public nature exercised in the public interest by any person."

In this case we do not consider that disclosing the information you have requested is 'necessary' for the exercise of the functions described in this section.

Fourthly, you cite Schedule 3, Sections 6(a) and (b):

The processing—
 (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), (b) is necessary for the purpose of obtaining legal advice

Again the main focus here is the word 'necessary' and we would argue that disclosure of the number of complaints made against Professor Bulstrode is not necessary in relation to either legal proceedings or for the obtaining of legal advice.

Lastly you cite Section 7(1)(a) and 9(b). These sections relate to the disclosure of personal data where the requestor is the subject of that data. This is clearly not the case here and therefore these sections are not of relevance.

I have provided a link below to a previous decision of the ICO relating to doctors' complaint histories. I believe that your request is similar to the background to this decision and do not believe that we are compelled to disclose the requested information to you:

http://www.ico.gov.uk/~media/documents/decisionnotices/2006/FS_50064698.ashx

Finally, in summary, there is a clear disclosure process involved in the investigation of complaints received against doctors. To disclose information about those complaints outside of that prescribed disclosure process would, in our view, be a breach of the First Principle of the DPA as it would go beyond the expectations of both doctor and complainant.

Should you remain dissatisfied with my decision on this matter you do have a further right of complaint to the ICO. Their contact details are as follows:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel. no: 0303 123 1113
Email: mail@ico.gsi.gov.uk

Yours sincerely

Julian Graves

Julian Graves
Information Access Manager
General Medical Council
3 Hardman Street
Manchester
M3 3AW

Tel. no:
Email:

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

From: Julian Graves

Sent: 22 February 2011 15:02

To:

Subject: Internal review of Freedom of Information request - Professor Christopher Bulstrode - acknowledgement

Dear

Your appeal below has been forwarded to me for consideration. I will consider your appeal in line with our comments and complaints procedure for information requests. This sets a target response time of 20 working days. I will endeavour to respond to you within this timeframe.

Yours sincerely

Julian Graves

Julian Graves
Information Access Manager
General Medical Council
3 Hardman Street
Manchester
M3 3AW

Tel. no: [Code A]

Email: [Code A]

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

From: [Code A]

Sent: 21 February 2011 12:27

To: [Code A]

Subject: Internal review of Freedom of Information request - Professor Christopher Bulstrode

Dear [Code A],

I would like to request Internal Review of the response in view of the fact that Data Protection Act 1998 (DPA 1998) principle I has been misapplied in refusing my request for information.

DPA Schedule 2 Section 3, 5(a) (d) and Schedule 3 Section 6 (a), (b) and Section 7 (1) (a) and 9 (b) allow the disclosure of the information asked for.

There are complaints made in public interest. You have not supplied Code of Public Interest test as applied for under different FOIA request. Breach of FOIA 2000.

Information requested is required for legal advice, it would be used in legal proceedings, it is necessary for measuring compliance with equality issues.

Professor Bulstrode was a member of the governing body of GMC and is a white English male. He has a duty to declare conflicts of interests just like everybody else. He did not. GMC did not take any action against him. This can be appealed through the courts, as you know. Court Procedure Rules allow the disclosure of this information too.

Yours sincerely,

[Code A]

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

Dear Code A

Please see attached letter in response to your e-mail of 6 February 2011.

Regards

Code A

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General Medical Council

3 Hardman Street, Manchester, M3 3AW

Regents Place, 350 Euston Road, London, NW1 3JN

The Tun, 4 Jacksons Entry, Holyrood Road, Edinburgh, EH8 8AE

Regus House, Falcon Drive, Cardiff Bay, CF10 4RU

9th Floor, Bedford House, 16-22 Bedford Street, Belfast, BT2 7FD

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