

Code A

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From: Julian Graves Code A
Sent: 24 March 2011 11:46
To: Code A
Subject: Internal review of Freedom of Information request - Dr Jane Barton request for erasure - response

Our ref: Code A

Dear Code A

I have now conducted a review of your request for the date that Dr Jane Barton applied for voluntary erasure from the medical register.

Having done so, I believe the only possible Data Protection Act 1998 condition that could be used to justify disclosure in this case would be Schedule 2, condition 6. In order that I may reasonably assess whether disclosure is appropriate on this basis, I would refer you to a recent judgement of the First-tier Tribunal, *Johnston v ICO and Brecon Beacons National Park Authority*, EA/2010/0130/0131:

http://www.informationtribunal.gov.uk/DBFiles/Decision/i499/20110321_Johnston_Determination_EA20100130-0131.pdf

I would specifically refer you to paras. 36 - 38 of this judgement which I have reproduced below for ease of reference:

"Schedule 2 conditions

36. If disclosure would amount to fair and lawful processing, then the next question is whether processing would also meet the conditions in Schedule 2.

37. Schedule 2 contains 6 conditions which are applicable to the processing of any personal data. The only relevant condition in the present case is condition 6 which requires that:

"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."

38. Condition 6 involves a three-part test. First, is there a legitimate interest in disclosure? Second, is such disclosure necessary to promote that public interest? In *Corporate Officer of the House of Commons v Information Commissioner*, "necessary" in the context of condition 6, was taken to reflect the meaning attributed by the European Court of Human Rights when justifying an interference with a Convention right, namely, that there should be a "pressing social need" and the interference should be "both proportionate as to means and fairly balanced as to ends". Third, would such disclosure cause unwarranted interference with the interests of the individual whose data is in issue? Even where disclosure is necessary, it is only permissible if it would not cause such interference."

Therefore in order that I may consider your appeal further, I would be grateful for your views as exactly in what way you believe there to be a legitimate interest in the disclosure of this specific information.

I will await your response.

Yours sincerely

Julian Graves

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

Code A

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

From: [redacted] Code A

Sent: 24 February 2011 23:17

To: [redacted] Code A

Subject: Internal review of Freedom of Information request - Dr Jane Barton request for erasure

Dear [redacted] Code A

Thank you for your reply.

I would like to request internal review.

1. There are eight principles of Data Protection Act 1998 and none would have been breached if the information requested was redacted in the document you hold. For ease of reference here is Schedule 1 of DPA 1998:

<http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

Which Section of Schedule 1 DPA 1998 do you think would be breached if only date was supplied?

I am only interested in the date when Dr Jane Barton applied for voluntary erasure. Date of an application for voluntary erasure cannot be construed as protected under DPA 1998 in a case such as Dr Jane Barton's very much in the public eye and of much interest. GMC's own Chief Executive stated she should have been erased from medical register.

2. Public Interest Test has not been applied when refusing this request made under Freedom of Information Act 2000.

3. Full reasons have not been supplied such as which section of DPA 1998 would be breached. Please, let me know which section of the DPA Principles, have you applied in you refusal.

4. There are exemptions (Part IV DPA 1998) to the non-disclosure of sensitive personal data. GMC is a public body and thus open to external scrutiny. Accountability does require a certain degree of openness in public view.

5. Part IV Section 32 (b) and 6 of DPA 1998 allow disclosure in this case. Please, reconsider. For ease of reference:

<http://www.legislation.gov.uk/ukpga/1998/29/section/32>

6. Section 2(2)b of FOIA 2000 has not been applied as per DBERR v. Information Commissioner and Friends of the Earth (EA 2007/0072 29-4-2008) at the time the request for information has been made.

&. When deciding to disclose or not Data Controller is advised by Information Commissioners Office to consider to what extent information is already in the public domain. It is known already that Dr Barton made the request for erasure.

Yours sincerely,

Code A

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

Dear Code A

Ref: Code A

With reference to your e-mail of 5 February 2011, please see attached letter of today's date.

Regards

Code A

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