

Mick Armstrong  
Chair  
British Dental Association  
64 Wimpole Street  
London  
W1G 8YS

**By email only**

18 March 2016

Dear Mr Armstrong,

Thank you for your Freedom of Information request of 5 February 2016. Please find the GDC's response below.

**Staff matters**

1. In relation to the former Chief Executive and Registrar, the former Director of Regulation, the former Director of Governance and the former Head of the Investigating Committee, you have requested:
  - (a) The legal costs incurred by the GDC in agreeing severance terms with each former employee.
  - (b) The legal costs incurred by each former employee and reimbursed in agreeing severance terms.
  - (c) The final value of any severance agreement to each former employee including, but not limited to notice period, pay in lieu of notice, pay in lieu of damages, replacement or training costs and agreed statements etc.
  - (d) All other associated costs not identified above.
2. On a brief initial point, we have assumed that the former officers you refer to are those who were in post in the relevant times covered by the Professional Standards Authority report of 21 December 2015 (being Evlynn Gilvarry, Neil Marshall, Frances Low and Adam Elliott respectively).
3. The GDC holds information in relation to items (a) to (c) above. There is nothing to disclose in respect of item (d). Please note that when you refer in your request to "severance" we have interpreted this as referring to the

departure of each individual. As you will be aware, employment can come to an end on a variety of bases, including by mutual agreement and for reasons of redundancy. For the avoidance of doubt, the GDC is not confirming anything as to the nature, grounds or legal bases for the departure of the four individuals (although of course you may already be aware from information previously published by the GDC that there were redundancies in this context).

4. As a general principle we wish to be open and transparent, particularly concerning the use of registrants' money, as reflected by the organisation's commitment to transparency as one of our core values in our recent corporate strategy. At the same time the information you have requested is the personal data of the former officers. As such we are required to comply with the Data Protection Act 1998 (the "DPA") in relation to all uses of that data. We must also balance our obligations of confidentiality as employer in respect of private employee information.
5. In particular we are required by the 1st Data Protection Principle in the DPA ("DPP1") to consider whether or not disclosure would:
  - (a) be fair and lawful; and
  - (b) meet any of the requisite conditions for processing in Schedule 2 of the DPA.
6. If either of these elements are not met then disclosure would breach DPP1. In our view disclosure would be in breach of DPP 1. As such, the information is exempt from disclosure under section 40(2) FOIA and 40(3)(a)(i). We outline our reasons for these conclusions below.

#### *Personal data*

7. Items (a) to (c) of the information you have requested are all the personal data of the former officers. That is the case for (a) because although it concerns the GDC's legal costs, they are costs incurred in relation to each former officer, and hence concern or relate to each individual (meeting the definition at section 1 DPA).

#### *Whether disclosure would be fair*

8. As stated above, personal data may only be disclosed if it would be fair to do so in accordance with DPP1. Considering fairness in this context requires us to assess a number of factors, in particular:
  - (a) The consequences of disclosure on the individuals;

- (b) the reasonable expectations of the individuals as to how we will use their personal information; and
  - (c) the balance between any legitimate public interest in disclosure and the rights and freedoms of the individuals concerned.
- 9. In terms of the consequences of disclosure, we consider that disclosure would be likely to cause distress to the individuals because it would be in breach of their expectations that private employee information would be kept private. If disclosed the information would provide significant insight into the private financial circumstances surrounding their departure, which would be an intrusion into their privacy. We have written to each individual explaining the FOIA request that the GDC has received, and asked whether they would consent to the disclosure. No consent has been provided, and the individuals have stated that disclosure would cause them distress for the reasons outlined above.
- 10. We also consider that the individuals' expectations of privacy are reasonable given the employer/employee relationship and the duties of confidentiality that apply. In relation to three of the individuals, some relevant information has been published in the remuneration report in the 2014 accounts, or is due to be included in the remuneration report for the 2015 accounts. It is reasonable for the individuals to expect that any additional information going beyond that disclosed in the remuneration reports will be kept private.
- 11. In forming this view, we have taken into account the seniority of the individuals concerned (particularly that of the former Chief Executive and the Directors of Regulation and Governance). We recognise that their former seniority means that it is reasonable to generally expect more information to be disclosed about these individuals than more junior individuals. As you may know, and as a result, the salary of the former Chief Executive was part of the remuneration reports and as noted above, certain information as to compensation payments are also published. Again, beyond this we consider it reasonable for the particular individuals to expect that the remaining aspects of their severance arrangements not to be disclosed.
- 12. We agree that there is a general legitimate public interest in how registrants' money is spent by the GDC. We note that you assert more specifically in this context (in your letter of 11 March) that the GDC may have rewarded failure. We can state categorically that there has not been any reward for failure. Whilst the PSA report of December 2015 expressed criticisms of the conduct of the four individuals in certain, limited aspects of their roles, those criticisms

were not of a nature to suggest that the individuals could or should have been removed for poor performance. As such, we do not consider that there is a legitimate public interest on this basis in the information requested being disclosed.

13. A balance has to be struck between the GDC's duty to be transparent and accountable about its use of resources and its duty to respect the individuals' right to privacy for personal employee information. Whilst it could be argued that the information requested should be disclosed to promote openness and accountability, and perhaps to dispel the assertion you raise, this would entail a breach of the individuals' privacy. Given the limited public interest in disclosure, we have come to the conclusion that to make disclosure as requested would be a breach of the DPP1.
14. We wish however to be as transparent as possible and therefore are able to disclose the following information. The total sum paid to the four individuals was £261,449. This includes the following:
  - (a) Any legal costs incurred by the individuals and then reimbursed in agreeing any settlement terms;
  - (b) Any redundancy payments;
  - (c) Any other compensation payment agreed as part of any settlement excluding payment for annual leave;
  - (d) Any payment in lieu of notice; and
  - (e) Any outplacement support.
15. The total sum of the legal costs incurred by the GDC in agreeing any terms for departure of the four individuals was £3,409.
16. Given the disclosure above, our view is that any remaining public interest in disclosure of further information (if any) is considerably outweighed by the privacy rights of the individuals. The public interest in accountability is also partly satisfied by the role of the National Audit Office as the GDC's external auditor. The NAO's role includes reviewing the terms on which senior officers depart, and no concerns have been raised by the NAO to date.
17. In conclusion then, balancing the considerations above, our view is that it would clearly be unfair to disclose the information requested (beyond the disclosure given above). As such disclosure would breach DPP1, and so the exemption at section 40(2) and 40(3)(a)(i) FOIA applies. This is an absolute exemption, so we are not required to consider the public interest test in

determining whether it applies (although we have carefully considered the public interest considerations, as discussed at paragraphs 12 to 16 above).

18. Although given this conclusion we are not required to consider the other aspects of DPP1, we have in any event done so, and set out our conclusions on them below.

#### *The conditions for processing in Schedule 2 DPA*

19. There are only two potentially relevant conditions for processing in Schedule 2 DPA in this context. The first is that the individual consents to the processing (paragraph 1 of Schedule 2). As explained above, we have sought the individuals' consents and none have been provided. The only other potentially relevant condition is that:

*"6(1) 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."*

20. We have discussed the balance of the public interest in disclosure against the privacy rights of the individuals at paragraphs 12 to 16 above. A similar conclusion applies here, namely that the disclosure is unwarranted because of the prejudice that would be caused to the privacy rights of the individuals (which considerably outweighs any residual public interest). In addition to this, given the disclosure provided above (and the accountability provided by the NAO's role as external auditor), we do not consider that further disclosure is necessary, as required for the paragraph 6(1) condition to apply.
21. Therefore in our view no Schedule 2 conditions for processing apply. For this reason too disclosure would be in breach of DPP1, and so the exemption at section 40(2) FOIA applies.

#### *Section 41*

22. Given the application of the section 40(2) exemption it is not necessary to discuss further exemptions. However for completeness we should add that some of the information requested was provided by the individuals and the GDC is under an obligation of confidentiality in relation to it. Hence the exemption at section 41(1) for information provided in confidence also applies.

23. For your reference, further information on FOIA requests for personal data about public authority employees can be found on the ICO's website.

### **Transparency Matters**

24. You have asked for:

(a) *All legal costs incurred by the GDC in seeking advice in relation to its dealings with the Professional Standards Authority in connection with its investigation into the whistleblowing matters*

25. To the best of our knowledge, between April 2014 and January 2016 the GDC spent £253,535.70 on legal costs in seeking advice in relation to the Professional Standards Authority investigation into whistleblowing matters.

### **Public Relations Costs**

26. You have asked for:

(a) *The total fees paid to Weber Shandwick in the periods 2012-2013, 2013-2014, 2014-2015, and 2015-2016;*

(b) *The complete description of how this agency was selected and the minutes of any procurement process, together with comparative quotes from other suppliers;*

(c) *The terms agreed with Weber Shandwick for the delivery of its services;*

(d) *A breakdown of total fees and description of services provided by any other public relations or public affairs agencies including but not limited to the Insight Consulting Group in the periods 2012-2013, 2013-2014, 2014-2015, and 2015-2016.*

27. Weber Shandwick has been used on an ad hoc basis since December 2011, with an overarching agreement issued by Weber Shandwick on 23 December 2011, detailing terms and conditions that will apply to any discrete parcels of work agreed between the GDC and them. All work commissioned through this agreement has been on the basis of a fixed fee or a fixed monthly fee, plus reimbursement of expenses.

28. The selection of this agency was made by the previous Chief Executive based on her knowledge of the market. The fees paid to Weber Shandwick [excluding VAT] are set out in table 1 below, along with the description of the procurement process and a summary of the service provided. No commitments with Weber Shandwick exist beyond January 2016. Details of minutes relating to procurement processes are attached in appendix 1.

Table 1

Date		£
2012 Jan	Media support for the CEO in relating to a BBC investigative documentary programme – single issue costs in the sum of £10,000 plus expenses. The usual GDC procurement process was waived due to the urgent nature of the support over the Christmas period into the New Year. Formal waiver documentation was completed by the Chief Executive and this was reported to the Audit Committee on 7 March 2012.	10,042
2012 May	Communications support for the Chief Executive and GDC Chair on handling a sensitive corporate governance report. The usual GDC procurement process was waived due to the urgent nature and confidentiality of the support required. Formal waiver documentation was completed by the Director of Policy & Communications and this was reported to the Audit Committee on 25 July 2012 in the sum of £10,000. In the end though this was a single issue cost in the sum of £8,800 plus expenses.	8,813
2012 June and July	Communications support and advice. These were single issue costs in the sum of £4,000 plus expenses. No procurement process was required by the GDC Procurement policy, for this single issue activity given the low value	4,037
2012 Dec	Media training to the GDC Chair. No procurement process was required by the GDC Procurement policy, for this single issue activity given the low value.	2,500
2013	No activity	Nil
2014 Dec	Communications support relating to the dentist Annual Retention Fee announcement. No procurement process was required by the GDC Procurement policy, for this single issue activity given the low value.	8,800
2015 Mar	Communications advice for the Chief Executive. These were single issue costs in the sum of £3,038. No procurement process was required by the GDC Procurement policy, for this single issue activity given the low value.	3,038
	Strategic communications advice and support to the GDC in preparation for an accountability hearing with the Health	15,632

	Select Committee. No procurement process was undertaken although it should have been subjected to a competitive process, for this single issue activity. This procurement lapse was reported to the Audit & Risk Committee on 8 July 2015	
2015 May to Aug	<p>Communications support following the departure of the Head of Public Affairs. The usual GDC procurement process was waived due to the urgent nature and confidentiality of the support required and the absence of in-house support. Formal waiver documentation was completed by the Chief Executive to the sum of £30,000 and this was reported to the Audit Committee on 8 July 2015. The final cost of this work was £36,000.</p> <ul style="list-style-type: none"> <li>• Strategic communication advice for the Chief Executive and the Chair at £7,000 per month</li> <li>• Support and advice regarding stakeholder engagement at £1,000 per month</li> <li>• Support for media relations at £1,000 per month</li> </ul>	36,000
2015 Oct to Dec	<p>Communications support required during a period of staff vacancies while the GDC's in-house communications function was restructured. The usual GDC procurement process was waived due to the urgent nature and confidentiality of the support required and the absence of in-house support. Formal waiver documentation was completed by the Chief Executive for this activity in the sum of £43,000. The final cost of this work was £36,000.</p> <ul style="list-style-type: none"> <li>• Strategic communication advice for the Chief Executive and the Chair at £7,000 per month</li> <li>• Support with stakeholder engagement at £1,000 per month</li> <li>• Support for media relations at £1,000 per month</li> </ul>	36,000
2016 Jan	Media monitoring and event management support	9,000



The above, excluding VAT, summarised by year of spend:

	£
2012	25,392
2013	Nil
2014	8,800
2015	90,670
2016	9,000

29. I can confirm that Insight Consulting Group were the only other public affairs agency used in the period from 2012-16. They were used on an ad hoc basis from March 2014 until January 2015. The initial commitments, approved by the former Director of Policy & Communications, were of low value to the extent that any form of competitive procurement exercise was not required under the GDC's Procurement Policy in place at the time. Other, larger, purchase orders should have been subjected to at least three written quotations being obtained. However, from the information available to us we are unable to confirm this took place. Table 2 provides details of the costs during this period.

Table 2

Date		£
2013 Nov to Dec	Public affairs support	3,757
2014 Jan to Dec	Public affairs support	42,423
2015 Jan	Public affairs support	1,907

### Governance Matters

30. You have asked for a:
- (a) *Full description of the process of Council approval of exceptional expenditure including redundancy and severance payments:*
31. I can confirm that the information we hold about this is in the public domain and available on our website. Under their terms of reference, the Remuneration Committee agrees any special severance arrangements for the

Chief Executive or any member of the Executive Management Team (EMT). The Remuneration Committee terms of reference can be found at: <http://www.gdc-uk.org/Aboutus/Thecouncil/Pages/Remuneration-Committee.aspx>.

32. There are matters delegated from the Council to the Chief Executive and Registrar, which permits the Chief Executive and Registrar to approve payments to employees who are not members of the EMT. The matters delegated from the Council to the Chief Executive can be found at: <http://www.gdc-uk.org/Aboutus/Thecouncil/Pages/Governance.aspx>.

33. You have also asked for the:

*Identification of the Council members consulted in respect of each of the matters described above under:*

- (a) Staff
- (b) Transparency
- (c) and public relations: and

*Copies of minutes relating to the sign off and approval of these decisions*

- (a) Staff

34. In line with the GDC's process for approving exceptional expenditure, the Remuneration Committee was consulted with and approved the payments made to directors. The Remuneration Committee and Chair of Council were consulted with and approved the payment for the Chief Executive.

35. However, the minutes and emails relating to the decision making contain detailed information about the discussions the GDC had with the former officers in addition to details of the final payments themselves.

#### *Personal data*

36. We explained at the start of this letter (paragraphs 7-13) that we consider details of payments made to the former officers should not be disclosed because the exemption at section 40(2) and 40(3)(a)(i) of FOIA applies. Naturally, the negotiation and discussion of those payments contains that same information along with additional detail. In line with our earlier explanations, we consider this to be personal information which the individuals have a reasonable expectation will not be disclosed. The legitimate public interest does not outweigh their rights as data subjects.

37. Although we accept that there is legitimate public interest in knowing what the GDC's decision making processes are in relation to exceptional expenditure,

and that those governance arrangements were followed in this instance, we have provided that information and assurance here without the need to breach the privacy rights of the individuals concerned.

*Section 41*

38. Given the nature and content of the records, we also consider that the exemption at section 41(1) relating to information provided in confidence applies to them.

*Section 36*

39. Finally, though the information we hold is largely composed of the personal and confidential information of the former officers, we consider that section 36 FOIA would also apply. Section 36(2)(b) applies to information which 'would, or would be likely to, inhibit – (i) the free and frank provision of advice, or (ii) the free and frank exchange of views.'
40. In our view, disclosure of the information would impact on the ability of GDC staff to provide advice and to discuss these and similar issues in the future. In turn, we are concerned that this would have an adverse effect on the effectiveness and quality of the decisions taken by senior staff and the committees whose role in the GDC governance framework it is to ensure best value in negotiating its settlement packages.
41. Section 36 is a qualified exemption and, as such, we have considered the public interest arguments for and against disclosure. We accept that disclosing the information may promote accountability and transparency by the GDC for the decisions it takes generally and those specifically taken in respect of severance packages. Disclosure may, therefore, help improve the quality of the GDC's decision making and administration in the future.
42. We also recognise that disclosing the information may also assist the public in understanding how, against the backdrop of the PSA's report, decisions in respect of the severance packages were taken and best value was achieved. This is especially so given the concerns you have expressed in your letter of 11 March 2016 that severance payments to senior staff maybe indicative of a 'reward for failure'.
43. Nevertheless, we conclude that the public interest arguments for withholding the information are stronger. I reiterate my statement in paragraph 12 of this letter that, whilst the PSA report of December 2015 expressed criticisms of the conduct of the four individuals in certain, limited aspects of their roles,

those criticisms were not of a nature to suggest that the individuals could or should have been removed for poor performance.

44. Public debate about the amount the GDC has paid to its former officers is not reliant on the disclosure of the discussions that led to those amounts being finalised. The public interest in knowing how much has been spent is met by our disclosure in paragraph 14. It is important to also stress that there is no suggestion or evidence more generally of the GDC mismanaging public funds that might require a greater level of transparency about the discussions that took place.
45. Given our concern that disclosure would be likely to have an adverse impact on the GDC's governance processes and the ability of staff to provide advice, discuss similar issues, and negotiate the best outcomes for the GDC, we also consider that disclosure would be likely to lead to poorer decisions – an outcome which is not in the public interest.
46. Finally, disclosing information which would breach the confidence of the individuals involved, would impact more widely on the trust and working relationship between the GDC and its staff, making negotiations, particularly around settlement payments, more difficult and less effective.
47. I hope it will be clear why we have concluded, therefore, that the public interest in withholding the information outweighs the interest in disclosure.

*(b) Transparency*

48. You have asked for a full description of the process of Council approval of exceptional expenditure, identification of Council members consulted on legal costs for the PSA report and copies of minutes relating to the sign-off and approval of these decisions. The costs for the investigation came from the Corporate Legal budget. As such, they were overseen by the Head of Corporate Legal, the former Director of Governance, the former Chief Executive, and, from August 2015 the Principal Legal Adviser. They have been reviewed by the Council as part of the annual sign off of the GDC report and accounts, and the more recent spend will also be reviewed by the Council as part of that established process.

*(c) Public relations*

49. Appendix 1 outlines those instances where the Audit and Risk Committee, the Committee which reviews procurement spending, were notified.

I would be happy to discuss further with you if that would be helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Brack', with a long horizontal flourish extending to the right.

Ian Brack  
Interim Chief Executive and Registrar

## **Appendix 1: Details of minutes relating to procurement processes**

Extract from the minutes of the Audit Committee on 7 March 2012:

### **Item 13 Procurement and Financial Operations Update**

- 13.1 The Committee received the paper from the Head of Finance and the Procurement Manager. The paper gave an update on key contracts being tendered, single tender action approvals, procurement exception reporting and an update on invoice management and progress on issues with the IT system.

Extract from the minutes of the Audit Committee on 25 July 2012:

### **Item 15 Procurement Exception Report**

- 15.1 The Committee received and noted the report from the Procurement Manager and the Head of Finance on procurement and operational finance matters.

Extract from the minutes of the Audit & Risk Committee on 8 July 2015:

### **Item 20 Annual Procurement Report**

- 20.1 The Committee received a report on GDC procurement and contract management activity during the 12 months to 30 April 2015. Also included in the report were the exceptions under the Procurement policy from 1 March 2015 to 31 May 2015.