



An Coimisinéir Faisnéise
Information Commissioner

Case RPSI/22/04

Decision of the Information Commissioner in his capacity as Appeal Commissioner on an appeal made under Regulation 15 of the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (the Regulations)

Date of decision: 12 December 2024

Appellant: Mr X

Public Sector Body: The Medical Council

Issue: Whether the Medical Council's decision to refuse the appellant's re-use request for (a) details held on its Published Register, and (b) a list of medical practitioners no longer registered, consequently whose names do not appear on its Published Register, in an open and machine readable format, was in compliance with the Regulations.

Decision: The Commissioner varied the Medical Council's decision in respect of part (a). While the Commissioner affirmed its decision to refuse, under Regulation 7(3)(a) and (b), all of the details held on its Public Register by way of one report, he annulled its decision to refuse access to the details held on its Public Register that can be exported from its main database system and directed it to conduct a fresh decision-making process in respect of that information. The Commissioner also annulled the Medical Council's decision to refuse part (b) under Regulation 3(2) of the Regulations and directed it to conduct a fresh decision-making process in respect of that part.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 20 of the Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

Background

1. On 18 May 2022, the appellant sought "...a complete electronic copy of the register of doctors, as maintained by the Medical Council, in an open and machine-readable format, such as CSV or Excel." The appellant further commented "I note that the information is currently available in limited form on the Medical Council website by searching for individual names. However, it is not possible to generate the list I am seeking as someone can only do this with access to the backend of the Medical Register database..."
2. On 17 June 2022, the Medical Council issued its decision, wherein it noted that following a telephone call on 8 June 2022, the appellant's re-use request had been clarified and updated so that its decision concerned a re-use request for the following in an open and machine-readable format:
 - (a) The details held on the electronic Register of Medical Practitioners which is available on the Medical Council website (the Published Register)
 - (b) A list of medical practitioners who are no longer registered with the Medical Council, and consequently whose names do not appear on the Published Register available on the Medical Council's website.
3. The Medical Council refused the appellant's request for re-use in full under regulations 3(2)(d)(i) and (iii), 3(2)(f), 3(2)(h)(i), 3(2)(4)(b), and 5(5)(b) of the Regulations.
 - Regulation 3(2)(d)(i) – This provision provides that the Regulations shall not apply to documents access to which is excluded under the Data Protection Acts 1988 to 2018.
 - Regulation 3(2)(d)(iii) – This provision provides that the Regulations shall not apply to documents access to which is excluded under the Freedom of Information Act 2014 (other than documents to which section 15(2) of that Act applies),
 - Regulation 3(2)(f) – This provision provides that the Regulations shall not apply to documents access to which is restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment, including where a person is required to provide a particular interest in order to obtain access to documents.
 - Regulation 3(2)(h)(i) – This provision provides that the Regulations shall not apply to documents access to which is excluded or restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment on the grounds of protection of personal data
 - Regulation 3(2)(4)(b) – This provision provides that nothing in the Regulations shall be read as permitting the release of information by a public sector body in a manner that is prohibited by law, in particular the General Data Protection Regulation or the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011)
 - Regulation 5(5)(b) – While the Medical Council refers to this provision, it appears to be a reference to the previous regulations, which are no longer in force. Having regard to that context and the detail in the decision, I understand that the Medical Council was referring to Regulation 7(3)(a) and (b) of the current Regulations, which provide that nothing in the Regulations shall be construed as requiring a public sector body or public undertaking to create or adapt any document, or provide

extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

4. On 17 June 2022, the appellant appealed the Medical Council's decision to this Office.
5. I have now completed my review under the Regulations. In so doing, I have regard to the correspondence between the Medical Council and the appellant as outlined above and to correspondence between my Office and both the Medical Council and the appellant on the matter. What follows does not comment or make findings on each and every argument advanced but all relevant points have been considered.

Scope of Review

Context

6. In its decision, the Medical Council provided context to the request, which I consider relevant to outline at the outset. The Medical Council explained that it is a statutory body established pursuant to Part II of the Medical Practitioners Act, 1978 and continued in being by Section 4(1) of the Medical Practitioners Act 2007, as amended, (the 2007 Act). The Medical Council stated that its objective is to protect the interests of the general public in their interactions with registered medical practitioners.

The Published Register

7. The Medical Council explained that it has a number of functions and, as part of its registration function, it maintains a register by collecting and storing a range of personal data belonging to registered medical practitioners. It noted that this data includes: name; contact details; qualifications; and professional indemnity insurance. It stated that all of this information is information that all registered medical practitioners are legally required to provide to the Medical Council in order to be included on the register and is necessary in order for the Medical Council to maintain the register and perform its other regulatory functions.
8. The Medical Council stated that, in line with the requirements of the 2007 Act, it currently publishes the following information in relation to each registered medical practitioner: Name; Medical Council Registration Number (MCRN); Registration type and date of initial registration; Qualifications (including optional additional qualifications, where relevant); Gender; and The Division of the Register in which the registered medical practitioner in question is registered. The Medical Council stated that all of this information in relation to those registered medical practitioners on the register is referred to as the Published Register and is available on the Medical Council's website. In its submissions to this Office dated 22 February 2023, the Medical Council also explained that "where conditions are attached to a registered medical practitioner's registration, some details of those conditions (including sanctions) are available on the Published Register in some cases. To that extent, some conditions applied and/or sanctions attaching to a registration may come within the scope of [part (a) of the appellant's request]."
9. The Medical Council stated that the Published Register is, and is meant to be, a contemporaneous record of those practitioners who are eligible to practise at a point and time. It noted that it is a 'live' record which is constantly changing. The Medical Council stated that it currently complies with its statutory obligation, outlined in Section 56 of the 2007 Act in terms of how the register should be published, through the current search function on the website. The Medical Council also noted that the register is available for inspection on appointment, at its premises. It stated that access is provided via the search function on the website and is free of charge.

Register Database

10. Further to the detail contained in its decision, in its submissions to this Office dated 11 November 2022, the Medical Council explained that, while the appellant's request concerns the Published Register, there is also a Register Database. It stated that the Register Database contains all information required to carry out its functions, from which the Published Register is collated and maintained. It noted that the Register Database is not and has never been available for inspection at its offices, nor is the Register Database capable of being published on the Medical Council's website in a searchable, line by line format in its entirety. It explained that the Register Database is separate and distinct from the Published Register and contains sensitive personal data and confidential information which the Medical Council is not permitted to publish and/or is prohibited or restricted from publishing/disclosing, either by statute, by order of the Courts, or due to other legal constraints.

The Complaints Process, Fitness to Practise Committee (FTPC), Sanctions and Publication

11. The Medical Council explained that where a complaint is received in respect of a registered medical practitioner, the Preliminary Proceedings Committee carries an initial review and investigation of the complaint in question in order to decide whether or not the complaint requires further action e.g. referrals to the FTPC for an inquiry.
12. The Medical Council noted that if a complaint is referred to the FTPC for an inquiry, under Part 8 of the 2007 Act, and if findings of poor professional performance and/or professional misconduct are made against a registered medical practitioner, there are a number of sanctions that may be imposed by the Medical Council. The Medical Council outlined that where it decides to attach restrictions (e.g. conditions) to a registered medical practitioner's registration following the conclusion of an inquiry, this is generally reflected on the Published Register, unless a direction has been made to the contrary by either the Medical Council or the High Court.
13. The Medical Council noted that when an extremely serious matter is brought to its attention, which is deemed by it to constitute an immediate or imminent threat to public safety, it may apply to the High Court for an order under Section 60 of the 2007 Act, for immediate suspension of the registered medical practitioner in question in order to protect the public. The Medical Council noted that where such an order is made, the registered medical practitioner in question will be suspended from practising medicine until any investigation or inquiry pursuant to Parts 7, 8 and 9 of the 2007 Act has been completed. The Medical Council stated that, in such cases, the registered medical practitioner's name will usually be removed from the Published Register.
14. The Medical Council stated that at the conclusion of the inquiry process, described above, it may impose a range of sanctions on a registered medical practitioner. It outlined that section 85 of the 2007 Act provides that the Medical Council shall, if it decides it is in the public interest to do so, advise the public when:
 - any sanction referenced in Section 84(1) of the Act takes effect,
 - any measure referred to in Section 84(2) of the Act comes to the knowledge of the Medical Council
 - after consultation with the FTPC, publish a transcript of all or any part of the proceedings of the Committee, whether with or without any information which would enable all, or any one or more than one, of the parties to the proceedings to be identified.

Removal from the Register

15. The Medical Council stated that a registered medical practitioner's name may be removed from the register for the following reasons:
- Voluntary withdrawal from the register
 - Failure by registered medical practitioners to apply for renewal of their registration, non-payment of registration fees, or failure to provide details of professional indemnity – in order to continue to be registered, registered medical practitioners are required to apply to renew their retention to the register on an annual basis. Registered medical practitioners are required to submit an application form together with an associated fee and details of their professional indemnity. Where a registered medical practitioner does not apply to renew their registration and/or does not pay the fee associated with it and/or does not provide details of their professional indemnity, they are removed from the Register, save where they are the subject of an open complaint/investigation or inquiry.
 - Sanction imposed by the Medical Council following an inquiry - Where the FTPC makes a finding that a registered medical practitioner has been guilty of poor professional performance and/or professional misconduct or that the registered medical practitioner's practise is impaired, the Medical Council is required, under the 2007 Act, to impose a sanction. One of the sanctions that the it may impose, under the 2007 Act, is cancellation of registration or removal from the register. Where this occurs, the name of the doctor is removed from the Published Register. In addition to this, the Medical Council may publish the details of the cancellation, on its website.

Scope

16. Regulation 15(1) of the Regulations provides that a requester can appeal to the Appeal Commissioner where a public sector body decides:
- (a) to refuse to allow a requester to re-use a document
 - (b) to refuse to grant an exclusive right to a requester to re-use a document
 - (c) to allow the re-use of a document but subject to a proposed charge being paid which the requester believes does not accord with the requirements of the Regulations in setting the amount of the proposed charge
 - (d) to allow the re-use of a document subject to imposing conditions.
17. Regulation 17(2) provides that the Appeal Commissioner (a) shall review in accordance with the Regulations a decision to which the Regulations apply, and (b) following the review, may, as the Appeal Commissioner considers appropriate, decide (i) to affirm or vary the decision, or (ii) to annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper, in accordance with the Regulations.
18. It is the position of this Office that a right of access to a document is an essential precursor to the right to re-use such a document. Rights of access to documents are generally defined by national legislation. Regulation 2(1) of the Regulations defines "document" as "all or part of any form of document, record or data, whether in physical, electronic or other form..."

19. As outlined above, the appellant's clarified re-use request sought the following in an open and machine readable format:
- (a) The details held on the electronic Register of Medical Practitioners which is available on the Medical Council website (the Published Register)
 - (b) A list of medical practitioners who are no longer registered with the Medical Council, and consequently whose names do not appear on the Published Register available on the Medical Council's website.
20. In its submissions to this Office dated 22 February 2023, the Medical Council explained that "where conditions are attached to a registered medical practitioner's registration, some details of those conditions (including sanctions) are available on the Published Register in some cases. To that extent, some conditions applied and/or sanctions attaching to a registration may come within the scope of [part (a) of the appellant's request.]"
21. In its decision, the Medical Council indicated that it was refusing the appellant's re-use request in full under Regulations 3(2)(d)(i) and (iii), 3(2)(f), 3(2)(h)(i), 3(2)(4)(b), and 7(3)(a) and (b) of the Regulations. While I note the Medical Council's decision and its various submissions to this Office, at this stage and, in particular, having regard to its submissions to this Office dated 22 February 2023, I am satisfied that it is specifically relying on Regulation 7(3)(a) and (b) of the Regulations to refuse part (a) of the appellant's request for re-use. I also note its position that part (b) of the appellant's request falls outside the scope of the Regulations because the Medical Council does not publish details of all medical practitioners who previously were, but no longer are, listed on the Published Register.
22. The appellant sought, in an open and machine readable format, at part (a) of his request, the details held on the Published Register and, at part (b), a list of medical practitioners no longer registered, and consequently whose names do not appear on the Published Register. I am satisfied that, in accordance with its statutory obligations under the 2007 Act, the Medical Council currently publishes data on the Published Register. Regarding part (a) of the appellant's request for re-use, given that the information relevant to that part is on the Published Register and is, therefore, available for inspection and accessible via the Medical Council's website, albeit on an individual basis, I am satisfied that a right of access to that information exists. It is the Medical Council's refusal to allow re-use of that information, which is under review.
23. Regarding part (b), while the Medical Council also referred to Regulation 7(3) in respect of that part, it also outlined its view that Regulation 3(2) of the Regulations is engaged and, accordingly, the Regulations do not apply to the information concerned. Regulation 7(3) does not fall to be considered if Regulation 3(2) applies. Accordingly, it is my view that it is necessary to consider Regulation 3(2) as a threshold matter in respect of part (b). As noted above, Regulation 15(1) sets out the types of decisions of public sector bodies that are open to appeal to the Appeal Commissioner. It is my view that a decision to refuse re-use under Regulation 3(2) on the basis that the Regulations do not apply to the document concerned can fall into, for example, paragraph (a) of Regulation 15(1), which simply pertains to the refusal of a re-use request. Therefore, a decision that a document is excluded from the Regulations under Regulation 3(2), for example, because no right of access exists by reference to the Freedom of Information Act 2014 (the FOI Act), can be considered by the Appeal Commissioner when making his or her determination on the re-use of that information. Where my powers as Appeal Commissioner extend to determining whether access to the information sought for re-use would be excluded under Regulation 3(2), I find that part (b) of the request, in addition to part (a) of the request, falls within the scope of this review.

24. In all the circumstances, I am satisfied that this review concerns whether the Medical Council was justified in refusing, under Regulation 7(3)(a) and (b) of the Regulations, part (a) of the appellant's re-use request for the details held on its Published Register, and, under Regulation 3(2) of the Regulations, part (b) of the appellant's re-use request for a list of medical practitioners no longer registered, consequently whose names do not appear on its Published Register, in an open and machine readable format.

Nature of the Review

25. I consider that a review by this Office is de novo, which means that it is based on the circumstances and the law as they pertain at the time of this decision.

Analysis and Findings

Part (a)

26. The Medical Council is refusing, under Regulation 7(3)(a) and (b) of the Regulations, part (a) of the appellant's re-use request for details held on its published register in an open and machine readable format.
27. Regulation 2(1)(a) of the Regulations states that "re-use" means in relation to a document held by a public sector body, the use of the document by an individual or legal entity for commercial or non-commercial purposes other than the initial purpose within the public task for which the document was produced, but does not include the exchange of that document between public sector bodies solely for the purpose of performing their public tasks. As referred to above, regulation 2(1) states that "document" means "all or part of any form of document, record or data, whether in physical, electronic or other form..."
28. Regulation 3 of the Regulations limits the application of the Regulations and exempts certain documents from the scope of the Regulations.
29. Regulation 5(1) of the Regulations provides that "...a document to which these Regulations apply shall be made available for re-use in accordance with the conditions provided for in Regulations 7 to 13."
30. Regulation 7(1) of the Regulations provides that where a public sector body makes a document available for re-use it shall make the document available in any pre-existing format or language, by electronic means where possible and appropriate, in a format that is open, machine-readable, accessible, findable and re-usable, together with its metadata, and the format and metadata shall, where possible, comply with formal open standards.
31. Regulation 7(2) of the Regulations provides that where possible and appropriate, public bodies, shall produce and make available documents to which the Regulations apply in accordance with the principle of "open by design and by default".
32. Regulation 7(3) provides that nothing in the Regulations shall be construed as requiring a public sector body "to (a) create or adapt any document, (b) provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation..."

33. It is the appellant's view that while a body can refuse a request where the request would involve disproportionate effort, going beyond a simple operation, this does not arise in this case. In support of his position, in his request, he stated that he is aware of an individual who "was previously given an Excel sheet with the medical register a number of years ago, following a request to the Medical Council" and "the Medical Council have the technical ability to generate such a register in electronic format, as this has been done before." In correspondence with this Office, the appellant also contended that similar information is published by the Pharmacy Regulator on its website and is available for re-use.
34. The Medical Council made detailed submissions to this Office in support of its decision regarding part (a) under Regulation 7(3)(a) and (b). I have included below some of the points made by the Medical Council to this Office on 11 November 2022 and, in particular, on 22 February 2023.
35. The Medical Council, explained, in providing further detail related to that set out in its decision and outlined in the "Context" section above, that it currently publishes certain prescribed information held in relation to each of nearly 28,000 registered medical practitioners. It stated that the current Published Register contains the following 10 fields of data:
1. Registration Number (MCRN)
 2. Full Name
 3. Gender
 4. First registration date
 5. Registration type
 6. Primary Qualification details
 7. Additional Qualifications
 8. Conditions (attached or not attached) and the detail of conditions attached in some cases
 9. If registered in the specialist division – speciality, speciality group, from date
 10. Where a trainee specialist, details of the post
36. The Medical Council noted that members of the public are not permitted to download the entirety of the Published Register in a single report from its website. The Medical Council stated that there is no reporting functionality with regard to the data held on the website.
37. The Medical Council stated that it uses different systems to store the information which forms part of the Public Register, one of which is its main database system (PRISM). The Medical Council stated that data relating to 9 of the 10 fields relevant to the Published Register is held on the main database system (PRISM) – the exception being "conditions" as data relating to conditions and sanctions is stored separately, including on an Excel spreadsheet. The Medical Council explained that the Excel spreadsheet maintains a working record of those practitioners with conditions attached to their registration, including a section listing those practitioners who previously had conditions attached and when those conditions were removed. It stated that it is not designed or prepared for external publication and would require additional manual checking and curation before being released or used for that purpose. It stated that this would be necessary to avoid the possible release of incomplete, out of date or inaccurate information, including personal data, which could be unfair and prejudicial to the individuals involved.
38. The Medical Council stated that a daily live feed from its main database system (PRISM) supplies the information displayed in 9 of the 10 data fields on the Published Register. The Medical Council explained that a website coding tool is used to capture certain information from the Excel spreadsheet for inclusion on the Published Register. In this regard, it explained that information is inputted manually by administration staff onto separate website tables where there are changes in conditions and undertakings for practitioners. It stated that this is not an automatic process and no reports can be generated from the website coding tool.

39. The Medical Council explained that in preparing its response to queries from this Office, it discovered that its main database system (PRISM) has a standard built-in reporting tool that allows it to run a reports in respect of the 9 of the 10 fields relevant to the Published Register. The Medical Council stated that it “was previously unaware that the functionality necessary to be able to extract 9 of the 10 fields from the Published Register existed and/or was possible.” However, it noted that as data relating to conditions and sanctions is stored separately, it would be required to amalgamate the report from the main database system (PRISM) with other reports, commenting “[n]otwithstanding [the] developments [it] would still be required to generate more than one report (i.e. two reports) and manually amalgamate those reports” in order to collate the information which appears on the Published Register into a single report and provide a complete copy. The Medical Council stated that it does not have the internal data or database expertise to integrate multiple sources of data into one report and, therefore, relies on external third party experts to do this work on its behalf.
40. The Medical Council responded to the appellant’s comment that that he is aware of an individual who “was previously given an Excel sheet with the medical register a number of years ago, following a request to the Medical Council” and “the Medical Council have the technical ability to generate such a register in electronic format, as this has been done before.” The Medical Council explained that, at the time that report was generated and provided to the individual concerned, it had a different database system in place. It stated that the current main database system (PRISM) does not have the same functionality/data fields as the older database system, which is no longer available. The Medical Council commented that it was its understanding that the previous report provided to the individual concerned did not contain details of conditions/restrictions attached to registrations.
41. The Medical Council reiterated that its current reporting tools are not capable of generating a single complete report of all searchable fields on the Published Register and different reports would have to be created and manual amalgamation would be required to combine them, which would be difficult and labour intensive. It contended that it would need to create or adapt documents in order to provide the relevant information in an open and machine readable format (such as CSV or Excel). It submitted that the Regulations do not impose an obligation on public bodies to engage in such document creation or adaption and accordingly, part (a) should be refused under Regulation 7(3)(a) of the Regulations.
42. The Medical Council also noted its position that to provide the information sought in an open and machine readable format (such as CSV or Excel) “would constitute the imposition of a disproportionate effort because a series of separate reports from multiple information sources would require manual amalgamation in an extremely labour-intensive process” and accordingly, part (a) should be refused under Regulation 7(3)(b) of the Regulations.
43. However, the Medical Council went on to state that while it “stands by its decision to reject [part a] in accordance with Regulation 7(3)(a) and/or (b) of the [Regulations]” and “notwithstanding [its] understanding that it is not required by the Regulations to provide a copy of the Published Register to the [a]ppellant, [it] may, in principle, be in a position to make a soft copy of the Published Register to the [a]ppellant on a voluntary basis, insofar that the soft copy relates to and is limited to [part (a)]...” The Medical Council stated that it is committed to being open and transparent about its decisions in a way that protects the public, however, it also recognises the requirement to balance this commitment with its legal obligations regarding the protection of personal data, privacy and confidentiality. It noted that, to that end, it was exploring the possibility of developing a technical solution to enable it to respond to part (a) “even though it is not obliged to incur such effort and expense pursuant to the Regulations”. It further commented:

“In order to comply with [part (a)] and provide a copy of the Published Register on a voluntary basis, the Medical Council would need to avail of external specialist assistance...This would take time to complete and would also involve expense for the Medical Council because external

assistance will be required. While this goes beyond the Medical Council's obligations under the [Regulations], upon reflection, the [Medical] Council is willing to consider providing such a copy of the Published Register in the interests of transparency, even though the steps required mean that this would exceed its obligations under the Regulations..."

44. The Medical Council outlined that it had contacted its supplier and indicated the fee quoted for the development of a one-off custom amalgamated report. It also indicated the fee quoted for the development of the functionality that would be required if it was necessary to generate amalgamated reports more frequently. It noted that it is statutorily obliged to have regard to its resources and the respective costs and benefits of building functionalities. It stated that while it was unwilling to develop the functionality required for the ability to regularly generate amalgamated reports, notwithstanding the cost involved and its position that refusal was justified, it was willing to make a one-off copy of the amalgamated report available for re-use, subject to "strict and non-negotiable re-use restrictions".
45. The Medical Council noted that the "strict and non-negotiable re-use restrictions" would include, but would not be limited to, a list of ten restrictions. It set out the detail of those ten restrictions. It also commented:

"The Medical Council wishes to highlight that this is a non-exhaustive list of restrictions which would be subject to review on each occasion the [a]ppellant wishes to broadcast and or publish the data concerned. In order to appropriately assess the conditions necessary to safeguard the re-use of the information, the Medical Council would need to be informed, on each occasion, of the intention to publish within an adequate timeframe. Enough time must be given to allow the Council to reflect on and consider the re-use and licensing terms necessary to allow for the re-use and publication of information without prejudicing any rights of individuals that may be affected as a result. Finally, the conditions...are provided by way of assistance to your office and the [a]ppellant and the Council reserve the right to update and/or amend same, as appropriate."

46. Having examined the Medical Council's submissions to this Office, which are summarised above, including its comments regarding the requirement to manually amalgamate reports because its current reporting tools do not have the capability to generate a single report of all searchable fields on the Published Register, and the need for, and cost involved in, procuring the external expertise that would be needed to do so, I am satisfied that to provide all of the details held on its Public Register in one report, would require the Medical Council to create/adapt a document and provide extracts from documents that would involve disproportionate effort, going beyond a simple operation. Accordingly, I find that Regulation 7(3)(a) and (b) of the Regulations applies to the provision of one report containing all of the detail for re-use. I make this finding notwithstanding the Medical Council's indication that it may be willing to engage the external expertise required and make available a one-off copy of the report on a voluntary basis.
47. However, given that a report can be run on the Medical Council's main database (PRISIM) to export details in respect of nine of the ten fields available on the Published Register using a standard built-in tool and seemingly without the need to engage third party expertise, I am satisfied that to do so would not require creating/adapting a document to the extent envisaged by Regulation 7(3)(a) or the disproportionate effort envisaged by Regulation 7(3)(b), instead it would require the extraction of data from an existing database. Accordingly, I find that Regulation 7(3)(a) and (b) of the Regulations does not apply in respect of providing those specific details.
48. On the other hand, given the work and effort that would be required to provide the detail relevant to the field related to conditions and sanctions contained in the Excel spreadsheet, I am satisfied that to do so would require creating/adapting a document and providing extracts from documents that would

involve disproportionate effort, going beyond a simple operation. Accordingly, I find that Regulation 7(3)(a) and (b) of the Regulations applies in respect of providing that specific detail.

49. Having found Regulation 7(3)(a) and (b) not to apply in respect of providing the detail relevant to nine of the ten fields available on the Published Register, I have considered whether it is appropriate for me to simply direct the re-use of that information. It is important to note that, just because a document is accessible, it does not mean that it can be re-used unconditionally. For example, Regulation 10 deals with “Standard Licences”. Regulation 10(1) provides that where a public sector body makes documents available for re-use, the re-use of the documents shall not be subject to conditions unless the conditions are in accordance with paragraph (2). Regulation 10(2) provides that any applicable conditions for the re-use of documents shall— (a) be objective, proportionate, non-discriminatory and justified on grounds of an objective of public interest, (b) not unnecessarily restrict possibilities for re-use, and (c) not be used to restrict competition. Regulation 10(3) provides that subject to Regulation 8(8), any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use. Regulation (4) provides that a public sector body shall, where possible and appropriate, use the standard licence for the re-use of documents published from time to time by the Minister.
50. As noted, the Medical Council outlined to this Office that if it were to provide all of the details voluntarily, it would only do so subject to a list of ten “non-exhaustive” conditions. Given the requirements of Regulation 10 of the Regulations, that the conditions were only raised in correspondence with this Office and not in the decision, and that an appeal can be made to this Office under Regulation 15(1)(d) regarding a decision to allow the re-use of a document subject to imposing conditions, I consider that the most appropriate course of action to take is to annul the Medical Council’s decision under Regulation 7(3)(a) and (b) in respect of the details regarding nine of the ten fields available on the Published Register that can be exported from its main database (PRSIM) and to direct it to undertake a fresh decision-making process on the appellant’s re-use request for that information. In doing so, should the Medical Council seek to impose conditions it must do so in accordance with Regulation 10, setting out its reasons for its decision. If the appellant is dissatisfied with the Medical Council’s decision, he will have a right of appeal to this Office.
51. For the sake of completeness, I would also note that it is open for the Medical Council and the appellant to come to an arrangement outside the RPSI process in respect of any or all of the information relevant to the appellant’s request, should they wish to do so.

Part (b)

52. The Medical Council is refusing, under Regulation 3(2) of the Regulations, part (b) of the appellant’s re-use request for a list of medical practitioners no longer registered, consequently whose names do not appear on its Published Register, in an open and machine readable format.
53. As noted above, the Medical Council, in its decision (and its submissions to this Office), relied on various provisions within Regulation 3(2) of the Regulations in refusing the appellant’s re-use request in full:
- Regulation 3(2)(d)(i) – This provision provides that the Regulations shall not apply to documents access to which is excluded under the Data Protection Acts 1988 to 2018.
 - Regulation 3(2)(d)(iii) – This provision provides that the Regulations shall not apply to documents access to which is excluded under the Freedom of Information Act 2014 (other than documents to which section 15(2) of that Act applies),

- Regulation 3(2)(f) – This provision provides that the Regulations shall not apply to documents access to which is restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment, including where a person is required to provide a particular interest in order to obtain access to documents.
- Regulation 3(2)(h)(i) – This provision provides that the Regulations shall not apply to documents access to which is excluded or restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment on the grounds of protection of personal data
- Regulation 3(2)(4)(b) – This provision provides that nothing in the Regulations shall be read as permitting the release of information by a public sector body in a manner that is prohibited by law, in particular the General Data Protection Regulation or the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011)

54. In applying Regulation 3(2) of the Regulations, it is not open to a public sector body to simply declare that a document is exempt from release, for example, if referring to the FOI Act - the public body must properly consider and provide reasons for the relevant provisions being relied upon and any public interest test set out therein in its decision on the re-use request. A public sector body receiving a re-use request if relying on Regulation 3(2) must consider the application of the various access regimes to the information sought, namely the FOI Act and the AIE Regulations, as well as the application of data protection legislation. If one access regime does not allow access, then another relevant regime must be considered. In practical terms the public authority must consider the access regime that gives the widest possible access to information.
55. The duty to give reasons for refusal is recognised generally as a core principle of administrative law and a fundamental element of constitutional justice (see, for example, *Meadows v Minister for Justice* [2010] IESC 3 and *Balz & Anor v An Bord Pleanála & Ors* [2019] IESC 90). Both of these judgments make it clear that where a requester has all or part of a request refused, they are entitled to be provided with clear reasons for that refusal. This duty arises so that the requester can take a view as to whether they consider refusal justified, or whether they wish to exercise their entitlement to have the refusal reviewed through an appeal to this Office.
56. In this case, I am not satisfied that it has been properly established by the Medical Council if a right of access exists in respect of the information relevant to part (b) of the appellant's request for re-use. Part (b) concerns detail that has been removed from the Published Register and is, therefore, neither available for inspection nor accessible via the Medical Council's website. While the Medical Council referred to data protection legislation and the Freedom of Information Act 2014 in its application of the provisions of Regulation 3(2) being relied upon (although it is not entirely clear whether all of those provisions were being considered in respect of part (b), it did not provide adequate reasons in its decision (or its additional submissions to this Office) to support a decision to refuse access under either of those regimes. Accordingly, the Medical Council has not sufficiently established that Regulation 3(2) is engaged in respect of part (b) of the request. Accordingly, I am not satisfied that the Regulations do not apply to that information. I also understand that in certain instances the names of individuals whose registrations are cancelled are published on the Medical Council's website.
57. In all the circumstances, I do not find that the Medical Council's decision under Regulation 3(2) was justified. However, where adequate reasons have not been provided, it has not been properly established by the Medical Council if a right of access exists, and the information concerned would include information relating to third parties, I do not consider it appropriate for me to simply direct the re-use of all of the information relevant to part (b). Instead, I direct the Medical Council to conduct

a fresh decision-making process in respect of that part. On the one hand, given the nature of the information concerned at part (b), in considering the matter afresh, the Medical Council may wish to consider the mandatory exemption at section 37 of the FOI Act. On the other hand, given submissions made by the Medical Council regarding the work involved to process part (b), it may wish to consider the exemption at section 15(1)(c) of the FOI Act. However, I note that these suggestions should not be interpreted as a finding that section 37 of the FOI Act applies to some or all of the information or a finding that section 15(1)(c) applies. Regardless of the approach taken by the Medical Council in processing the matter afresh, it should have full regard to the actual information concerned and the specific requirements of any provision of the Regulations, including any accompanying legislation being relied upon, and provide adequate reasons for its decision.

Decision

58. In accordance with Regulation 17(2) of the Regulations, I have reviewed the Medical Council's decision on the appellant's request. I vary the Medical Council's decision in respect of part (a). While I affirm its decision to refuse, under Regulation 7(3)(a) and (b), all of the details held on its Public Register by way of one report, I annul its decision to refuse access to the details held on its Public Register that can be exported from its main database system and direct it to conduct a fresh decision-making process in respect of that information. I also annul the Medical Council's decision in respect of part (b) under Regulation 3(2) of the Regulations and direct it to conduct a fresh decision-making process in respect of that part.

Right of Appeal

59. A party to this appeal or any other person affected by this decision may appeal this decision to the High Court on a point of law from the decision, as set out in Regulation 20 of the Regulations. Such an appeal must be initiated not later than eight weeks after notice of this decision was given to the person bringing the appeal.

Ger Deering
Appeals Commissioner
12 December 2024