

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2024

Public Authority: Nursing and Midwifery Council
Address: 23 Portland Place
London W1B 1PZ

Decision (including any steps ordered)

1. The applicant requested information from the Nursing and Midwifery Council (NMC) about a named nurse. The NMC refused the request under section 40(2) of FOIA, which concerns third person personal data.
2. The Commissioner's decision is that the NMC should have neither confirmed nor denied it held the requested information under section 40(5B) of FOIA. He has applied this exemption himself, proactively. The NMC therefore breached section 17(1) of FOIA as it failed to issue a correct refusal notice within 20 working days. It's not necessary for the NMC to take any corrective steps.

Request and response

3. The applicant made the following information request to the NMC on 27 February 2024:

"[Redacted], later [redacted] later [redacted]. I would like to know whether this nurse was struck off the register for misconduct under the ENB or UKCC."
4. The NMC refused the request on 6 March 2024, advising that it was relying on section 40(2) of FOIA to withhold the requested information.

5. The NMC maintained this position following its internal review of 28 March 2024.

Reasons for decision

6. Section 1(1)(a) of FOIA obliges a public authority to confirm whether it holds information an applicant has requested. This is known as 'the duty to confirm or deny.'
7. However, section 40(5B) removes that obligation if even the act of confirming or denying information is held would disclose the personal data of a third person and contravene one of the of the data protection principles.
8. In this case, the applicant has requested information about a named nurse and whether they'd been struck off the register for misconduct. The Commissioner is satisfied that confirming or denying the requested information is held would disclose the personal data of that individual - the data subject. They could be identified as they're named in the request and the requested information would relate to them. Confirming or denying the information is held could indicate whether or not they'd been struck off the NMC register.
9. The Commissioner notes that he has issued numerous decision notices setting out the correct response from a public authority faced with such a request and explaining why they should not confirm or deny that information is held¹.
10. The Commissioner recognises that the applicant has an interest in this information, if held. He considers that interest and the general public interest in public authorities being transparent are legitimate. However, he doesn't consider that they justify disclosing the data subject's personal data to the world at large – which is what FOIA requires a public authority to do – through confirming or denying it holds the requested information.

¹ See for example <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619693/ic-59213-t4x9.pdf> or <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022455/ic-165474-f9s6.pdf>

11. The Commissioner is satisfied that, on the basis of the available evidence, there would be no lawful basis in data protection law for the NMC to confirm, to the world at large, whether a particular (identifiable) nurse had been removed from its register.
12. The Commissioner is therefore of the view that the NMC shouldn't have confirmed or denied that it held relevant information and he now applies the exemption under section 40(5B) of FOIA himself to prevent any further disclosure of personal data.
13. The Commissioner notes that the NMC advised the applicant that it has an online register² which can be searched by a nurse's name or PIN number.

Procedural matters

14. Section 17(1) requires a public authority that is refusing to disclose information to provide the applicant with a refusal notice within 20 working days that confirms the exemption it's relying on and explains why it considers that exemption applies.
15. In this case, the NMC refused the request under section 40(2) of FOIA when it should have relied on section 40(5B) to neither confirm nor deny it held the information. The Commissioner therefore finds that the NMC breached section 17(1) of FOIA in responding to this request.

² <https://www.nmc.org.uk/registration/search-the-register/>

Right of appeal

16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF