

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 January 2012

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

### Decision (including any steps ordered)

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1. The complainant requested the disclosure of the date that a particular nurse's registration with the Nursing and Midwifery Council (the "NMC") lapsed. The NMC confirmed it held the relevant information but refused to comply with the request on the basis that the date constituted third party personal data (section 40(2)).
2. The Commissioner has found that the NMC incorrectly applied section 40(2) to withhold the information requested.
3. The Commissioner requires the NMC to take the following steps to ensure compliance with the legislation:
  - Confirm to the complainant when the named nurse's NMC registration lapsed.
4. The NMC must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

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5. On 11 August 2011, the complainant wrote to the NMC and requested information in the following terms:

*"When did [the nurse's] NMC registration lapse?"*

6. On 07 September 2011 the NMC responded to the request. It confirmed it held the information but it was relying on the third party personal data exemption to withhold it.
7. On the same day the complainant asked for an internal review to be undertaken. He also sought to clarify his request:

*"Any patient/resident/professional colleague has a right to know if the person who was providing and/or supervising nursing care at any given time is on the live nursing register."*

8. Following an internal review the NMC wrote to the complainant on 22 September 2011. It upheld its position that section 40(2) of the Act was engaged and refused to disclose the information.
9. The NMC went on to respond to the clarification provided by the complainant:

*"Whilst I acknowledge that it is in the public interest to know whether the registration of a particular nurse is effective, I consider that this interest is satisfied without disclosing the exact date on which a registration has lapsed."*

## Scope of the case

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10. On 22 September 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The scope of case will be to consider the NMC's use of the third party data exemption at section 40(2) of the Act.

## Reasons for decision

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12. Section 40(2) of the Act provides that information is exempt from disclosure if it constitutes the personal data of someone other than the applicant and disclosure would satisfy one of two conditions. In this case the relevant condition is the first condition which is that disclosure would contravene any of the data protection principles. The NMC has argued that disclosure would prejudice the first data protection principle which requires that data be processed fairly and lawfully.

Is the information personal data?

13. In deciding whether the exemption applies it is first necessary to consider whether the withheld information constitutes personal data. Personal data is defined in the Data Protection Act 1998 (the "DPA") as:

"...data which relate to a living individual who can be identified -

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

14. Clearly the requested information provides something of a public record concerning the employment history and future employment intentions of the individual. Furthermore, given the context of the request the Commissioner is satisfied that a living individual is identifiable from this information.

15. Therefore the Commissioner is of the view that the name of the nurse and his or her registration dates, including the date at which the registration lapsed, are personal data within the meaning of the DPA.

Would disclosure breach the first data protection principle?

16. The Commissioner has gone on to consider whether the disclosure of the information that he considers is the personal data of the nurse would contravene the first principle of the DPA.

17. The first principle states that personal data shall be processed fairly and lawfully and shall not be processed unless:

- at least one of the conditions in Schedule 2 is met, and
- in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.

18. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:

- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned (i.e. the consequences of disclosure);
- the individual's reasonable expectations of what would happen to their information; and

- are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
19. The Commissioner has considered each of these factors, with reference to the withheld information, in turn.
  20. The NMC has raised a particular concern about the consequences of disclosure on the nurse in question. This is explained in the confidential annex which will be provided to the NMC only.
  21. The NMC state that when an individual is practising as a nurse they recognise that the public has a right to know if that nurse has the qualifications he or she claims and that their registration is current. However, the NMC maintain that when an individual no longer works as a nurse, or claims to have current registration, any information about registration is private and disclosure would prejudice that person's right to have their personal data protected.
  22. The NMC believes that the public interest is satisfied when it confirms that a nurse's registration has lapsed without disclosing the exact date on which registration has lapsed. The NMC state that its investigations into allegations concerning non-registration facilitate the "appropriate action" if necessary.
  23. In this instance the Commissioner finds that disclosure of the date that the registration lapsed is unlikely to have a detrimental or distressing effect on the nurse. Nursing is a registered profession and there should be an expectation that the qualifications, accreditations and registrations of staff will be scrutinised by the public – even where this relates to retrospective scrutiny concerning a period of care where the nurse is no longer employed or registered. The Commissioner also notes that the request is only for the date upon which the nurse's registration lapsed. It was not for the reasons behind the lapse of the registration (which the Commissioner accepts has the potential to be sensitive to the individuals concerned).
  24. The Commissioner has gone on to consider the second factor – whether the individuals concerned would have reasonably expected that this information would be made public. Nurses know that as a registrant their full name, geographical location, register entries (or qualifications) and the start date of registration is published on the NMC website. This information is only published while the individual, working as a nurse, is registered. Nurses have a reasonable expectation that their registration history will not be disclosed after the registration lapses because of the NMC publication policy.

25. However, the Commissioner does note that the information published on the NMC's public register does include an expiry date for an individual nurse's registration. Whilst the Commissioner accepts that this is likely to change on a yearly basis, as a registered nurse renews their annual registration, if a nurse was to choose to not renew their registration, their registration details would be removed from the public register following the already published expiry date. Therefore, the Commissioner does consider that – to a certain extent – registered nurses would have some reasonable expectation of some transparency as to the date upon which their registration ended.
26. The Commissioner recognises that the public have a legitimate interest in knowing whether a nurse is registered with the NMC. The Commissioner finds that this public interest continues even in hindsight. The current NMC policy fails to offer this assurance, by default, if, for whatever reason, the nurse's registration lapses before the patient, patient representative, patient group or any individual for that matter has the opportunity to visit the NMC online register. Once the nurse's registration lapses the NMC will not provide confirmation of whether a nurse was indeed registered at the time of any given patient's care.
27. The Commissioner recognises that to date nurses have a reasonable expectation that their registration details will remain confidential following the registration lapse. The Commissioner acknowledges that not all roles require NMC registration. However, the retention of registration dates from the public domain and internal NMC investigations shield healthcare staff from public scrutiny. On the balance of fairness, the Commissioner does not accept that disclosure would likely cause damage or distress. There is a compelling legitimate public interest to know whether a nurse, even in hindsight, was registered with the NMC. This is necessary to maintain public confidence and trust in health care provision, namely in this instance, in providing the public with the opportunity to inspect the competency of nursing professionals who were, at some time, employed in a healthcare role even where NMC registration is not required.
28. Therefore the Commissioner has concluded that the NMC incorrectly relied upon the exemption at section 40(2), and that the requested information should be disclosed.

## Right of appeal

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29. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Pamela Clements**  
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