

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 03 September 2012

**Public Authority:** Independent Safeguarding Authority  
**Address:** PO Box 181  
Darlington  
DL1 9FA

#### Decision (including any steps ordered)

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1. The complainant requested information about referrals made by the Nursing and Midwifery Council to the Independent Safeguarding Authority (ISA). The ISA refused to disclose the requested information, citing the personal information exemption (section 40).
2. The Information Commissioner's decision is that the information is not 'personal data' for the purposes of disclosure under FOIA. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: disclose the requested information.
3. The public authority 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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4. The complainant wrote to the Independent Safeguarding Authority (ISA) on 25 January 2012 and requested information in the following terms:

*"1. How many registered nurses and NHS healthcare support workers has the Nursing & Midwifery Council reported to the ISA in the last two years because of safeguarding concerns?"*

*2. What was the outcome of the ISA investigations in the cases that were reported by the NMC?"*

*We would like to point out that qualified nurses have to be registered with the Nursing and Midwifery Council (NMC) in order to practice but the NMC does not regulate healthcare support workers and therefore, as far as we are aware, does not hold or publish information about them."*

5. The ISA responded on 17 February 2012. It stated that although the ISA holds information relevant to the request, it is exempt from disclosure by virtue of the personal information exemption of FOIA. It cited sections 40(2) and 40(3)(a).
6. The complainant expressed dissatisfaction with that response.
7. Having considered matters, the ISA wrote to the complainant on 23 February 2012 upholding its decision. Referring the complainant to its correspondence of 18 November 2011 - the internal review of its handling of her earlier request for information - it confirmed that a further full internal review would not be carried out.

## **Background**

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8. The Independent Safeguarding Authority (ISA) is established under section 1 of the Safeguarding Vulnerable Groups Act 2006. Employers, social services and professional regulators are under a legal duty to notify the ISA of relevant information, so that individuals who pose a threat to vulnerable groups can be identified and barred from working with those groups.
9. According to its website:

*"The Independent Safeguarding Authority's (ISA) role is to help prevent unsuitable people from working with children and vulnerable adults."*
10. The Commissioner understands that the ISA's legal responsibilities are to:
  - maintain a list of individuals barred from engaging in regulated activity with children;
  - maintain a list of individuals barred from engaging in regulated activity with vulnerable adults;
  - reach decisions as to whether a person should be included in one or both barred lists; and

- reach decisions as to whether to remove an individual from a barred list.

11. The ISA became a public authority for the purposes of FOIA on 1 October 2011.

### Scope of the case

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12. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She told the Commissioner that she disputes that the personal information exemption applies to the entire request and is dissatisfied that the ISA does not appear to have considered how the requested information, or some part of it, could be provided in an anonymised way.
13. The Commissioner is aware that the complainant made a request for information to the ISA – requesting the same information that is being requested in this case - in September 2011. Although the ISA responded, at that time the ISA was not subject to FOIA. Clearly, the ISA dealt with the request in this case as a valid new request and not a repeated request.
14. Referring to the wording of the request in this case, the Commissioner notes that it relates to nurses and NHS Healthcare support workers referred by the Nursing and Midwifery Council (NMC) to the ISA. He also notes that the complainant appears to be aware that the NMC does not regulate healthcare support workers.
15. In correspondence with the Commissioner, the ISA explained:
- “The NMC registers all nurses, midwives and specialist community public health nurses; however, it does not register Healthcare support workers therefore there would have been no referrals for this group from the NMC”.*
16. The Commissioner therefore considers the scope of his investigation to be the ISA’s citing of the personal information exemption – section 40 – in relation to those parts of the request that relate to registered nurses referred to the ISA by the NMC.
17. He considers that the question in this case is whether disclosure of the requested information, either on its own or in conjunction with other available information, would itself give rise to the identification of any of the individuals concerned. If it would not, then following the rationale of the High Court in the case of *Department of Health v Information*

*Commissioner*<sup>1</sup>, disclosure will not amount to a disclosure of personal data for the purposes of the FOIA.

## Reasons for decision

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### Section 40 Personal information

18. Section 40 of FOIA provides an exemption from the disclosure of personal 'data' where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act (DPA).

*Is the information personal data?*

19. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
20. The requested information at issue concerns the number of referrals by the NMC to the ISA and the outcome of those investigations. While, on the face of it, such information would not appear to constitute personal data, the Commissioner's view is that statistical or numerical information has the potential to constitute personal data. This is because, depending on the nature of the information in question, such information can sometimes be used to identify individuals.
21. In the Commissioner's view, if a member of the general public could identify individuals by cross-referencing the disclosed, 'anonymised', data with information already in the public domain, the information will constitute personal data.
22. Conversely, the Commissioner considers that statistics that have been truly anonymised do not constitute personal data and will not therefore engage section 40 of FOIA.
23. Whether it is possible to identify individuals from the 'anonymised' data is a question of fact based on the circumstances of the specific case.

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<sup>1</sup> Department of Health (DoH) –v- Information Commissioner CO/13544/2009

24. The withheld information in the case relates to referrals by the NMC to the ISA. The ISA told the complainant:

*"given the number of referrals received from the Nursing Midwifery Council (NMC) the disclosure of information relating to their referrals would increase the risk of identification of an individual... particularly when other personal data about that group of individuals is known and published by the NMC".*

25. The Commissioner understands that the NMC investigates and, if necessary, takes action on complaints against nurses and midwives when those complaints suggest a nurse or midwife is not fit to practise. The NMC publishes information about all orders made by the investigating committee panels and the reasons for those orders, including the identity of the nurses and midwives concerned.

26. The NMC website explains:

*"We publish information about all orders made by the committee panels and the reasons for those orders, including the identity of the nurses and midwives concerned. We release details of nurses and midwives affected by panel decisions to employers and the public. We do this to be accessible, visible and accurate and prevent cases of misidentification".*

27. The Commissioner understands that the NMC is under a statutory duty to make referrals to the ISA. A referral is information which does, or could, indicate that an individual has engaged in an activity that caused concern for the safeguarding of children or vulnerable adults in the workplace.

28. The ISA told the complainant:

*"Given the sensitive circumstances surrounding the information which you have requested, we are mindful of the consideration which must be made regarding whether any 'determined person' with a particular reason to track an individual would be able to do so, if we released the information requested".*

29. The ISA also told her:

*"While we are committed to transparency in what we do, we must balance the requirements for transparency against the rights of individuals under the Data Protection Act and Human Rights Act. While we recognise that you do not agree with our decision to withhold the data, the information you have request [sic] is, in our opinion, personal data".*

30. The Commissioner acknowledges that, by their very nature, the cases handled by the ISA involve individual circumstances, behaviours and outcomes. He also recognises that at the heart of each case is the individual who may, or may not, have committed the abuse or neglect.
31. The Commissioner is also mindful of the fact that regardless of whether the complainant may, or may not, intend to, or be able to, link the information to an individual or individuals, disclosure under FOIA is considered to be disclosure to the public at large.
32. In this respect, the Commissioner accepts that there is likely to be media interest surrounding cases involving complaints against nurses and midwives.
33. During the course of his investigation, the Commissioner asked the ISA to provide examples of the type of information published by the NMC that support the ISA's argument that disclosure of the requested information would increase the risk of identification.
34. Having considered its response, the Commissioner is not satisfied that the ISA has demonstrated how disclosure of the requested information, when linked to the information already in the public domain, makes it likely that the individual nurse or nurses could be identified from that information.
35. He therefore considers that, in the circumstances of this case, the information at issue is not personal data and thus can be disclosed without reference to the Data Protection Act.

## Right of appeal

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36. 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)

37. 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.
38. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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