

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2013

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

Decision (including any steps ordered)

1. The complainant has requested any comments or responses made by individuals named in the requester's complaint to the NMC. The NMC refused to confirm or deny if information was held, citing section 40(5)(b)(i).
2. The Commissioner's decision is that the NMC was correct to neither confirm nor deny whether information was held and he does not require the NMC to take any steps.

Request and response

3. On 21 November 2012, the complainant wrote to the NMC and requested information in the following terms:
*"Recently, I noticed that the NMC Fitness to Practice Rules 2011 have been amended effective 6th February 2012.
Pursuant to Rule 5 of the amended rules, I request a copy of comments or responses made by all of the people named in my complaint."*
4. The NMC responded on 6 December 2012. It stated that the NMC was relying on section 40(5)(b)(i) of the NMC to neither confirm nor deny whether the requested information was held. The NMC went on to explain that it considered to confirm or deny whether information was held would reveal personal data in relation to an individual and therefore breach the first data protection principle of the Data Protection Act 1998 ("DPA").

5. The complainant requested an internal review on 10 December 2012 and following an internal review the NMC wrote to the complainant again on 10 January 2013. The NMC stated that it upheld its original decision to neither confirm nor deny if the information was held.

Scope of the case

6. The complainant contacted the Commissioner on 14 February 2013 to complain about the way her request for information had been handled.
7. The Commissioner considers the scope of his investigation to be to determine if the NMC was excluded from its duty to respond to the request under section 1(1) of the FOIA by virtue of section 40(5)(b)(i) because in responding to the request it would disclose information which constitutes personal data.

Reasons for decision

8. Section 40(5) of FOIA states that a public authority is not obliged to confirm or deny whether information is held if to do so would constitute a disclosure of personal data and this disclosure would breach any of the data protection principles. The Commissioner has therefore considered those points in turn when determining if the exemption has been correctly applied in this case.

Would confirming or denying that the information is held constitute a disclosure of personal data?

9. The DPA defines personal information 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"

10. Whether or not individuals had commented on allegations in relation to complaints would clearly be the personal data of those individuals who commented if it were held. The complainant did ask for the comments rather than the names but the Commissioner must consider whether responding to the request would reveal personal data by virtue of either confirming or denying that comments, and therefore a complaint involving those individuals, exists. The Commissioner is satisfied that the information requested by the complainant, that being the comments

attributable to specific individuals named in her complaint about medical professionals, would be personal data if it were held.

Would confirming or denying that the requested information is held breach a data protection principle?

11. In cases such as this the most likely data protection principle is the first principle which requires that personal data is processed fairly and lawfully.
12. The NMC has explained that confirming whether the information was held would confirm that allegations had been made which would be unfair to specific individuals. The NMC has explained that when allegations are made about the fitness to practice of nurses or midwives the details remain confidential unless the complaint is progressed to a full public hearing.
13. In this case the information requested, if it were held, would be likely to be information about individuals involved in a complaint that has not yet reached the point where it would be put into the public domain. The NMC does not consider it reasonable therefore to confirm or deny if the requested information is held as to do so would put personal information into the public domain.
14. Disclosure of the information under the FOIA constitutes disclosure to the world at large and the Commissioner therefore accepts that it would be unfair in the circumstances for the NMC to confirm or deny whether it holds information within the scope of the request.
15. The NMC has relied on previous decisions by the Commissioner when considering this point¹ and one particular decision notice² which related to a request for statements provided by named nurses during a fitness to practice investigation.
16. In view of the above, the Commissioner finds that confirming or denying whether the NMC holds information within the scope of the request would contravene the first data protection principle. The NMC was therefore correct to apply section 40(5) of the FOIA in this case.

¹ ICO decision notice FS50180310 and FS50276047

² FS50169734

Right of appeal

17. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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

**Pam Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**