

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2016

Public Authority: Nursing and Midwifery Council (NMC)

Address: 23 Portland Place
London
W1B 1PZ

Decision (including any steps ordered)

1. The complainant has requested information relating to an NMC investigation about a named nurse. The NMC has confirmed that it does not hold any information under section 1(1)(a) FOIA.
2. The Commissioner considers that the NMC was correct to confirm that it does not hold any information under section 1(1)(a) of the FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 August 2014 the complainant requested information of the following description:

"I request the name of the alleged care co-ordinator and from what source (named) this evidence was received by the NMC.

A copy of the allegation served on the registrant.

A copy of the written response to those allegations.

Details as to the period the IC [Investigating Committee] termed 'at the material time'.

Detail as to the date of the event the IC described as 'an isolated event'."

5. On 4 September 2014 the NMC responded. It refused to confirm or deny whether it held the requested information under section 40(5) FOIA.
6. The complainant requested an internal review on 4 September 2014. The NMC sent the outcome of its internal review on 9 September 2014. It upheld its original position.
7. The complainant made a complaint to the ICO and on 15 December 2014 a Decision Notice was issued upholding the NMC's position.
8. This was subsequently overturned by the First Tier Tribunal on 7 October 2015 and it ordered the NMC to confirm or deny whether or not it held the requested information and if it did hold information, it should either be disclosed to the complainant or the NMC should explain why it is exempt from disclosure.
9. On 4 November 2015, the NMC responded as a result of the First Tier Tribunal decision. The NMC explained why the requested information was not held. As the complainant was dissatisfied with the response and considers that information is held by the NMC falling within the scope of his request, he asked the NMC to carry out an internal review of its response of 4 November 2015.
10. The NMC provided the complainant with the internal review on 10 December 2015, it upheld its response of 4 November 2015 to his FOIA request made on 28 August 2014.

Scope of the case

11. The complainant contacted the Commissioner on 8 February 2016 to complain about the way his request for information had been handled.
12. The Commissioner has considered whether the NMC was correct to confirm that it does not hold the requested information under section 1(1)(a) FOIA.

Reasons for decision

13. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".

14. The NMC explained that searches were conducted within the applicable case, the results of the searches did not produce any information.
15. In relation to part 1 of the request, the NMC explained that the patient did not have a care co-ordinator and therefore this information is not held. It acknowledged that their letter of 5 August 2014 did refer to a care co-ordinator however this was in error.
16. In relation to part 2 of the request, the NMC explained that no allegations were served on the registrant prior to the IC panel meeting of 30 July 2014 or prior to the complainant's request dated 28 August 2014. It therefore said that this information was not held. However it did explain that allegations were subsequently served on 20 April 2015. It said that these were publicly available and provided a link to these as well as setting out the allegations to the complainant in its internal review.
17. In relation to part 3 of the request, the NMC explained that no response to allegations were held at the time of the request because the allegations had not been served at that time.
18. In relation to parts 4 and 5 of the request, whilst the NMC acknowledged that its letter of 5 August 2014 did refer to 'at the material time' and 'an isolated event', it confirmed that it does not hold any recorded information about what was the relevant time period referred to in the letter or what was the date of the event referred to.
19. The complainant has argued that information is held as he considers that the NMC holds a record of the IC proceedings conducted in July 2014. He believes that this record is contained in the electronic record which is entered into the NMC case management system by the Panel Secretary, following the IC proceedings.
20. The NMC has confirmed that searches were conducted within the applicable case, the results of the searches did not produce any of the information requested.
21. It went on that information relating to IC proceedings conducted in July 2014 does not currently exist in written form. Rather, it is one employee's recollections about a process that no longer exists.
22. It went on that at each IC meeting, the panel would read the material provided, discuss the case, agree a decision and formulate reasons. The panel were accompanied by an IC Secretary whose role was to record the IC's decision and reasons. The reasons and decisions for each case would be ratified by the relevant Chair at the end of each meeting.

23. It confirmed that no notes exist from any IC panel meeting. All papers were routinely destroyed after each meeting. It said however that the IC must give clear and adequate reasons for every decision: procedural and substantive. Therefore following each IC meeting, the IC Secretary would upload the decision and reasons to the NMC's case management system (CMS) and notify the relevant teams. The decision letter is generated within the CMS, checked and sent to the relevant parties (the Commissioner believes that this is the letter dated 5 August 2014 which the request is referring to).
24. During the course of his investigation the complainant wrote to the Commissioner and provided further evidence in support of his position that there is further information held relevant to the scope of his request. He explained that a copy of the original IC file was provided to [named individual], Devon and Cornwall Police, by the NMC in 2015. He said that tab 21 of this file contains a response received by the registrant provided by her legal representatives dated 24th June 2014 and 23 July 2014. He has said that it follows therefore that a referral notice must have been served on the registrant for a response to have been received and this would contain details of charges. The complainant has said that [named individual] informed him that the copy bundle does contain the detail of two charges of professional wrong doing relating to 6th December 2010 and 20th December 2010.
25. The NMC explained that the complainant's case with the NMC was raised in 2013. It said that the professional wrong doing relating to 6th December 2010 and 20th December 2010 refer to an internal investigation carried out by [named registrant's] employers' investigation team and which was eventually sent on request to the NMC when [named registrant] was referred in 2013 and which form part of the NMC investigation when employers are asked if there have been any fitness to practice concerns prior to a referral being made. It confirmed that the NMC still holds this confidential information however this has been provided to the complainant.
26. The NMC has explained that the reference to a care co-ordinator was in error and that the patient did not have a care co-ordinator. On the balance of probabilities therefore the NMC could not have held the name of the care co-ordinator as there wasn't one.
27. In this case the NMC has confirmed that allegations were not served upon the [named registrant] until April 2015 and this information has been provided to the complainant (despite the fact that it was not held at the time of the request). It has explained that the information provided to Devon and Cornwall Police related to the [named registrant's] employer's own internal investigation which was only provided to the NMC once a referral was made to it about the [named

registrant]. On the balance of probabilities therefore the NMC could not have held the allegations the NMC served upon the [named registrant] or a response to such at the time of the request in August 2014.

28. The NMC has said that it does not hold any recorded information to explain what was meant by 'at the material time' and 'an isolated event' referred to in its letter of 5 August 2014. The Commissioner's understanding is that this letter was the NMC's decision letter following the 30 July 2014 IC panel meeting. The NMC has clarified that no notes exist from any IC panel meeting and all papers were routinely destroyed after each meeting. On the balance of probabilities the Commissioner does not consider that there is any recorded information held which explains the meaning behind the references within the decision letter.
29. On the balance of probabilities, the Commissioner considers that the requested information is not held by the NMC and therefore its response to the complainant complied with section 1(1)(a) FOIA.

Right of appeal

30. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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

Gemma Garvey
Senior Case Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF