

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

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

Decision (including any steps ordered)

1. The complainant has requested information explaining why a particular nurse did not have their registration suspended. The above public authority ("the public authority") relied on section 40(2) of FOIA to withhold the information.
2. The Commissioner's decision is that the public authority should have relied on section 40(5B) of FOIA to refuse to confirm or deny whether any information was held and has applied this exemption himself proactively. The public authority breached section 17 of FOIA as it failed to issue a correct refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 28 January 2022, the complainant wrote to the public authority and, having previously referenced a particular nurse, requested information in the following terms:

"I expressed my concern that the NMC hadn't suspended this nurse pending investigation...could you please remind me of your reply"
5. The public authority responded on 2 February 2022. It noted that it had previously set out the criteria for imposing an interim order (which would suspend registration), but could not provide the specific reasoning for the particular case.

6. Following an internal review the public authority wrote to the complainant on 6 June 2022. It confirmed that it held the requested information, but now relied on section 40(2) of FOIA to withhold that information.

Reasons for decision

7. The Commissioner notes that the original correspondence containing the request referred to the nurse in question. Although this nurse was only referred to by their initials, earlier emails in the same chain refer to the nurse by their full name (and job title). The Commissioner is satisfied that there also is sufficient information in the public domain (particularly to those with knowledge of the underlying matter) that would allow the nurse to be identified.
8. Having determined that the nurse is identifiable, 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 held.¹
9. The Commissioner recognises that the complainant has strong personal reasons for pursuing this matter. Whilst he sympathises with those reasons, he does not consider that they justify publishing information to the world at large – which is what FOIA requires a public authority to do.
10. The Commissioner is satisfied that, on the basis of the available evidence, there would be no lawful basis in data protection law for the public authority to confirm, to the world at large, whether it had or had not considered suspending a particular (identifiable) nurse.
11. The Commissioner is therefore of the view that the public authority should not have confirmed or denied that it held information and he now applies this exemption himself to prevent any further disclosure of personal data.

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/2015/1432108/fs_50581583.pdf

Procedural matters

12. The Commissioner notes that the public authority did not explicitly cite any FOIA exemption until the outcome of its internal review on 6 June 2022 and, as referred to above, when it did finally cite an exemption, it should have relied on section 40(5B) of FOIA to neither confirm nor deny that it held any information.
13. The Commissioner therefore finds that the public authority breached section 17 of FOIA in responding to this request.

Right of appeal

14. 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

15. 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.
16. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF