

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2022

Public Authority: Nursing and Midwifery Council

Address: 23 Portland Place
London
W1B 1PZ

Decision (including any steps ordered)

1. The complainant requested information from the Nursing and Midwifery Council ("the NMC") about policies and procedures relating to whistleblowing disclosures. By the date of this notice the NMC had not issued a substantive response to this request.
 2. The Commissioner's decision is that the NMC has breached section 10 of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
 3. The Commissioner requires the NMC to take the following step to ensure compliance with the legislation.
 - The NMC must provide a substantive response to the request in accordance with its obligations under the FOIA.
 4. The NMC must take this step 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.
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Request and response

5. On 7 December 2021, the complainant wrote to the NMC and requested information in the following terms:

"Dear Nursing and Midwifery Council,

The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 SI 2017/507 were made in accordance with Section 43FA of the Employment Rights Act 1996. These regulations require prescribed persons to report annually on disclosures of information made to them by workers.

[...]

Please could you disclose:

1. Policies, procedures, guidance and other documents which show how you determine whether a concern (such as a fitness to practise concern) received by you is a worker's disclosure, for the purposes of meeting your obligations under the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 SI 2017/507.
2. Information showing how you determined whether a concern (such as a fitness to practise concern) received by you was a disclosure for the purposes of producing the 2021 "Whistleblowing disclosures report" and reporting within it on the number of disclosures of information received."

6. To date, a substantive response to the request has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 15 January 2022 to complain about the NMC's failure to respond to their request.
8. The Commissioner has considered whether the NMC has complied with its obligations in relation to the time for compliance at section 10 of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
11. On 24 January 2022 the Commissioner wrote to the NMC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the NMC has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the NMC did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the NMC has breached section 10 by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF