

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2018

Public Authority: The 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 erasure from the register, suspensions and conditions placed upon practice. The NMC refused to disclose the information requested at part 1 of the request under section 40(2) FOIA. It refused to comply with parts 2 and 3 of the request under section 12 FOIA.
2. The Commissioner's decision is that the NMC was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request in its entirety. It did not however provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance in accordance with the NMC's obligations under section 16 FOIA.
4. 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

5. On 7 August 2017 the complainant requested information of the following description:

"Please would you let me know in writing if you hold information of the following description:

1. A list of all nurses (including full name and NMC Pin number) who have been restored to the register following disciplinary erasure by fitness to practise panel since 2008. In each case I would like the panel minutes relating to the original striking off AND the panel minutes relating to the nurse's restoration.
2. Since 2008, a list of all nurses (including full name and NMC Pin number) who have been found to have applied for medical posts and/or worked whilst suspended from the register. In each case I would like the panel minutes relating to the suspension AND the panel minutes relating to the breach of suspension. For example: [Redacted] NMC Pin [Redacted], was found by an NMC fitness to practise panel to have worked 35 shifts as a nurse despite being suspended from the register in June 2016.
3. Since 2008, a list of all doctors, nurses (including full name and NMC Pin number) who have been found to have breached conditions placed on their practise. In each case I would like the panel minutes of the case where the nurse had conditions imposed AND the panel minutes relating to the breach of said conditions.

I would like a copy of the information and would prefer for it to be sent by email if possible."

6. On 11 September 2017 the NMC responded. It refused to disclose the information requested at part 1 under section 40(2) FOIA and refused to comply with parts 2 and 3 of the request as it said that it would exceed the cost limit under section 12 FOIA to do so.
7. The complainant requested an internal review on 24 September 2017. The NMC sent the outcome of its internal review on 24 October 2017. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 2 October 2017 to complain about the way the request for information had been handled.

9. The Commissioner has considered whether the NMC was correct to apply section 12 and/or section 40(2) FOIA.

Reasons for decision

Section 12 – cost exceeds appropriate limit

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate cost limit to:
- either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
- (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
12. The appropriate limit for the NMC is £450 or the equivalent of 18 hours work.

Parts 2 and 3 of the request

13. The NMC explained that the information requested is not coded using any specific case speciality criteria that relates to either nurses who have applied to work while suspended or those who have breached conditions placed on their practise. It said that the broad nature of both questions, and the large number of cases and data within the specified year range (2008-2017), would mean that identifying this information would exceed the 18 hour time limit deemed appropriate for FOIA requests.
14. It confirmed that the estimate set out below has been based on the quickest methods of gathering the requested information i.e. retrieving

electronic data from the NMC's case management and records management systems.

15. It said that the following calculations were based on looking at Fitness to Practise panel outcome figures as published in NMC annual reports. For the purpose of this exercise, the NMC only went back as far as the year 2011-2012 as the figures were collated/published in a different way before then (the request goes back further to 2008).

Year	Total outcomes
2016-17	1513
2015-16	960 (did not include *SOR outcomes)
2014-15	1732
2013-14	1805
2012-13	1377
2011-12	753
TOTAL	8,140

**substantive order reasons*

16. It went on that the NMC would need to review the outcomes in each of these cases to determine if the charges match the criteria of the request. It must be noted that pre 2017 NMC did not have a reliable coding framework for allegations. It would also need to determine whether the information, if matched, is still available in the public domain.
17. It said that this would take approximately 4-5 minutes per case:

$$5 \times 8140 = 40,700 \text{ minutes}$$

$$40,700 / 60 = 678.3 \text{ hours}$$

18. It concluded that this would put this request outside the scope of FOI requirements. It also noted that the above calculations do not include the all of the requested years going back to 2008.
19. In this case the NMC has explained that there were 8140 cases that would need to be checked when just going back to 2011 (bearing in mind the request goes back to 2008). It has allotted a time of 4-5 minutes to check each case to respond to the request. Within this time estimate it has alluded to a requirement to check what information is still available in the public domain. The Commissioner considers that this type of work would be more relevant in terms of determining what information would need to be redacted rather than locating, retrieving and extracting the information and so this would not be able to be taken into account. However even allotting a time of 30 seconds per case still comes to over 67 hours work and would vastly exceed the cost limit. This would still not include all work required to respond to the request I full i.e. going back to 2008.
20. Therefore based upon the NMC's submissions, the Commissioner considers that due to the sheer number of cases that would need to be reviewed it would exceed the cost limit under section 12 FOIA to comply with parts 2 and 3 of the request.

Part 1 of the request

21. Whilst the NMC has only argued that parts 2 and 3 of the request would exceed the cost limit in this case, the Commissioner's Guidance on section 12 explains the following:

"When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:

- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- made for the same or similar information; and
- received by the public authority within any period of 60 consecutive working days."

22. In this case part 1 of the request was made by the same person within a period of 60 days and is for the same or similar information as parts 2 and 3. The whole of the request can therefore be aggregated.

23. As the whole of the request would be covered by section 12 FOIA, the Commissioner has not gone on to consider the application of exemptions (specifically in this case section 40(2)) any further.

Section 16 – advice and assistance

24. Under section 16 FOIA the NMC is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.
25. The NMC has not provided the complainant with any advice and assistance in this case.
26. The Commissioner therefore considers that the NMC has not complied with its obligations under section 16 FOIA in this case.

Right of appeal

27. 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

28. 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.
29. 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 Officer

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