

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 October 2011

**Public Authority:** Central and North West London NHS Foundation Trust (CNWL)

**Address:** Greater London House  
Hampstead Road  
London  
NW1 7QY

### Decision (including any steps ordered)

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1. The complainant has requested information relating to two recommendations contained in the CNWL Report and Action Plan relating to disciplinary action against [named nurse].
2. The Commissioner's decision is that CNWL correctly refused to confirm or deny whether or not the information was held under section 40(5) of the Freedom of Information Act 2000 (FOIA).
3. The Commissioner requires no steps to be taken.

### Request and response

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4. The complainant made a request to the Trust on 21 November 2010 for the following information:

*The CNWL Report and Action Plan contained two recommendations relating to disciplinary action against [named nurse]. ... Please advise me of the date of these proceedings, the findings, the date of the judgement and the sanctions imposed.*

5. The Trust provided responses to the complainant on 10 and 22 December 2010. It refused to confirm or deny whether it held the requested information under section 40(5) of the Act. It stated that it also wished to rely on the following exemptions from disclosure, section 40(2), section 41 and section 31(1)(g).

6. The complainant requested an internal review of the public authority's decision in February 2011. On 21 March 2011 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its decision to neither confirm nor deny whether the requested information was held under section 40(5) FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner will consider whether or not CNWL was correct to neither confirm nor deny whether the information is held.

### **Reasons for decision**

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9. Section 40(5)(b)(i) of FOIA states that a public authority is not obliged to confirm nor deny whether third party personal data is held if it would breach any of the data protection principles to do so.
10. The Commissioner considers that the requested information, if held, would amount to the personal data of [named nurse].
11. The Commissioner has therefore gone on to consider whether it would breach any of the data protection principles to confirm or deny whether the requested information is held. The relevant principle to consider is principle one, in particular the issue of fairness and therefore whether to confirm or deny whether the information is held would be fair.

### **Likely expectations of the data subject**

12. CNWL has explained that [named nurse] was anonymised in the case review panel report as nurse B, however it has said that the complainant is aware of the identity of [named nurse]. The Commissioner is not aware that the case panel review report is publicly available.
13. CNWL said that [named nurse] has the expectation that her employment records will remain confidential. It explained that CNWL policies and procedures ensure that access to employment information is restricted. It said that internal records of performance and disciplinary matters in particular are accessed solely on a 'need to know' basis. CNWL has explained that [named nurse] had a legitimate expectation that internal disciplinary matters of an individual will be private in line with *Waugh v Doncaster College* EA 2008/0038.

14. As the requester is aware of the identity of [named nurse] and because the Commissioner does not consider that the case review panel report referred to by the requester is in the public domain, the Commissioner considers that [named nurse] would not expect the existence of internal disciplinary proceedings to be disclosed into the public domain.

### **Damage and distress to data subject**

15. The Commissioner considers that confirming or denying whether information relating to internal disciplinary proceedings against [named nurse] were held by CNWL would cause damage and distress to [named nurse].

### **Legitimate public interest**

16. CNWL has acknowledged that there is a legitimate public interest in knowing that NHS professionals are fit to practice. However it has suggested that this is achieved by CNWL's internal disciplinary code and the professional registration body for nurses, the Nursing and Midwifery Council (NMC). It has explained that it is not necessary to disclose whether or not internal disciplinary proceedings have taken place against a particular nurse under the circumstances of this case.
17. The Commissioner is aware that if a nurse's employer is unable to deal with an issue through internal disciplinary procedures, the employer is under a duty to refer the case to the NMC. If an NMC case goes to the stage of a public hearing the existence of the case, the name of the nurse along with other information relating to the case will be made public at that stage. The Commissioner does not consider that there is a legitimate public interest in knowing whether internal disciplinary proceedings have or have not taken place prior to any such public hearing.
18. Taking all of the above into account, the Commissioner considers that CNWL was correct to neither confirm nor deny whether the requested information was held.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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 .....**

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