

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 December 2024

**Public Authority:** Manchester University NHS Foundation Trust  
**Address:** Cobbett House  
Oxford Road  
Manchester  
M13 9WL

#### **Decision (including any steps ordered)**

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1. The complainant has requested details of referrals to the Nursing and Midwifery Council. The above public authority ("the public authority") relied on section 12 of FOIA (costs) to refuse the request.
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request. However, the public authority failed to discharge its obligation under section 16 of FOIA to provide reasonable advice and assistance. The public authority also breached sections 10 and 17 of FOIA in its handling of the request.
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 to help her reframe her request such that will fall within the cost limit.
4. The public authority must take these steps within 30 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

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5. On 17 February 2024, the complainant wrote to the public authority and requested information in the following terms:

“Please would you be so kind as to supply

1. The number of nurses your organisation referred to the Nursing and Midwifery Council in each of the following years: 2019, 2020, 2021, 2022 and 2023.

2. The number of Midwives your organisation referred to the Nursing and Midwifery Council in each of the following years 2019,2020,2021, 2022 and 2023.”

6. The public authority responded on 7 May 2024. It relied on section 12 of FOIA to refuse the request. It upheld this position following an internal review.

## Reasons for decision

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7. Section 12(1) of FOIA allows a public authority to refuse a request if the cost of identifying and then retrieving, locating or extracting, the relevant information would exceed a specific limit. That limit is £450 for this public authority – the equivalent of 18 hours of staff time.
8. There is no requirement to consider public interest. Either a request will exceed the limit or it will not.
9. The public authority has explained to the Commissioner that, until relatively recently, it did not have a centralised process for referrals. Any member of staff could make a referral, although, in practice this was usually handled either at site level (the public authority oversees multiple hospital sites) or at department level.
10. The only reliable way of identifying all referrals that took place in the period covered by the request would be for the public authority to carry out a manual review of personnel files.
11. The public authority noted that it employed around 9,500 staff who were registered with the NMC. If it took one minute per file to identify and extract relevant information, searching the files of all NMC-registered staff would take over 150 hours of staff time.
12. It had considered whether an email search might be quicker, but it was not confident, given the width of such a search, that it could reliably

filter out correspondence relating to referrals from correspondence it may have had with the NMC on any other matters.

13. The complainant has drawn attention to the significant impact that a referral can have on the person concerned. She has also highlighted the discrepancy between those NHS trusts with the highest rates of referral and those with the lowest. Finally she has noted [NMC guidance](#) that advises trusts to have a single senior individual with oversight and responsibility for signing off referrals.
14. The Commissioner considers that complying with the request would exceed the appropriate limit.
15. The complainant has argued that the public authority should have a more centralised process in place to deal with referrals. She may well be right, but the reality is that, until relatively recently, the public authority had no such process in place. The Commissioner can only base his decision on how records **are** held, not on how they **ought to be** held.
16. The public authority has argued (and no contrary evidence has been put forward) that the only reliable way of locating all information that would be within the scope of the request is to conduct a manual trawl of personnel files. The Commissioner agrees that that would be necessary.
17. Given the number of staff the public employs, even if each file could be searched in five seconds (which the Commissioner considers is not feasible), the time required would still exceed 18 hours.
18. The Commissioner recognises the public value of the information that has been requested. Unfortunately, this is not something he is permitted to take into account in these circumstances.
19. As the cost of complying with the request would have exceeded £450, the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.

## **Procedural matters**

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### **Section 16 – advice and assistance**

20. Where a public authority relies on section 12 to refuse a request, it should provide advice and assistance to help the requester narrow their request such that it falls within the cost limit. Alternatively it should advise the requester that their request cannot be meaningfully refined.
21. The public authority did not provide any advice and assistance in its initial response. It's internal review suggested that the requester could contact the NMC directly, but the Commissioner does not consider this adequate.
22. The public authority must therefore provide advice and assistance to the complainant to help her refine her request.

### **Timeliness**

23. Section 10 of FOIA requires a public authority confirm whether it holds the information that has been requested within 20 working days of receiving a request.
24. Where a public authority is refusing a request, section 17 of FOIA requires that public authority to issue a refusal notice, stating that the request is refused, within 20 working days of receiving the request.
25. In this case the public authority took three months to respond to the request. It therefore breached both sections 10 and 17 of FOIA.

## Right of appeal

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26. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**