

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2025

Public Authority: Nottingham University Hospitals NHS Trust
Address: Heathfield House
City Campus
Hucknall Road
Nottingham NG5 1PB

Decision (including any steps ordered)

1. The complainant has requested information about nurses and midwives referred to the Nursing and Midwifery Council over five years. Nottingham University Hospitals NHS Trust ('the Trust') has disclosed some relevant information but has refused part of the request under section 12(1) of FOIA because it says the cost of complying with this part would exceed the appropriate limit.
2. The Commissioner's decision is that section 12(1) isn't engaged.
3. The Commissioner requires the Trust to take the following step to ensure compliance with the legislation:
 - Issue the complainant with a fresh response to their request that doesn't rely on section 12 of FOIA.
4. The Trust must take this step 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

5. The complainant made the following information request to the Trust on 17 February 2024:

"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.

If you would be so kind as to present them in a table format, I would be most grateful."

6. Following the Commissioner's decision in IC-320525-Y8B7, the Trust responded on 14 August 2024. It refused the request under section 12 of FOIA. The Trust noted that the request asked for the number of nurses and midwives "your organisation referred." It advised that there were multiple routes by which nurses and midwives could be referred to the Nursing and Midwifery Council (NMC), which is why complying with the request would exceed the cost limit.

7. On 30 August 2024, the complainant wrote to the Trust, disputing its reliance on section 12. They said that in their view "sufficient information about numbers should be available from senior Clinical and Human Resources Management without trailing through individual records."

8. On 16 September 2024, the Trust asked the complainant to clarify their request in the following terms:

"Is the request for the number of individuals working at the Trust who are under investigation by the NMC as a whole or, specifically about those that have been referred by someone from the Trust? These two requests are different, the latter of which is difficult to answer without taking the time to access and manually review a significant amount of information."

9. On 16 September 2024, the complainant clarified their request as follows:

"I am therefore requesting both the total number of a) nurses and b) midwives referred in each of the years 2019,2020,2021,2022 and 2023 by anyone including self referrals to the NMC. I am also requesting a similar profile of the number of referrals that originate from the trust itself."

10. On 8 November 2024, the complainant wrote to the Trust again, as follows:

"I am interested in the number of nurses and midwives that have been referred by the trust. I also understand that you have a named member of staff whose responsibility is tracking referrals so it is strange that you should state that this request would entail cross checking of records."

11. The Trust provided a final response on 20 March 2025. It disclosed "The total number of a) nurses and b) midwives referred in each of the years 2019, 2020, 2021, 2022 and 2023 by anyone including self referrals to the NMC." The Trust applied section 12 of FOIA to "The number of referrals that originate from the Trust itself."

Reasons for decision

12. This reasoning covers the Trust's application of section 12(1) of FOIA to the request for the number of nurse and midwife referrals to the NMC that originated from the Trust itself.

13. In correspondence to the Commissioner on 20 March 2025, the complainant said

"...I am dubious about the reasons they cannot provide the information requested

The main problem with this response is that the trust is known to have a named senior nurse responsible for oversight of NMC referrals so it is somewhat concerning that they continue to insist that they are unable to identify and numerate those that were initiated through a recognisable trust process overseen by the senior nurse who submits the referral and communicates with the NMC."

14. It's not the Commissioner's role to consider how a public authority generally operates, what information the authority **should** hold, or how it **should** manage its information. His role is solely to consider whether a public authority has complied with FOIA in its handling of a request for information; in this case whether the Trust is entitled to refuse part of the complainant's request under section 12(1) of FOIA.
15. Under section 12(1) of FOIA a public authority may refuse to comply with a request for information if the cost of doing so would exceed the appropriate limit. In the case of the Trust, the cost is £450 or 18 hours work.

16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of [Randall v Information Commissioner & Healthcare Products Regulatory Agency EA/2007/0004, 30 October 2007](#) the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence.”
17. The task for the Commissioner when he’s considering section 12 is to reach a conclusion as to whether the cost estimate made by the public authority was reasonable; in other words, whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450. If it did, then section 12(1) applied and it wasn’t obliged to comply with the request.
18. In its response of 20 March 2025, the Trust said that in relation to NMC referrals that originate from the Trust itself, there are multiple routes to refer nurses and midwives to the NMC. This could be a member of the public, another registrant or healthcare professional, or the Trust via the Chief Nurse or responsible officer. Referrals can also be made anonymously and the Trust said it doesn’t always know who made the referral.
19. The Trust said it would be time consuming to identify this information for the following reasons:
 - The Trust has individuals who work for it who have worked elsewhere who have NMC referrals that emerge after they’ve started. The Trust said it often doesn’t hold data on this.
 - There can be multiple referrals for the same case, including [from] the Trust, but only one case.
 - The Trust doesn’t routinely capture the referral as part of its reporting process. Each NMC referral has a significant amount of correspondence and data that is captured as part of the process and information exchange.
 - To provide a response to this question, the Trust would need to manually search each registrant’s file. It said that this is a significant amount of work that would exceed section 12’s time limit.
20. In its response the Trust also said that this information isn’t held in an easily retrievable format. The Trust would need to retrieve and manually audit and review individual records in order to extract the information requested. It estimated that the cost of this work would exceed the appropriate limit of £450.

21. The Commissioner clarified this point with the Trust. He asked whether it would need to review every staff record to see whether the staff member had been referred to the NMC and if that referral had originated from the Trust, if so, or whether it would need to review only those records of staff that the Trust knew had been referred to the NMC.
22. The Trust confirmed that it would need to review the files of nurses and midwives that it knew had been referred to the NMC during the five year period, to check if the referral originated from the Trust.
23. The Trust confirmed that it had identified 97 referrals in total over the five year period.
24. It also advised the following:

"The Trust does not record the source of the referral. Focus is placed on the content and professional practice issues that require investigation. Therefore, the requested information is not held in an easily retrievable format and would require a manual audit of records.

Each referral record contains numerous documents, including email correspondence. These files would need to be individually reviewed to identify the source of the referral.

The Trust are not always told the source of referral – it depends on the member of the NMC team that emails the initial referral notification. Therefore, even after conducting a manual review, we still may not be able to answer the request accurately.

Due to inconsistencies in records keeping pre-2021, which have now been addressed, there are records stored with NMC referrals that are not referrals to the NMC. These records would need reviewing for the Trust to provide an accurate response.

The preliminary data search took approximately 3 hours due to duplication and the need to cross check records to avoid referrals being counted twice.

The limits within Section 12 of the FOIA would allow an average of approximately 11 minutes to review each of the 97 cases highlighted above (excluding any time already spent on this request)."

25. The Trust subsequently clarified to the Commissioner that it had taken it three hours to provide the figure for the total number of nurses and midwives referred to the NMC for the requested five years - 97.

26. The Trust has considered how long section 12 provides it – 18 hours – and divided this by 97 to derive the length of time this gives to review each of the 97 files to identify any referrals that the Trust had made: 11 minutes per file.
27. If the Trust has already spent three hours identifying the files of the total number of nurses and midwives referred it's left with 15 hours, which would give it nine minutes to review each of the files.
28. The Trust has stated a length of time it would have to review each file, but it hasn't explained convincingly why it wouldn't be possible to review each file in that amount of time. And it doesn't appear that the Trust has undertaken a sampling exercise – reviewed two or three representative files to see how long each took.
29. In the Commissioner's view, the Trust might have first carried out a sampling exercise to derive an estimate of the total length of time it would need to review the 97 files, rather than working backwards from the amount of time available to it under section 12.
30. As it is, and based on the information available to him, the Commissioner considers that 11 minutes, and even nine minutes, is a reasonable amount of time in which to review one file.
31. The Commissioner appreciates that the Trust may find it onerous to carry out this work but its submissions to him haven't persuaded the Commissioner that it would take more than 18 hours to fully comply with the complainant's request. As such, the Commissioner finds that section 12(1) of FOIA isn't engaged.
32. The Trust took the option of only applying section 12 to one part of the request in this case. In his published guidance on section 12, the Commissioner advises that, as a matter of good practice, a public authority should avoid providing the information found through any searches already conducted and then claiming section 12 for the remainder of the information. Instead, it should inform the applicant that section 12 is engaged for all of the request. The authority can then offer advice and assistance which should enable the applicant to make a fresh request, targeting the information which they are most interested in from that which could be provided within the limit.
33. Finally, the Trust has noted that the information it could provide may not be accurate. The Trust can explain that and provide relevant context when it provides a response to the request.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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