

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2016

Public Authority: Nursing & Midwifery Council

Address: 23 Portland Place
London
W1B 1PZ

Decision (including any steps ordered)

1. In eight, multi-part requests submitted to the Nursing & Midwifery Council (NMC) in November 2015 and on 15 December 2015 the complainant has requested information about aspects of its administration. The NMC has refused to comply with the requests which it says are vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the NMC has correctly applied section 14(1) to the requests and is not obliged to comply with them. He does not require the NMC to take any steps.

Request and response

3. The NMC has told the Commissioner that between 26 November 2015 and 29 November 2015, the complainant submitted six FOIA requests that broadly concern the NMC's administration, practices and recruitment practices. It provided the Commissioner with copies of these requests – see Appendix.
4. On 1 December 2015, the NMC responded to the complainant. It said that the above requests were vexatious and that it was not obliged to comply with them under section 14(1) of the FOIA. Further, the NMC said that it would apply section 14(1) to all subsequent requests that it received from the complainant that fitted into the same pattern as those it had already received. As permitted under section 17(6) of the FOIA, the NMC said it would not respond to any such further requests.

5. On 15 December 2015, the complainant submitted two further requests to the NMC – see Appendix.
6. The NMC has confirmed to the Commissioner that it also considers these two requests to be vexatious under section 14(1) and has not responded to them.

Scope of the case

7. The complainant contacted the Commissioner on 15 December 2015. She provided the Commissioner with the NMC's response of 1 December 2015 and copies of two requests that the Commissioner subsequently identified as being those she had submitted to NMC on the same day ie 15 December 2015. The complainant referred, at this point, to a third request but this was a duplicate of request 8 of 15 December 15.
8. The Commissioner has first, focussed his investigation on whether the NMC correctly applied section 14(1) to the six requests submitted in November 2015. Second he has considered whether section 14(1) also applies to the two requests of 15 December 2015 meaning that the NMC is correct not to respond to them.

Reasons for decision

9. In its submission to the Commissioner, the NMC has confirmed that it considers that section 14(1) applies to the eight requests that are the subject of this notice.
10. Section 14(1) of the FOIA says that a public authority does not have to comply with a request for information if the request is vexatious.
11. The term "vexatious" is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance

12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. The Commissioner considers that the background and history of the request may be relevant here but has nonetheless considered all the circumstances of the case.
15. In its submission, the NMC has told the Commissioner that it has reviewed the number of FOI requests the complainant has submitted to the NMC over the past 12 months; up to, the Commissioner understands from the material it has provided to him, 26 November 2015. It says that it received a total of eight requests and provided the Commissioner with its responses to three of these requests; those dated 12 May 2015, 27 July 2015 and 28 August 2015. The NMC says it responded to all eight of these requests within the statutory timeframe of 20 working days.
16. Between 26 November 2015 and 15 December 2015, the complainant then submitted the further eight requests that are the subject of this notice – six between 26 and 29 November 2015 and two submitted on 15 December 2015.
17. The NMC has told the Commissioner that the six requests of November 2015 are vexatious because they meet the criteria in the Commissioner's guidance, at paragraph 11. Specifically, that the complainant has sent frequent or overlapping requests with the deliberate intention of causing annoyance to the organisation.
18. The complainant's requests were submitted within a relatively short period of time and she continued to send new requests before the NMC had had the opportunity to address her earlier enquiries. The NMC says that the requests, a large number submitted within a short space of time, are therefore vexatious because of the cumulative burden of responding to them. It has told the Commissioner that responding to these requests would have impacted heavily on the small unit that deals

with FOIA requests, and would have caused an unreasonable disruption to its work.

19. The NMC considers that the background to the request is also relevant to this case. It has explained to the Commissioner that in August 2015 one of its case workers in its Fitness to Practice team was working on two, unrelated cases one of which involved the complainant. In the course of this work, and due to an administrative error, the personal data of a third person was disclosed to the complainant, who published some of this information on her Twitter account. In a separate case, the Commissioner has formally investigated this data protection breach.
20. In September 2015, the NMC's Communications team reported the tweets in question to Twitter. It asked Twitter to take down these tweets on the basis that they contained confidential information about another individual. The subject of the tweets was aware of the tweets and it had caused that individual substantial distress.
21. The NMC says that on the basis of this incident and what it says is the complainant's persistent use of abusive language in correspondence with its Fitness to Practice team, it decided to invoke its restricted access policy. The restricted access policy meant the following:
 - The NMC would not acknowledge the complainant's correspondence whether by post or by email although it would read all of it and store the correspondence onto its case management system.
 - The NMC asked that all contact from the complainant be made via post to one named contact.
 - Any further, abusive correspondence *"may lead to further fitness to practice allegations."*
22. In summary, the NMC confirmed that its decision to apply section 14(1) to the six requests in question follows a long series of requests and correspondence with the complainant. It noted that the complainant submitted a subject access request (SAR) under the Data Protection Act on 16 December 2015. The NMC responded to the SAR on 25 January 2016.
23. The Commissioner has considered the six requests submitted in November 2015 and the NMC's submission, which includes the background to the case. He notes that the majority of the requests comprise multiple parts and are all broadly concerned with the NMC's corporate processes. He notes too that these six requests were submitted over four days.

24. The Commissioner agrees with the NMC that the complainant's requests prior to 26 November 2015 followed a similar pattern, being multi part requests for corporate information. He notes that, nonetheless, the NMC responded to these requests and appears to have released a good deal of information to the complainant. The Commissioner considers that the six requests of November 2015 are a continuance of that pattern and were intended to cause annoyance to the NMC. The frequency and overlapping nature of these requests, when considered cumulatively, is manifest and means that the NMC would be unlikely to get the opportunity fully to consider its response to one request before another was received. This would create a burden which would be disproportionate and unreasonable. The burden would be disproportionate because the requests do not appear to have any wider public interest, and certainly the complainant has not put forward any arguments to the Commissioner as to their wider value.
25. The Commissioner considers that the background is also relevant to the case, namely that the complainant was involved in the data breach incident concerning the NMC and is the subject of the NMC's restricted access policy as a result of the tone of her wider correspondence with its Fitness to Practice team.
26. Having considered his guidance on vexatious requests and all the circumstances of this case, the Commissioner is satisfied that the six requests of November 2015 are vexatious and that the NMC is correct not to comply with them under section 14(1) of the FOIA. Considered cumulatively, the requests are part of a pattern of frequent and overlapping requests; they do not have any wider value; responding to them would be a disproportionate burden and the background to the case suggests that it is the complainant's intention to cause annoyance to the NMC.
27. The complainant then submitted two further requests on 15 December 2015. As referred to at paragraph 4, the NMC had given the complainant a refusal notice on 1 December 2015, in which it said that it would not comply with any further request that it considered followed the same pattern. As a result, it has not responded to the complainant's requests of 15 December 2015 because it considers that these requests are also vexatious.
28. The Commissioner agrees that the two requests of 15 December 2015 - being multi part requests broadly concerned with the NMC's corporate processes, both submitted on the same day, are again a continuance of the complainant's pattern of correspondence and were intended to cause annoyance to the NMC. He is satisfied that these two requests are also vexatious under section 14(1) of the FOIA.

29. The NMC is correct when it says that section 17(6) of the FOIA says there is no need to issue a refusal notice if the authority has already given the same person a refusal notice for a previous vexatious or repeated request; and it would be unreasonable to issue another one.
30. The Commissioner will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the complainant that further requests on the same or similar topics will not receive any response. Since, in this case, the NMC had given the complainant such a warning on 1 December 2015, he does not consider that its position of not issuing a further refusal notice regarding the 15 December 2015 requests is unreasonable.

Right of appeal

31. 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

32. 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.
33. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

APPENDIX

26 November 2015

Request 1

"What procedures, policies or protocols do the NMC have in place for ensuring & monitoring their Duty of Care to registrants going through the Fitness to Practice process

- 1, How often are these procedures, policies, protocols monitored or reviewed internally*
- 2, Are the subject to external assessment?*
- 3, What training is given to staff as Staff training?"*

Request 2

*"Under Freedom of Information. How much of the £71 Million income is spent on Fitness to Practice cases in 2013-2014 either as a % or in £
Is this a predetermined % or is this an ongoing amount that can rise & fall depending on cases heard"*

27 November 2017

Request 3

"Please tell me the income of the NMC and how the budget is broken down

How many departments does the NMC have

What is the lowest salary paid to your workers

What is the highest salary paid to your workers (excluding Jackie Smith taking £250,000 a year from the budget) i.e head of department"

Request 4

"In many NMC cases there are strong mitigating circumstances surrounding the case. In America and Australia these mitigating circumstances are taken into consideration in their deliberations on a case.

Why doesnt the NMC take these circumstances into account

As your remit is to protect the public, how do protecting the public when you allow nurses to work in unsafe working conditions and therefore allow members of the public to live or be cared for in unsafe working conditions.

The NMC must, by their failure to act, condone this. The NMC is failing – They do not protect the public

Similarly How does the NMC protect the public when, as the regulatory body of nurses, allows nurses to work with dangerous staffing levels. By not condemning it, the NMC is condoning poor/dangerous staffing levels.

What is the NMCs defence against my allegations. Does the NMC protect the public or not

27 November 2015

Re-submission of Request 3

Request 5

"...under Freedom of Information

How many staff are employed by the NMC

How many NMC sites are there throughout the UK

How many of these staff deal with overseas nurses applying for admission to the register for years 2009, 2010, 2011, 2012, 2013, 2014

How many overseas applicants were there between 2009 and 2015 Broken down into years as above please"

29 November 2015

Request 6

"Under the freedom of information please tell me

1, How many false allegations has the NMC made against nurses over the last 5 years?

2, Do you inform the nurse concerned that a mistake has been made?

3, Do you compensate the nurse for making false allegations against them?

4, So you inform the ICOs office of the false allegations you have made public?"

15 December 2015

Request 7

"Under the Freedom of information;

- 1, How many appeals are made against NMC sanctions imposed on a registrant in a Fitness to Practice hearing years 2010 - 2015*
- 2, How many of these appeals are successfully overturned by the registrant*
- 3, How many of these appeals were made by the registrant alone, without legal support of a solicitor*
- 4, How many appeals had to return to the investigatory process*
- 5, In how many appeals did the NMC have to pay costs*
- 6, How much did each appeal cost the NMC in total"*

Request 8

*"Do your case managers have a basic qualification i.e. in law (LLB)
What is the basic qualifications do these people need to have
What in house training are these case managers given
How does the NMC check the credentials of these people and their honesty/integrity
How many of the NMC staff are registered*