

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2024

Public Authority: Gloucestershire Hospitals NHS Foundation Trust

Address: Cheltenham General Hospital
Sandford Road
Cheltenham
GL53 7AN

Decision (including any steps ordered)

1. The complainant has requested from Gloucestershire Hospitals NHS Foundation Trust (the Trust) information about referrals to the Nursing and Midwifery Council (the NMC). The Trust denied holding any information in response to the request.
2. The Commissioner's decision is that Trust breached section 16 of FOIA because it failed to obtain the correct objective reading of the request.
3. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request based on the interpretation set out in paragraph 16 of this notice.
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

5. On 17 February 2024, the complainant wrote to the Trust 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.

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

6. On 22 February 2024, the Trust responded and applied section 12 of FOIA (cost of compliance exceeds the appropriate limit) to refuse the request. The complainant replied on the same day and asked the Trust to carry out a review of its response.
7. On 26 November 2024, the Trust completed a review and wrote to the complainant with a revised position. It denied holding any information within the scope of the request. The Trust said that ‘organisations do not refer registrants to the NMC, individuals do, therefore strictly the answer to the question asked is 0’.

Scope of the case

8. The complainant originally contacted the Commissioner on 12 July 2024 to complain about the Trust’s failure to carry out a review. However, once in receipt of the review, the complainant also set out their concerns regarding the Trust’s interpretation of the request.
9. The Commissioner has considered whether the Trust has met its obligations under section 16 of FOIA regarding clarifying the request.

Reasons for decision

Section 16 – advice and assistance

10. Section 16 of FOIA places a duty on a public authority to provide “reasonable” advice and assistance to those making and wishing to make information requests.
11. The Commissioner’s published guidance on section 16¹ states that when a request, read objectively, is ambiguous and requires clarification as to the information sought, the public authority should contact the applicant for more details to help identify and locate the information they want.
12. A public authority will have complied with its section 16 duty where it has followed the Code of Practice² issued under Section 45 of FOIA, that requires a public authority to seek clarification of requests which are unclear, or which are capable of multiple objective readings.
13. The Trust said that organisations do not refer registrants to the NMC, individuals do, that anyone including a member of public and staff can refer a registrant to the NMC, and this does not need to be associated with a formal HR process. The Trust will not necessarily have oversight of the referral until contacted by the NMC.
14. The Commissioner accepts that this may be correct in law. However, he also notes his guidance on interpreting and clarifying requests which states that:

“You should not exclude material from the scope of an otherwise clear request because the requester has described the information in a different way or has failed to use the ‘correct’ terminology.”
15. The Commissioner recognises that a reference to “your organisation” could mean the organisation acting as a body corporate. However, “your organisation” could equally be understood as collectively describing the organisation’s staff.
16. Based on the complainant’s correspondence, the Commissioner considers that the intended interpretation of their request was:

¹ [Section 16 – Advice and Assistance | ICO](#)

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf](#)

1. The number of nurses **that staff working for** 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 **that staff working for** your organisation referred to the Nursing and Midwifery Council in each of the following years 2019,2020,2021, 2022 and 2023.
17. Therefore, whilst it can be argued that the Trust did use **an** objective reading of the request, it was not the **only** objective reading. The onus is on the Trust, not the applicant, to ensure that it has reached the correct objective reading of the request before it deals with the request.
18. In this case, it should have been obvious to the Trust that the request was capable of more than one objective reading. It should have taken care to clarify which reading the complainant intended, rather than simply selecting the reading it preferred.
19. The Commissioner therefore finds that the Trust did not meet its duty to provide advice and assistance to the requester in this case and finds that the Trust breached section 16(1) of FOIA. As such, it should now follow the steps ordered in paragraph 3 of this decision notice.

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Pam Clements
Group Manager

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