

BY EMAIL

Steve Dunn
Chief Executive
West Suffolk NHS Foundation Trust

13 January 2020

Dear Mr Dunn,

West Suffolk NHS Foundation Trust's request for staff fingerprints & National Guardian's involvement

Thank you for the trust's reply below of 13 January 2020 to my letter to you of 12 December 2019, also copied below, seeking information under the Freedom of Information Act.

The trust's reply was received at 01.45 am, although for some reason the time stated on the trust's email is 15.00.

I believe in its reply, the trust has failed to comply with the law by omitting to answer several of my questions about the trust's attempt to obtain biometric data from staff, and what parties apparently sanctioned this.

In the absence of answers to my questions, I am concerned that the trust may be hiding its past attempts to identify staff from fingerprints, or conversely, that there has been an intimidatory bluff to staff when the trust in fact had no fingerprint evidence to match against.

I am also concerned that the trust's reply seeks to mislead me on the manner in which the trust asked its staff for biometric data. There is no acknowledgment of duress to staff, and the trust now asserts that the trust's arrangement was entirely voluntary.

Regarding the questions that I put which the trust has not answered:

1. Questions about the trust's actions in seeking fingerprints and handwriting samples from staff

On 12 December 2019 I asked you:

"The Guardian has reported that the trust has asked several of its staff to submit to being fingerprinted, in order to find the author of an anonymous letter:

https://www.theguardian.com/society/2019/dec/11/matt-hancock-wont-talk-to-us-say-bullied-doctors-at-hospital-in-suffolk?CMP=share_btn_tw

- Can the trust advise if it has tested for finger prints any documents purporting to be from staff expressing concerns, and if so, on how many occasions has it done this?

- Please advise if there is a relevant trust policy governing such a practice, and direct me to the relevant link or kindly supply a copy if the document is not published.

- Please advise in particular what contractual provision the trust believes allows it to ask staff to provide fingerprints.

- If there is no specific policy or contractual provision, please can the trust give a broad indication of the range of circumstances in which it might seek to identify a member of staff by fingerprints.

- Please explain how such a practice of asking staff for fingerprints potentially intersects with:

a) The trust's recent adoption of a facility for raising concerns anonymously, as advised by your Chief Executive report last month.

b) The trust's whistleblowing policy reference PP(18)056 of January 2019:

<https://minhalexander.files.wordpress.com/2019/12/pp19056-freedom-to-speak-up-whistleblowing-staffconcernsaboutpatientcareandothermatters.pdf>

This trust policy makes provision for staff to report through a "trusted partner (formally independent adviser)" who communicates with others but safeguards and keeps secret the identity of the whistleblower. See trust flowchart copied below.

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This trust policy makes provision for staff to report through a "trusted partner (formally independent adviser)" who communicates with others but safeguards and keeps secret the identity of the whistleblower. See trust flowchart copied below."

The trust answered thus to the above questions:

"As part of our duty under Data Protection legislation, we conducted a serious investigation around a data breach that had directly affected a grieving family. This then lead to an HR investigation. As part of this we asked staff who were involved in the investigation to provide handwriting and fingerprint examples in order to immediately rule themselves out of the data breach investigation. Staff were asked to provide these, and were not threatened with disciplinary action if they chose not to do so, but the Trust has acknowledged this could have been handled differently and those directly involved have received a personal written apology for the stress and upset caused. The Trust does not envisage choosing to take a similar approach again. The organisation informed staff in October that it had no intention of pursuing a request for fingerprints further.

Following concerns raised by staff, earlier this year our serious incident investigation and HR investigation process was shared with the national head of whistleblowing for the NHS for thorough scrutiny. It was also shared with the Care Quality Commission."

Firstly, please answer the question on whether the trust has tested any documents, purportedly from staff, for fingerprints.

To be clear, I refer to any documents or stationery which the trust believed were sent to the bereaved family by unidentified staff, or any other documents or stationery which the trust suspected have been unlawfully sent by trust staff to parties outside of the trust, on any other occasions.

Please also answer the question on how many times the trust has undertaken any such fingerprint testing of suspect documents and stationery.

The trust has not answered my questions about whether the trust believed there was a trust policy or contractual entitlement which allowed the trust to ask staff for such biometric data.

In the absence of answers from the trust, I take this to mean that the trust concedes that it had no right in policy or contract to make intrusive requests for highly sensitive biometric data.

However, as the trust set an unfortunate precedent, I would be grateful if the trust could clearly answer my questions on policy provision and contractual issues.

2. Question about which senior figure from central bodies purportedly endorsed the trust's approach to staff and its demands for fingerprints.

On 12 December 2019 I asked you:

"3. Endorsement of trust actions by "the NHS national head of whistleblowing"

The Guardian newspaper reported that a trust spokesperson stated:

"In this case we shared our serious incident investigation process with the CQC [Care Quality Commission], and the NHS national head of whistleblowing, who backed our approach."

(a) Could you please clarify to whom the spokesperson was referring in regards to "the NHS national head of whistleblowing"?

Has the trust consulted Dr Henrietta Hughes National Freedom To Speak Up Guardian?

Was Dr Hughes aware of the fingerprinting request to staff?

Did she agree that the trust was justified in asking for staff fingerprints?"

The trust answered evasively:

"The Trust shared its investigation process with the national head of whistleblowing for the NHS, and the Care Quality Commission."

(a) Was the trust referring to Dr Henrietta Hughes National Freedom To Speak Up Guardian when it told the Guardian newspaper that its approach had been "backed" by the NHS head of whistleblowing?

Or was the trust referring to Tom Grimes the head of whistleblowing at NHS Improvement and NHS England?

If the trust was not referring to either of these individuals, who was the trust describing as the "national head of whistleblowing for the NHS"?

Please indicate the name, seniority and originating organisation of the individual cited by the trust.

Please also answer the specific questions about whether Dr Henrietta Hughes was:

- i) Aware of the trust's fingerprinting request to staff?
- ii) Agreed that the trust was justified in asking for staff fingerprints?

(b) The trust claims that it shared its investigation process with the CQC, and seemingly implies that the CQC also “backed” its investigation process

(i) Please clarify if the CQC did indeed agree that the trust was justified in asking for staff fingerprints.

(ii) If so, please advise what level of seniority was the CQC staff member/ members who endorsed the trust’s request for staff fingerprints?

I acknowledge that questions (b)(i) and (b)(ii) are new, additional questions.

I would be grateful if West Suffolk would expedite its answers to outstanding questions, given that it has now passed the statutory deadline for answering my questions, and it is therefore in breach of Section 10 FOIA.

I copy this to CQC's Chief Inspector of Hospitals and NHSI Chair in view of the trust failure to be candid.

I also copy the ICO in view of my concern that the trust attempted to obtain sensitive staff biometric data, and also in view of the trust’s failure to respond to large parts of my FOI request.

Yours sincerely,

Dr Minh Alexander

Cc Ted Baker CQC Chief Inspector of Hospitals
ICO Casework
Dido Harding Chair NHS Improvement

From: FOI [redacted]

Subject: FOI Response 19-13226

Date: 13 January 2020 at 15:00:09 GMT

To: minh alexander [redacted]

Cc: Communications [redacted]

Dear Minh Alexander

I am writing to confirm that the West Suffolk NHS Foundation Trust has now completed its search for the information which you requested on 12th December 2019

1. Anonymous reporting systems at West Suffolk NHS Foundation Trust

I see that you advised the board of West Suffolk NHS Foundation Trust in your chief executive report for the 1 November 2019 that the trust had launched arrangements for anonymous staff reporting:

"A part of our Freedom to Speak Up arrangements we have launched a new anonymous reporting phone line and intranet form to give staff another way to share concerns. We know that, across the NHS, one of the main reasons colleagues don't speak up when they see

something is because they fear they might be victimised or punished for it. Here at WSFT, we work really hard to create a culture of compassion, honesty and learning. We want everyone to feel they have a voice, control and influence. But we know that we don't always get that right – in last year's NHS Staff Survey:

- *Of those staff that had experienced harassment, bullying or abuse at work, only 37.9% reported it*
- *Of those staff that had experienced physical violence at work, only 49.7% reported it*
- *Of those staff that saw an error, near miss or incident that you thought could hurt staff, patients, or service used, only 91.4% of you reported it.*

So we're taking steps to try and make reporting feel safer and easier. We'd always encourage colleagues to formally report issues where they feel able to do so rather than use anonymous tools, but we'd rather hear this way than not at all!"

<https://www.wsh.nhs.uk/CMS-Documents/Trust-board/2019/Trust-open-board-meeting-papers-1-November-2019.pdf>

- Please can the trust give a detailed account of these telephone and intranet reporting platforms:

- How is anonymity achieved? **Staff have a choice whether or not to leave contact information on both platforms; if they choose not to, the Trust has no way of identifying who they are.**

- Do staff need to log on to trust computer systems using any identifying code or passwords in order to make an anonymous report? **No. Anonymous reports can be made from outside the Trust, e.g. via a smart phone, a home or public computer etc. using the link publicised internally, or from any phone if using the phonenumber facility. No passwords or identifying codes are required for either.**

- Who is responsible for:

a) Receiving the anonymous telephone calls? **No-one receives the calls; it's an answerphone facility. The Trust's patient safety team has responsibility for checking the answerphone daily and processing issues raised accordingly as per approved standard operating procedure / protocol.**

b) Processing the anonymous intranet reports? **Submitted messages are automatically emailed to two senior HR department leads. They have responsibility for processing issues raised accordingly as per approved standard operating procedure / protocol.**

- Are there any third parties involved in operating these processes, and if so, please can you advise who they are and any service specification agreed by the trust. **No third parties are involved in operating these processes. The Trust content management system provider (CMS) provides technical support for the CMS that hosts the process, but would only access the CMS on request to support with technical problems.**

- Please can you advise what data from staff's anonymous reports is stored by the trust,, how and where? **The only data that is stored is the content the user chooses to submit. This means if they choose not to leave a name or any identifying information, the Trust will not have access to this information.**

Online: The information the person has submitted is stored for 30 days on the CMS and then automatically removed from the CMS. The information the person has submitted is stored in the email which is issued to two senior members of HR team, which is kept in a secure, password protected folder. The content of the submissions is added by one of these senior team members onto a database, which has controlled access and is on a secure server. Only approved staff have access.

Phone: The phone message is stored on the answerphone facility. The content of the submissions is added by a member of the patient safety team onto a database, which has controlled access and is on a secure server. Only approved staff have access.

As required, content of the submissions (online or phone) may then be added onto Datix or other reporting systems so that the Trust can monitor and action accordingly. As stated, this is only using the information the staff member has chosen to submit.

- How is such information accessed? How is access controlled and who controls the authorisation of access? **See above.**

2. Reported attempts to identify a member of staff who raised concerns through fingerprints

The Guardian has reported that the trust has asked several of its staff to submit to being fingerprinted, in order to find the author of an anonymous letter:

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Following concerns raised by staff, earlier this year our serious incident investigation and HR investigation process was shared with the national head of whistleblowing for the NHS for thorough scrutiny. It was also shared with the Care Quality Commission.

3. Endorsement of trust actions by "the NHS national head of whistleblowing"

The Guardian newspaper reported that a trust spokesperson stated:

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Could you please clarify to whom the spokesperson was referring in regards to "the NHS national head of whistleblowing"?

Has the trust consulted Dr Henrietta Hughes National Freedom To Speak Up Guardian?

Was Dr Hughes aware of the fingerprinting request to staff?

Did she agree that the trust was justified in asking for staff fingerprints?

The Trust shared its investigation process with the national head of whistleblowing for the NHS, and the Care Quality Commission.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research and for the purposes of news reporting. Any other reuse, for example commercial publication, would require the permission of the copyright holder.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to:

Chief Executive
West Suffolk NHS Foundation Trust
Hardwick Lane
Bury St Edmunds
Suffolk IP33 2QZ

If you are not content with the outcome of your complaint, you may request the Information Commissioner's Office to carry out a review.

Kind regards

Jenny Hards
Senior Information Governance Officer

T: [redacted] Mon-Thur 8.30-3pm

West Suffolk NHS Foundation Trust
Hardwick Lane | Bury St Edmunds | SUFFOLK | IP33 2QZ

From: minh alexander <minhalexander@aol.com>
Subject: Anonymous reporting systems at West Suffolk NHS Foundation Trust and reported attempts to identify a member of staff who raised concerns through fingerprints
Date: 12 December 2019 at 03:05:45 GMT
To: Stephen Dunn [redacted]
Cc: [redacted]

BY EMAIL

Steve Dunn
CEO West Suffolk NHS Foundation Trust

12 December 2019

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Did she agree that the trust was justified in asking for staff fingerprints?

Many thanks.

Yours sincerely,

Dr Minh Alexander

Cc Dido Harding Chair NHS Improvement
Ted Baker CQC Chief Inspector of Hospitals