



University Hospitals Sussex
NHS Foundation Trust

Freedom of Information Office

C/O Company Secretary
Worthing Hospital
Lyndhurst Rd
Worthing BN11 2DH

01/03/2023

Re: Freedom of Information Request FOI220854

Thank you for your recent request for information under the Freedom of Information (FOI) Act 2000.

We are now in a position to respond to your request.

Your request:

FOI request – whistleblowing governance at University Hospitals Sussex NHS Foundation Trust

1. I write to ask how many active Employment Tribunal cases are in progress against the trust, and how many of these include a claim filed under the jurisdiction code of Public Interest Disclosure (whistleblowing). I asked this previously as part of a wider FOI request, but the trust advised that checking files for details of ET claims would be too time consuming.

I am sure that checking files on just a few active cases would be a much quicker task.

2. I would also be grateful if the trust could also disclose, drawing from the digital data submitted to NHS Digital:

a. The number of dismissals for any reason by staff group for each of the financial years

2019/20
2020/21
2021/22

b. The total number of medical staff dismissed in the period 1 April 2019 to 31 March 2022.

c. The total number of doctors referred to the GMC by the trust in the period 1 April 2019 to 31 March 2022.

3. I understand that the trust does not keep a central record of its settlement agreements and cannot give an exact overview of how many non-disclosure agreements and non-disparagement clauses that it has applied.

One of the recommendations of the report of the NHS Freedom To Speak Up Review was that NHS Trust Chief Executives should take personal responsibility for reviewing all settlement agreements made by their trusts. This is to ensure that they are not excessively restrictive.

If you are personally overseeing settlement agreements, could you possibly give a brief overview as CEO of the settlement agreements used by your trust and whether they typically contain:

- Clauses which require signatories to keep the existence of settlements agreements secret
- Clauses which require signatories to keep the contents of settlement agreements secret
- Clauses which require signatories not to disparage each other

4. And could you kindly supply a template of the settlement agreement commonly used by your trust, or better still, a redacted copy of the most recently applied settlement agreement which shows the restrictive clauses used?

Our response:

Under Section 1(1)(a) of the Freedom of Information Act (FOIA), the Trust can confirm that it holds information relevant to your request and this has been provided where possible below.

1. There are currently 14 employment tribunal cases in progress. We are unable to provide any further information relevant to these cases (e.g. those that include a PID as per your request) due to the small number of staff involved and the risk of identification. Since you have requested this information under the terms of the FOI Act, we are obligated to consider the legitimacy of disclosure to the world at large which allows unrestricted access to this data, free from any obligation of confidence. The Trust considers the disclosure of further information relevant to these cases to be exempt under section 40(2) exemption [*personal information*] on the grounds that it amounts to personal data and the first condition under section 40(3)(a)(i) is satisfied, namely, that disclosure would be in breach of the first data principle as outlined in the UK General Data Protection Regulations (GDPR) and Data Protection Act 2018, which outlines the requirement that personal data is processed 'fairly'. It is our view that the staff involved in these cases would have a reasonable expectation that this information would not be disclosed into the public domain in this way, and that disclosure would likely cause undue distress and not be considered 'fair' by the individuals involved. The engagement of s.40(2) in this case is considered *absolute* and is not subject to further public interest considerations.

2. University Hospitals Sussex NHS Foundation Trust has been in operation since 1 April 2021, following the merger of Brighton and Sussex University Hospitals NHS Trust and Western Sussex Hospitals NHS Foundation Trust. Information for the periods 2019/20 and 2020/21 is therefore relevant to legacy Brighton and Sussex University Hospitals NHS Trust and Western Sussex Hospitals NHS Foundation Trust. Information for the period 2021/22 is relevant to University Hospitals Sussex NHS Foundation Trust. Information about the Trust's hospitals can be found on our website – <https://www.uhsussex.nhs.uk/hospitals/>

2a. Please refer to the tables below for the information requested. This information has been anonymised in line with the Information Commissioner's Office (ICO) Anonymisation Code of Practice. This guidance recommends that since the publication of information under the Freedom of Information Act 'is to the wider world' and therefore carries more data protection risk, information relevant to a small number of people should be anonymised to ensure identification is not possible. We have included total figures where possible to ensure our data is both useful and meaningful.

Financial Year 2019-20 Legacy Trusts ONLY	Dismissals Headcount
Additional Clinical Services	19
Administrative and Clerical	9
Estates and Ancillary	11
Other: Includes Medical, Dental, Nursing and Midwifery Registered	11
Total	50

Financial Year 2020-21 Legacy Trusts ONLY	Dismissals Headcount
Additional Clinical Services	7
Administrative and Clerical	8
Nursing and Midwifery Registered	8
Other: Includes Medical, Dental, Estates and Ancillary, Add Prof Scientific and Technic, Allied Health Professionals	10
Total	33

Financial Year 2021-22 University Hospitals Sussex NHS Foundation Trust	Dismissals Headcount
Additional Clinical Services	13
Administrative and Clerical	12
Estates and Ancillary	26
Other: Includes Medical and Dental, Nursing and Midwifery Registered, Allied Health Professionals, Add Prof Scientific and Technic	9
Total	60

2b. A total of 6 medical staff were dismissed during the period 1 April 2019 to 31 March 2022. Since you requested a total figure related to periods of time both before and after the merger (see note above), this data is relevant to the legacy Trusts and University Hospitals Sussex NHS Foundation Trust.

2c. A total of 6 doctors were referred to the GMC during the period 1 April 2019 to 31 March 2022. Since you requested a total figure related to periods of time both before and after the merger (see note above), this data is relevant to the legacy Trusts and University Hospitals Sussex NHS Foundation Trust.

3. The Trust adheres to the latest legal guidance regarding Public Interest Disclosure. Please see extract below taken from our current settlement agreement template.

1. Confidentiality

1.1. The Employee understands and accepts that she/he/they will remain bound by any pre-existing confidentiality obligations in her/his/their contract of employment, including the obligation to keep confidential any patient confidential information and all confidential information and know how that the Trust may have disclosed to the Employee, whether orally, in writing or digitally which includes but is not limited to data, financial information, financial projections, financial records, spreadsheets, computer software, patient information and any information which has been given to the Trust in confidence and any other information which the Employee is told is confidential which the Employee has obtained about the Trust or its patients or its employees and its officers during the currency of the Employee's employment, however obtained, and whether held on document, computer disc, tape or otherwise and not to publish that information to any third party without the prior written consent of the Trust.

1.2. For the avoidance of doubt, nothing in this clause specifically and nothing in this agreement generally shall prevent or inhibit the Employee, the Trust or any of its officers, employees or agents from:

1.2.1. making disclosures under the Employment Rights Act 1996 or prejudice any such right;

1.2.2. speaking up about any concerns she/he/they may have in relation to the quality and/or safety of the care provided by the Trust or by any other organisation, nor from speaking up to any statutory, regulatory, supervisory or professional body in accordance with her/their professional and ethical obligations including those obligations set out in guidance issued by any statutory, regulatory, supervisory or professional body from time to time;

1.2.3. reporting a criminal offence to any law enforcement agency;

1.2.4. seeking support from immediate family, a GP or similar health practitioner, or an employment support scheme (such as NHS Improvement's Whistleblowers' Support Scheme)

1.2.5. co-operating with any law enforcement agency regarding a criminal investigation or prosecution; nor

1.2.6. making such disclosure as it is required to make by law and/or the rules of any statutory, regulatory, supervisory or professional authority or body; this agreement from being subject to scrutiny by a statutory body tasked with the scrutiny of public bodies, such as the National Audit Office or the Public Accounts Committee.

4. Please find attached the template for the last settlement agreement used by the Trust.



To comply with the Re-use of Public Sector Information Regulations (2015), this Information is provided to you under the Open Government Licence (OGL). This licence does not grant you any right to use the Information in a way that suggests any official status or that University Hospitals Sussex NHS Foundation Trust endorse you or your use of the Information. The re-use of this Information indicates your acceptance of the terms and conditions as set out in the OGL:

<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

When you use our information under the OGL, you should include the following attribution where appropriate:

University Hospitals Sussex NHS Foundation Trust 2023, licensed under the Open Government Licence: <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

If you wish to re-use information outside of the licence terms then please inform the Trust, as unauthorised re-use may be in breach of copyright law. For information where the copyright is owned by another person or organisation, you must apply to the copyright owner to obtain their permission to re-use. Further guidance for the re-use of information can be found at:

<http://nationalarchives.gov.uk/documents/information-management/ogl-user-guidance.pdf>

If you require clarification or if we can be of any further assistance, please do not hesitate to contact us at: UHSussex.foi@nhs.net

If after contacting us with any questions or concerns you remain dissatisfied with the outcome of your enquiry, you have the right to appeal. Complaints should be made within 40 working days of the Trust response. We are not obliged to carry out an internal review into the processing of your request after this period. If you wish to submit a complaint, please provide the basis for your appeal by emailing us or write to:

Freedom of Information Office
C/O Company Secretary
University Hospitals Sussex NHS Foundation Trust
Worthing Hospital
Lyndhurst Rd,
Worthing BN11 2DH

After we have reviewed your complaint, if you are still not satisfied with the outcome of your appeal you can contact the Information Commissioner's Office. This can be done via their website - <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/> or via telephone - 0303 123 1113.

We hope you are happy with the processing of your request and find the information provided helpful.

Yours sincerely,

Freedom of Information Office
University Hospitals Sussex NHS Foundation Trust