



University Hospitals Sussex

NHS Foundation Trust

Freedom of Information Office

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

10/08/2023

Re: Freedom of Information Request FOI230192

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:

1. Does the Trust consider that Mr Grayson is a Fit and Proper Person under CQC Regulation 5, especially as a Chief Governance Officer?
2. What process, if any, did the trust follow to justify that Mr Grayson's appointment to the University Hospitals Sussex trust board was safe following the events which led to his departure from East Sussex Healthcare NHS Trust?

I would also be grateful for information as follows:

3. Please disclose all items of work purchased from the Good Governance Institute since 1 April 2016, by the trust and its predecessor bodies.
4. Please disclose the nature of the services and goods purchased, the dates of the purchases and the cost of each purchase.
5. Where services were purchased, please disclose who from the GGI delivered the services.
6. In particular please disclose if Darren Grayson, who is now the trust's Chief Governance Officer, delivered any of these purchased services.
7. Please disclose the most senior trust officer or officers who signed off the purchases.
8. Please disclose copies of all reports produced by the GGI for the trust.
9. Please advise if all of these GGI reports were disclosed to
 - A) NHS England and predecessor bodies, and if so, when
 - B) CQC, and if so, when

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 as explained in the following response.

1. This question was answered in our initial response to your request sent to you via email on 12 July 2023.

2. This question was answered in our initial response to your request sent to you via email on 12 July 2023.

3. Although we answered this question in our correspondence of 12 July 2023, we have since identified additional information relevant to your request. Over this period the Good Governance Institute (GGI) also carried out a review titled "Options for Board Secretary" dated April 2018 for Western Sussex Hospitals NHS Foundation Trust/Brighton and Sussex University Hospitals NHS Trust and provided Senior Project Manager resourcing for a pandemic project in April 2020.

4. Since our initial response on 12 July 2023, the Trust further considered the public interest test associated with section 43(2) [*commercial interests*] exemption as it relates to the disclosure of these specific costs and concluded that disclosure outweighed withholding this information. Please refer to the cost breakdown associated with work provided by GGI in the table below:

Good Governance Institute Work	Date	Spend (£)
Brighton and Sussex University Hospitals NHS Trust Quality governance review [Report]	November 2017	58,920.00
Brighton and Sussex University Hospitals NHS Trust Rapid Review of Digestive Diseases Clinical Directorate [Report]	January 2018	16,248.60
Options for Board Secretary - Western Sussex Hospitals NHS Foundation Trust, Brighton and Sussex University Hospitals NHS Trust [Report]	April 2018	18,133.39
Brighton and Sussex University Hospitals NHS Trust (BSUH) Rapid review of clinical governance in divisions [Report]	September 2018	55,405.55
Supporting the Implementation of Quality Management Structure [Resourcing]	Jan-Oct 2018	179,916.73
Senior Project Manager Covid-19 [Resourcing]	April 2020	11,325.72
Western Sussex Hospitals NHS Foundation Trust and Brighton and Sussex University Hospitals NHS Trust - A Quality Governance Structure for the merged Trust: Governance & Risk Management Support [Report]	November 2020	70,470.00
Total		410,419.99

5. The Trust applied section 40(2) [*personal information*] exemption in our response of 12 July 2023.

6. This question was answered in our initial response to your request sent to you via email on 12 July 2023.

7. This question was answered in our initial response to your request sent to you via email on 12 July 2023.

8. Please find attached the reports indicated below which have been redacted where appropriate for the reasons explained.

Western Sussex Hospitals NHS Foundation Trust and Brighton and Sussex University Hospitals NHS Trust - A Quality Governance Structure for the merged Trust: Governance & Risk Management Support [Report] – November 2020

This report is being disclosed in full.

Brighton and Sussex University Hospitals NHS Trust Quality governance review [Report] – November 2017

Options for Board Secretary - Western Sussex Hospitals NHS Foundation Trust, Brighton and Sussex University Hospitals NHS Trust [Report] – April 2018

Brighton and Sussex University Hospitals NHS Trust (BSUH) Rapid review of clinical governance in divisions [Report] – September 2018

Names and other identifying information relevant to the authors, reviewers, and staff mentioned within these three documents has been redacted under section 40(2) [*personal information*] exemption of the Freedom of Information Act. This includes personal data relevant to staff of GGI, Western Sussex Hospitals NHS Foundation Trust and Brighton and Sussex University Hospitals NHS Trust. Article 4(1) of UK General Data Protection Regulations (GDPR) defines personal data as meaning “any information relating to an identified or identifiable natural person (‘data subject’)”. There are six lawful bases for ‘processing’ personal information in Article 6 of the GDPR, with only consent or legitimate interests relevant to disclosure under the FOIA. On the basis that consent has not been given regarding the disclosure of this information, we have considered probable legitimate interests, if disclosure is necessary in this case, and does any legitimate interest outweigh the interests and fundamental rights and freedoms of the individuals concerned.

Although disclosure in this case would serve a legitimate interest relevant to the general principles of transparency and accountability, it is our view that these individuals would not have a reasonable expectation that their personal information would be disclosed into the public domain in this way. On this basis we do not consider disclosure necessary nor do we consider there to be sufficient legitimate interest which outweighs the rights of the data subjects in this case. The redacted information is therefore considered exempt under section 40(2) [*personal information*] exemption of the Act. The engagement of s.40(2) in this case is considered *absolute* and is not subject to further public interest considerations.

Since our initial response on 12 July 2023, the Trust further considered the public interest test associated with section 43(2) [*commercial interests*] exemption as it relates to the disclosure of these reports and concluded that disclosure outweighed withholding this information. No information has been redacted under section 43(2) exemption within these reports.

Brighton and Sussex University Hospitals NHS Trust Rapid Review of Digestive Diseases Clinical Directorate [Report] – January 2018

In December 2017, GGI was commissioned by Brighton and Sussex University Hospitals NHS Trust to conduct a rapid review of the Digestive Diseases Clinical Directorate; GGI’s review report is dated January 2018. This final report relevant to your request is being withheld in full on the basis that it falls within section 36(2) of the FOI Act [prejudice to the effective conduct of public affairs] and that the public interest in maintaining the exemption outweighs the public interest in disclosure. This decision is supported by the Trust’s Qualified Person, Dr George Findlay (Chief Executive Officer), who is of the opinion that the disclosure of this information would likely inhibit the free and frank provision of advice and/or free and frank exchange of views for the purposes of deliberation [section 36(2)(b)(i) and (ii)], and that disclosure would otherwise likely prejudice the effective conduct of public affairs [section 36(2)(c)].

Section 36 of the FOIA provides that, "Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act - (2)(b) would, or would be likely to, inhibit –

- i. the free and frank provision of advice, or
- ii. the free and frank exchange of views for the purposes of deliberation,

or (2)(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

The rationale for the application of section 36(2)(b) is as follows:

The Trust must be able to hold free and frank discussions about its services and about confidential and sensitive matters, without concern that the detail of those discussions or that advice will be prematurely disclosed. The fundamental purpose of undertaking an invited service review is to facilitate the free and frank exchange of views for the purposes of deliberation, which enables the Trust to shape and implement proposals in order to improve its services. The review report by the GGI contains analysis which reflects candid discussions between staff within the Trust and the reviewers. To be effective, invited service reviews rely on a relationship of trust and confidence between the Trust and the staff concerned. Disclosure of this report would, therefore, likely undermine this trust and inhibit the free flow of views and information that would consequently have a detrimental impact on service development and improvement.

During the review, staff were interviewed and opinions shared which forms a substantial amount of information contained in the report. This information was exchanged with the clear expectation that these discussions would remain confidential. Due to the small number of staff involved, staff could be identified by their views which would then be known by other staff, making working relationships more strained and complicated. Disclosure in this case could well exacerbate some of the problems that led to the review being commissioned in the first place. For these reasons we believe that disclosure poses a significant risk of having a chilling effect on the willingness of staff that participated in the review and the wider team from continuing to assist the Trust, and from participating in future discussions relevant to the issues involved.

The Trust must be allowed the safe space to conduct rigorous and candid reviews of its services, seek advice and deliberate openly and honestly about how to move forward without the risk of premature disclosure. There must be a safe space in circumstances such as this, which staff feel able to raise concerns and discuss issues which could benefit their work. While staff have an understanding of the FOIA, there is still an expectation that this type of free and frank discussion will remain confidential. If the information contained in the report was disclosed, staff may be reluctant to participate so freely, frankly and honestly. All levels of staff in the Directorate concerned and staff more generally, are likely to be affected by disclosure in this case which would likely have a significant chilling effect on the willingness of staff to participate in such reviews in the future. Although specific, personal identifying information can be redacted from the report under section 40(2) exemption [*personal information*], due to the small number of staff involved in the review the general themes and views outlined in the report could still be attributed to these staff. If staff were less willing to participate in reviews of this nature on the basis that their personal views might become known to their colleagues or the general public, this would likely undermine the ability of the Trust to effectively review its performance and implement changes to improve its services.

The rationale for the application of section 36(2)(c) is as follows:

Further to the views outlined above, the Trust's Qualified Person is also of the opinion that disclosure of the report would otherwise prejudice the effective conduct of public affairs. The Trust is in the process of resolving some of the issues raised in the report and a safe space is

necessary in which to do this. Disclosure of the report would likely prejudice the ability of the Trust to discuss and debate internally the issues it faces, the recommendations put forward and the options available to it. Although we appreciate that considerable time has passed since the review, some of the more complex issues involved remain live. The information that staff provided remains relevant to the status of the service at this time and issues are ongoing for the staff involved. Since this was an invited review and not a regulatory investigation, the willingness of staff to continue to participate and cooperate in this process is essential. Full disclosure would be likely to discourage the staff that participated in the review and those in the wider department, from continuing to assist the Trust. This would likely hinder the Trust's ability to develop its corporate improvement plan and implement the changes that are required. Disclosure at this stage would be premature and therefore likely to prejudice the outcome of the review process.

The issues involved in the review include sensitive matters and disclosure could cause those involved distress and upset. The Trust relies on its relationship with its staff to enable free and frank communication, and has a duty to safeguard and promote positive relationships between the staff involved in such reviews and across the wider Trust. Full disclosure would likely lead to greater speculation, external comment, media attention and/or pressure from other interested parties adding prejudice to the review process. Disclosure and subsequent use of this information by others without understanding the context in which it was written, is likely to lead to sensationalised or misunderstood reporting about the service in question, which may undermine public confidence in the service and the staff that support it. The Trust requires a safe space to develop and promote its corporate improvement plan which will address the issues raised without getting unduly side-tracked with public enquiries and media attention. Disclosure at this stage would likely to prejudice the Trust's ability to carry out its public affairs effectively and implement the necessary actions that are required to improve patient care. This would likely undermine its willingness to invite external organisations to conduct service reviews in the future.

The Public Interest Test: Section 36 is a prejudice based and qualified exemption so the Trust must apply a 'public interest test' and a 'prejudice test' to decide whether, in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Trust recognises the public interest in accountability and transparency in respect of the decisions and actions it takes. Disclosure may further public understanding and public debate surrounding the issues identified by the review, what has been recommended and why, and the improvements that are required. The Trust fully appreciates the public interest in the spending of public funds and ensuring the best use of public resources. Additionally, we acknowledge the public interest in bringing to light information affecting public health and safety.

There is clearly strong public interest in ensuring the quality and safety of the Trust's services, in demonstrating our accountability for these services and how well they are performing. We also understand how issues around quality and safety might impact on an individual basis and on the public more generally. However, this public interest is met in a variety of ways, such as through a range of internal and external quality assessment and assurance processes and CQC inspections which are formally reported. Whilst invited service review reports may also serve this purpose, it is our view that the forthcoming report that will outline the Trust's corporate improvement plan which will address some of the issues raised by this review and will be made available via the Trust Board, is the more appropriate means by which to communicate this information to the public in these circumstances. Invited service reviews protect patient safety by supporting staff to speak up safely, which leads to robust conclusions and recommendations that are then followed up by the Trust to ensure important issues and concerns are accepted and being addressed.

It is our view that to be effective, invited service reviews rely on a relationship of trust and confidence amongst those staff involved. The Trust considers that there is a strong public

interest in respecting the confidences of those that participated in the review process and in preserving and promoting candour, reflection and freedom to speak up amongst staff. Although full disclosure of the report would provide transparency and further insight regarding the purpose of the review, we do not believe this outweighs the negative impact disclosure would likely have on future invited reviews and the willingness of staff to participate in them. Diminished cooperation by staff in this context would undermine the ability of the Trust to effectively review its performance and implement changes that would benefit patients and staff, which is firmly in the public interest. There is a public interest in safeguarding and promoting the relationships between all parties involved in these reviews, and ensuring that they remain willing to share free and frank views in the future, to help guarantee that such reviews remain fit for purpose and learning for the Trust is encouraged. It would not be in the wider interests of the public to prejudice this function.

Considering the timing of the request and the circumstances at this time, we believe the consequences of disclosure would add additional challenges for the Trust and this would not be in the public interest. Deliberations and planning which address the recommendations made in the review report remains ongoing. In order to decide on the steps and resolutions required to address the recommendations made, the Trust requires the safe space to obtain and consider free and frank internal advice and deliberate openly, candidly and honestly about how to move forward. This process needs to be rigorous so as to promote patient safety, the effective delivery of services, and to improve relationships between staff members. Disclosure of the information contained in the report at this time would be likely to prejudice this process. Those staff involved would be likely hindered or discouraged from discussing and considering the issues so openly and frankly, which would be further prejudiced by likely public enquiries and media attention. Disclosure at this time would also likely negatively impact the relationship the Trust has with staff involved in this process, thereby hindering its ability to implement the changes that are required. This would in turn compromise the Trust's ability to assure the public that it is taking the necessary action to improve patient care. We believe such consequences would be challenging for the Trust and this would not be in the wider interests of the public. Rather it is in the best interests of the public to allow the Trust the safe space it requires to consider its options and implement the right solutions in order to address the issues identified. We believe there is compelling public interest in preserving the integrity of reviews of this nature and in giving the Trust the best opportunity to overcome the challenges it faces so that it may provide the highest quality of clinical care for its patients.

Taking into account all of these considerations, it is the view of the Trust that the public interest is best served by withholding the information contained in the report under section 36(2)(b) and (c) for the reasons explained above.

The Information Commissioner's Office (ICO) has a duty to investigate complaints where it is believed that an authority has failed to respond correctly to a request for information. Previous investigations and subsequent decisions by the ICO have established that it is both reasonable and in the wider public interests for NHS organisations to withhold reports which detail the findings and outcomes of Invited Service Reviews under section 36(2)(b) of the FOIA. We have considered a number of these decisions and believe the application of section 36(2) exemption is appropriate in these circumstances and this view is supported by ICO Decision Notices, reference FS50839428 and FS50730159. We have provided links to these decision notices for your information below.

[Microsoft Word - FS50839428 Decision Notice for website \(ico.org.uk\)](#)

[Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](#)

9. This question was answered in our initial response to your request sent to you via email on 12 July 2023.



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If you require clarification or if we can be of any further assistance or 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 you require our response or the information we have provided in a more accessible format, please let us know and we will be happy to assist you.

If after contacting us with any questions or concerns you remain dissatisfied with the outcome of your enquiry, you have the right to appeal. Please submit your appeal within 40 working days of the Trust's response to your request and indicate why you are dissatisfied, as this will form the basis of our internal review. The Trust will then have 20 working days in which to respond to your appeal or 40 working days in exceptional circumstances. The Trust is not obligated to review the processing of a request if an appeal is received after 40 working days. Please email your appeal 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 replied to your appeal, if you are still not satisfied with our response to your request you can submit a complaint to 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 information request.

Yours sincerely,

Freedom of Information Office
University Hospitals Sussex NHS Foundation Trust
Worthing Hospital, Lyndhurst Rd
Worthing BN11 2DH
Email: UHSussex.foi@nhs.net

Website: www.uhsussex.nhs.uk



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