

FREEDOM OF INFORMATION

ANNUAL REPORT 2021/22



University Hospitals Sussex NHS Foundation Trust operated for the period from 1 April 2021 following the merger of Brighton and Sussex University Hospitals NHS Trust and Western Sussex Hospitals NHS Foundation Trust. The purpose of this Freedom of Information Annual Report is to provide an overview of University Hospitals Sussex NHS Foundation Trust's performance and compliance relevant to the Freedom of Information Act (2000) in the financial year 2021/22.

Summary of Key Points:

The Freedom of Information Act requires public authorities to respond to requests for information within 20 working days.

In 2020/21 the legacy Trusts (Brighton and Sussex University Hospitals NHS Trust and Western Sussex Hospitals NHS Foundation Trust) received a total of **1,182** FOI requests between them. University Hospitals Sussex NHS Foundation Trust received a total of **751** FOI requests during 2021/22. Whilst the number of requests received appear lower than the previous year, information held by all three organisations was required to answer most requests over this period, effectively trebling the requests that needed processing. The 751 requests received were also above 50% of the prior year's activity across the legacy Trusts; far more than the 590 requests anticipated.

Of the **751** requests received by University Hospitals Sussex NHS Foundation Trust during 2021/22, **694 (92%)** received a response within the statutory deadlines.

During this period the FOI Office received **3** formal complaints that prompted internal reviews which were all resolved to the satisfaction of the applicants; **no** complaints were escalated to the attention of the ICO.

Introduction

The Freedom of Information Act (FOIA) 2000 provides public access to information held by public authorities, including NHS organisations such as ours. It does this in two ways: public authorities are obliged to publish certain information about their activities; and members of the public are entitled to request information from public authorities.

Public authorities are required by the Act to:

- reply to any request within 20 working days; either by providing the information they hold or stating why it cannot be provided subject to the 23 exemptions outlined in the Act
- provide advice and assistance to applicants making requests under section 16 (*duty to assist*)
- not charge for providing information, other than photocopying, postage and related disbursements; unless the time that would be required to provide the information would exceed the 'appropriate limit' of 18 hours, in which case a 'fees notice' is issued
- offer a complaints (internal review) procedure when a request has been declined or the applicant is not satisfied with the response they received, prior to the applicant escalating a formal complaint to the Information Commissioner
- maintain a 'model publication scheme' on their website which provides access to seven classes of information, as directed by the Information Commissioner's Office

Under FOI legislation, individuals have a right to request any *recorded* information held by a public body, including printed documents, computer files, letters, emails, notes, photographs and sound or video recordings. Anyone, anywhere in the world can make a request under the Act. The Act promotes transparency and allows members of the public to hold public authorities to account, both on how their money is being spent and how decisions are made which may affect their lives.

While it most certainly brings additional work to already stretched resources, the Act can bring about improvements in procedures and reporting across the organisation as a result of requests that highlight inefficiencies and poor practice.

This annual report covers the processing of requests for information under the FOIA received by the Trust during the period 1 April 2021 to 31 March 2022.

Freedom of Information Function

The FOI Office, which sits within Corporate Governance, was responsible for ensuring compliance with the FOIA in 2021/22. This involved the processing of all FOI requests received by the Trust by applying a consistent set of rules that ensured our legal responsibilities were met and the interests of the Trust were maintained. The FOI Office was managed by the FOI Manager who was also responsible for implementing the corporate FOI complaints process and acted as liaison with the Information Commissioner's Office over this period.

The FOI Office had a staff complement of 3.2wte initially over this period, though this was reduced to 2.6wte when a member of the team retired in June 2021. This role would not be filled until April 2022 due to the service going through a consultation process following the merger. The consultation concluded in October 2021 and resulted in the approval of a business case to permanently extend staffing of the FOI Office to 3.6wte, including the appointment of a Deputy FOI Manager in January 2022. It is expected that these staffing changes will drive improvements in the FOI service and overall resilience of the FOI team.

During 2021/22 the FOI Office processed **751** requests for information, provided advice and assistance to approximately **250** applicants wishing to submit a request, as well as the provision of

regular advice and support to staff across the Trust regarding requests and FOI legislation. The team also logged, acknowledged and redirected **240** Subject Access Requests to the Trust's SAR Team which were sent to the FOI Office in error. Subject access requests are processed under Data Protection legislation and not the FOIA.

Summary of Activity

2021/22 was another extraordinary year due to the ongoing COVID-19 pandemic and its impact on services and staffing levels across the Trust. Add to this the fact that aside from Finance and Procurement, information required from all other service areas involved contribution, alignment and approvals across both legacy Trusts, as services generally continued to operate independently. In most instances the requests received by the FOI Office required information held by the legacy Trusts and University Hospitals Sussex NHS Foundation Trust, effectively trebling the work involved in answering requests. These circumstances combined created a significant challenge for the Trust in meeting deadlines over this period. Though the ICO understood the challenges the public sector faced as a result of the pandemic in 2020/21, the expectation in 2021/22 was that information rights work by public authorities should have returned to normal.

During 2021/22 a total of **751** FOI requests were received by the Trust from members of the public (including local residents and service users), national and local media, universities, NHS organisations, charities, Members of Parliament and their staff, private companies and whatdotheyknow.com. The table below shows the number and percentage of requests received by category of applicant in 2021/22.

Category of Applicant	Requests Received	% of Requests
Public/Private	271	36%
Commercial	178	24%
FOI Portal (whatdotheyknow.com)	94	13%
Media/Journalism	93	12%
Academic	41	5%
NHS	31	4%
Charity/Community Services	19	3%
Other	14	2%
Government	7	1%
Professional Body	3	<1%

Performance

The Act requires that FOI requests are responded to within 20 working days. In 2021/22, **92%** of requests received by the Trust met this target. The table below indicates the monthly performance over this period.

Month 2021/22	Requests Received	% Compliant
Apr-21	89	91%
May-21	79	92%
Jun-21	84	88%
Jul-21	54	93%
Aug-21	61	97%
Sep-21	62	94%
Oct-21	34	91%
Nov-21	48	94%

Dec-21	60	100%
Jan-22	50	84%
Feb-22	69	97%
Mar-22	61	89%
Totals	751	92%

Of the **751** requests received in 2021/22, **57** requests (**8%**) did not receive a response within 20 working days. Most breaches were due to delays in receiving information from services or in obtaining approvals which ensured that responses were both accurate and complete. Whenever possible, applicants were informed in advance of any likely delay and this helped to avoid escalation when a response was overdue.

Under the circumstances good performance occurred across the Trust with staff cooperative and helpful in meeting statutory deadlines whenever possible. The FOI Office monitored performance and supported staff in responding to requests within the statutory time frame, ensuring breaches were kept to a minimum.

Section 16 [Duty to Assist]

Under section 16 of the Act [*duty to assist*], public authorities are required to provide assistance to applicants regarding their FOI requests where possible and reasonable to do so. The FOI Office provides assistance when:

- applicants are unable to submit their request in writing (e.g. due to a disability)
- applicants have provided insufficient information to process their request
- a request is unreasonable in scope
- a request primarily seeks exempt information

Of the **751** requests received by the Trust in 2021/22, the FOI Office contacted **251** applicants (**33%**) to provide advice, request clarification or seek revision. Where requests were too broad in scope, the FOI Office would contact the relevant services in the first instance to establish the nature of information that could be more easily provided, which was communicated to applicants and more reasonable requests were then agreed. This was especially important over the last year when there was little spare capacity for information rights work across most services.

Exemptions

The presumption of the Freedom of Information Act is that information should be released unless there is a good reason why it should be withheld. While the Act was introduced with the aim of increasing transparency, there are certain circumstances where information is exempt from disclosure. The Act outlines 23 exemptions which prevent the release of information. The following table indicates the nature and frequency of exemptions that were applied in full or in part to requests in 2021/22.

Exemptions Applied 2021/22	Number of Requests	% of Requests
S.12 [<i>Cost Limit</i>]	214	28%
S.21 [<i>Accessible Elsewhere</i>]	47	6%
S.22 [<i>Future Publication</i>]	12	2%
S.24 [<i>Safeguarding National Security</i>]	3	<1%
S.31 [<i>Law Enforcement</i>]	4	<1%
S.38 [<i>Health & Safety</i>]	1	<1%
S.40 [<i>Personal Information</i>]	224	30%
S.41 [<i>Provided in Confidence</i>]	20	3%
S.43 [<i>Commercial Interests</i>]	48	6%

Section 12 provision [*cost limit*] can be engaged when an applicant asks for information that will require an unreasonable amount of staff time to 'locate, retrieve and extract' (defined as >18 hours); the provision is intended to mitigate the amount of additional work created by FOI requests. **Section 12** provision was applied to some extent to **214** requests (**28%**) received by the Trust. **Section 40** exemption was applied to **224** requests (**30%**) in order to prevent the disclosure of personal, confidential information relating to patients or Trust staff. **Section 21** exemption was applied to **47** requests (**6%**) where information was reasonably accessible by other means, usually via the Trust's website or in many cases over this last year NHS England's website (for COVID-19 data). **Section 22** exemption was applied to **12** requests (**2%**) where information was intended for future publication on the Trust's website. **Section 43** exemption was applied to **48** requests (**6%**) to protect the commercial interests of the Trust or a supplier. **Section 24** exemption was engaged where disclosure could expose vulnerabilities to security threats (e.g. cyber security measures). **Section 31** exemption was applied where disclosure would be likely to prejudice the prevention of crime such as theft or fraud. **Section 38** exemption was engaged where disclosure would likely endanger the safety of patients and/or staff.

Exemptions were applied in full to just **33** requests (**4%**) over this period.

Complaints/Internal Reviews

Applicants who are unhappy with the response they receive or the way in which their request was processed can submit a formal complaint, which initiates a process called an Internal Review. When a complaint is received a lead officer is nominated by the FOI Manager to carry out an impartial review of the processing of the request. The lead officer is usually the Company Secretary, who considers the rationale, public interest, timeliness, and decisions made. The lead officer then produces a written response on conclusion of the review which outlines whether the Trust's original decision is upheld, reversed or modified. Where the outcome of a review is that information should be disclosed which was previously withheld, the information in question is then disclosed as soon as possible.

If an applicant remains dissatisfied with the outcome of the internal review, they can then submit a complaint to the Information Commissioner's Office (ICO). The ICO will then formally review the Trust's handling of the request and subsequent internal review, and can issue a legally binding Decision Notice where appropriate. A Decision Notice outlines the ICO's final decision about compliance with the FOIA and is used to publicly highlight particular issues. Decision Notices are published on the ICO's website. In the event that the Trust does not comply with the steps specified by the Commissioner in a Decision Notice, this could result in the Trust being found in contempt of court.

In 2021/22, the Trust received **3** formal complaints which were resolved to the satisfaction of the applicants. Of the 3 internal reviews carried out, the provision of additional information was found warranted in **1** case, while the Trust's original response was upheld in **2** cases. No complaints were escalated to the attention of the ICO over this period.

Publication Scheme

Public authorities are required to proactively publish and maintain a Publication Scheme under Section 19 of the Freedom of Information Act. The Publication Scheme sets out an organisation's commitment to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information; in line with seven classifications outlined by the ICO's 'model publication scheme'.

The Trust's Publication Scheme was maintained in line with the ICO definition document and is currently hosted on the Trust's temporary website –

<https://www.uhsussex.nhs.uk/about/governance/#nhs-block-anchor-37>

Information continues to be identified for routine publishing and the new Publication Scheme will be further developed by the FOI Office to include a 'disclosure log' of information released via the FOIA where it is considered of significant public interest. The new disclosure log will be introduced when the Trust's new website is launched later in 2022.

Internal Audit

Internal Audit conducted a review of the FOI service during this period which concluded positively. The review made a number of recommendations where the Trust could further strengthen the divisional processes which support the FOI function. An action plan was developed which was reported to the Audit Committee and these actions are now substantively complete.

Conclusion

The Act was intended to be a tool for cultural change, providing new levels of accountability in public sector organisations such as the NHS. The additional scrutiny associated with the FOI process has enabled the Trust to understand the nature of information that is important to our communities and patients, which has led to improvements in the way information is conveyed and made available proactively via our website. University Hospitals Sussex NHS Foundation Trust will continue to learn and grow through engagement with this process. This annual report provides assurance that the Trust met its legal obligations under the Act in 2021/22 and confirms its commitment to openness and transparency.

For further information about this annual report or other FOIA/EIR matters please contact:

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Further information about FOI/EIR request processing can be found on the Trust website – [Freedom of Information - University Hospitals Sussex NHS Foundation Trust \(uhsussex.nhs.uk\)](https://www.uhsussex.nhs.uk)