

THE DUDLEY GROUP NHS FOUNDATION TRUST

FREEDOM OF INFORMATION REQUEST 014868

Following your request asking the Trust to review the response it provided to you for Freedom of Information request reference 014868, please find below our original responses and a reviewed response on pages 2/3.

Under the Freedom of Information Act 2000, I would like to request the following information:

1) What is the total number of staff currently employed by the trust?

4912

2) How many members of staff were suspended on full pay in the last three years? Rather than giving a total for the years combined, please specify the number of those suspended on full pay in each 2016, 2017, 2018 and 2019 to date.

The Trust only centrally keeps details of the current live suspensions. Currently the number of suspensions is less than 5 as per NHS Digital rules the Trust does not publish numbers lower than 5 as this could lead to the identification of the persons involved. Exemption Section 40(2) of the Freedom of Information Act is applied.

3) The total cost for each year 2016, 2017, 2018 and 2019 to-date spent on paying staff while suspended. Please break this down into each year rather than a whole total.

See response to question 2

4) For each incident of suspension, please break down the following:

- **The role of the person suspended (Mental health worker, doctor etc).**
- **Their years in service.**
- **Where they were working when suspended (Royal Blackburn Hospital, Ballenden House).**
- **Circumstances behind the suspension. (Misconduct, inappropriate sexual relationship etc).**
- **Date (where appropriate) of the incident which led to suspension.**
- **The date the individual was suspended from and to.**
- **How much was paid to the suspended person.**
- **The outcome of any suspension – both internal and external.**
- **Did the staff member return to a role following the suspension?**

See response to question 2

5) What was the longest suspension over the three-year period?

See response to question 2

6) How much was paid to that employee during that suspension?

See response to question 2

7) Please include the employee's role, reason for suspension and outcome of suspension.

See response to question 2

8) Finally, please include the total number of staff currently suspended on full pay from the trust.

See response to question 2

Reviewed Response:

Releasing information under FOIA involves disclosure to the world at large and as such the information is free from any duty of confidence, therefore by complying with your request the Trust would be making an unrestricted disclosure of its employee's personal data to the general public on the strength of an individual requester's private concerns without considering the employee's reasonable expectations.

For example as the numbers of staff currently suspended are less than 5 there is a potential for those individuals or their colleagues to know that any responses to a FOIA request would be about them/their colleagues (especially coupled with any response in line with your further questions in Q4 and Q7).

When the Trust received your request for personal information about its employees the Trust was required to decide whether the disclosure would contravene the GDPR data protection principles, by considering whether the disclosure of the information would contravene principle (a) which requires the processing of personal data to be lawful, fair and transparent.

Such a disclosure could constitute a disproportionate and unwarranted level of interference with our employees' rights and freedoms (in particular their right to the protection of their personal data under Article 8 of the Charter of Fundamental Rights of the European Union).

For the disclosure to be lawful it must satisfy one of the GDPR Article 6 lawful bases for processing and GDPR Article 10 if the data relates to offences including the alleged commission of offences and related proceedings which applies to various types of employee information including:

- Salaries and bonuses
- Information about termination of employment and compromise agreements
- Lists and directories of staff
- Names in documents
- Registers of interests
- Disciplinary files
- Representatives of other organisations.

Due to its sensitivity, the conditions for processing such data are very restrictive and concern specific stated purposes. Consequently there are only two relevant conditions available to the Trust to allow it to lawfully disclose the information under FOIA which are:

- consent from the data subject (The Trust is under no obligation to ask employees if they consent to the disclosure under FOIA)
- or the processing relates to personal data which has clearly been made public by the *individual concerned*.

Section 40 of the Freedom of Information Act (FOIA) provides an exemption from the right to information if it is personal data as defined in the Data Protection Act. This states that you should not disclose the information under FOIA if the personal data is that of the requester or someone else and the disclosure would contravene the data protection principles or the data is exempt from the right of subject access.

As your request asks for specific information (roles, dates, pay, circumstance, hospital) this would be classed as personal data as it could lead to the potential identification of an individual, hence the Trust's cited FOIA exemption section 40(2) to your request and continues to cite this exemption due to the low numbers involved and the potential for individuals to be identified (that could be by the individuals themselves, by their colleagues or their family if such information were to be made public).

The Trust's Electronic Staff Record is only able to provide a centralised report for *current* live suspensions. Suspension indicators are only one of the data sets held on the Electronic Staff Record. Suspension indicators are removed when the outcome of an investigation is finalised or when a suspension has been lifted (for any other reason). Historical suspensions (information in relation to your request for previous years) are held in individual staff personal files (not in the centralised ESR reporting database), and are exempt under 40 (2) personal information.

The number of 'current' suspensions, at the time of your request, was less than 5. As per NHS Digital rules the Trust does not publish numbers lower than 5 as this could lead to the potential identification of the persons involved. Exemption Section 40(2) of the Freedom of Information Act was applied. If an investigation is ongoing it is not in the Trust's interest for such information to be released into the public domain.

As the information you have requested for question 3 is partially held on the centralised Electronic Staff Record and partially within individual staff personnel files (exempt under FOIA section 40(2) the Trust is unable to pull a single centralised report to show the total cost for each year 2016, 2017, 2018 and 2019 to-date spent on paying staff while suspended, broken down into each year rather than a whole total.

Staff suspensions are conducted under the Trust's disciplinary proceedings and as such the Trust is in its rights to neither confirm nor deny that it holds information on an employee (FOIA 40(5A) and (5B)(a)). The Trust chose not to use this exemption.

As a data protection controller, the Trust has a duty to ensure that employee data is adequately protected, but also understands it has a duty to respond to requests under FOIA where an exemption is not held. The Trust's [Publication Scheme](#), holding information it is required to publish by law and information it publishes for the greater public transparency, can be found on its website - <http://www.dgft.nhs.uk/about-us/freedom-of-information/publication-scheme/> .

If you are not content with the outcome of review, you may wish apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by The Dudley Group NHS Foundation Trust.

Further information about your rights is also available from the Information Commissioner at:

Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

Tel: 0303 123 1113

Fax: 01625 524510

www.ico.gov.uk