NHS Resolution

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March 2024
FOI_6412

The following information was requested on 16th February 2024:

Follow up to: - 6370 [FOI_6370_CNST-Claims-with-damages-paid-broken-down-by-the-Primary-Cause.pdf (resolution.nhs.uk)]

For the tables which you have provided, would you also be able to add an additional column which includes estimated total damages on these claims (i.e. both damages which have been already been paid and estimated damages to be paid on these claims in the future as part of a PPO).

Our Response

NHS Resolution considers that this information is exempt from disclosure under s.36 (2)(c) and s.43 (2) of Freedom of Information Act 2000 (FOIA).

In consideration of this request, NHS Resolution concludes that the disclosure of this information would prejudice the effective conduct of public affairs (s.36 (2) (c) and prejudice commercial interests (s.43 (2)). Disclosing precise values of liabilities accounted for, and the reserves against a claim would be likely to encourage claims informed by that amount rather than conventional civil liability principles.

NHS Resolution has given due consideration to the public interest test when relying on the above listed exemptions, s.36(2)(c) and s.43(2) and concludes that the factors in favour of non-disclosure outweigh the factors in favour of disclosure under the public interest test.

The values and reserves held are broad estimates. Actual experience may differ considerably from the estimates we provided for in our 2022/23 accounts, but it will be several years before we are likely to be able to confirm that. In the case of claims settled as a PPO - PPOs are an agreement between the parties, to pay an initial lump sum and regular future payments (PPO damages) related to the injured party's ongoing needs, usually care for life i.e., a percentage of the full value of the claim is paid at the point of settlement (lump sum damages) with the balance paid at regular intervals over subsequent years. As the date of death of the injured party is unknown the precise damages to be paid out will be an estimate.

NHS Resolution has considered all the relevant factors in favour of disclosure, including:

- The public interest in favour of disclosure inherent in FOIA.
- Transparency and accountability around NHS Resolution's potential costs.

NHS Resolution has weighed these against the factors in favour of maintaining the exemption, including:

- The strong public interest in the proper and effective discharge of NHS Resolution's statutory duties and responsibilities, which include exercising its functions in an efficient, effective and economical way;
- The public interests in the timely and cost effective resolution of complaints and claims;
- The public interest is served by the information previously disclosed in response to FOI_6370_CNST-Claims-with-damages-paid-broken-down-by-the-Primary-Cause.pdf (resolution.nhs.uk) where the amount that has already been paid out has been shared.
- The public interest in the costs of any claims not being compounded by '**anchoring' claims to reserved amounts**.

In light of all of the factors, NHS Resolution concludes that the public interest favours non-disclosure of the requested information.

If you would like to know how data is categorised in our Claims database please see the following link: Glossary

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to Tinku Mitra, Deputy Director of Corporate and Information Governance, Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow

Cheshire
SK9 5AF

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