NHS Resolution

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FOI_7583

The following information was requested on 26 November 2025:

This is a follow up to FOI_7504_CNST-claims-at-Lewisham-and-Greenwich-NHS-Trust.pdf

Thank you for your previous response (FOI 7504). I am writing to make a new, highly specific request under the Freedom of Information Act 2000.

This request pertains to a very limited set of claims from the financial year 2024/25 for Lewisham and Greenwich NHS Trust. Based on the data you provided in FOI 7504, I am aware that there were between one and five claims in each of the following categories. My request is confined exclusively to these claims.

I request the following for each claim categorised under the following headings:

A. Primary Injury Categories:

- *Removal Of Testicle (1-5 claims)*
- *Amputation - Lower (1-5 claims)*

B. Primary Cause Categories:

- *Foreign Body Left In Situ (1-5 claims)*
- *Wrong Site Surgery (1-5 claims)*
- *Inappropriate Treatment (1-5 claims)*

For each of these specific claims, please provide:

- *The anonymised Risk Management Sheet, Clinical Governance Learning Summary, or equivalent pre-existing internal document that contains the narrative summary of the incident. This is the standard document created for internal learning and improvement.*
- *The total damages paid.*
- *The year the incident occurred.*

For context, please also provide the other two categorising aspects:

- *For a claim from list A (Primary Injury), please provide its Primary Cause and Clinical Specialty.*
- *For a claim from list B (Primary Cause), please provide its Primary Injury and Clinical Specialty.*

I acknowledge the need to protect patient confidentiality. However, I believe the disclosure of this information is lawful and fair for the following reasons:

Anonymised Nature of Source Documents: The documents I am requesting (e.g., Risk Management Sheets) are, by their very nature and purpose, created to be anonymised for internal learning and governance. They are designed to convey clinical facts without identifying the patient.

Further Anonymisation is Possible: I am not requesting any unique identifiers. The data can be further anonymised upon release by, for example:

- Using broad date ranges (e.g., "Incident occurred between 2018-2020") rather than specific years.

- Rounding the damages figures to the nearest £100,000.

- Using broader specialty categories if necessary.

The Significant Public Interest Outweighs the Low Risk: The categories in this request represent some of the most serious patient safety incidents. There is an exceptionally powerful public interest in understanding the systemic causes of such rare, catastrophic events to ensure lessons are learned and public trust is maintained. The risk of identifying an individual from a heavily anonymised clinical summary of a rare event is low, while the public interest in transparency is overwhelmingly high.

I look forward to your response within the statutory 20-working day period.

Please send the data as a spreadsheet.

Our Response

Thank you for your request for information. We are not able to provide the information you have requested for the following reasons:

What is personal data?

Personal data is defined in the Data Protection Act 2018 as:

*"**Personal data** means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).*
***Identifiable living individual** means a living individual who can be identified, directly or indirectly, in particular by reference to: -*
(a)an identifier such as a name, an identification number, location data or an online identifier, or
(b)one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual".

The UK GDPR also provides that some types of personal data are likely to be more sensitive and gives them extra protection. This type of personal data is called special categories of personal data'. Special categories of personal data are:

- personal data revealing **racial or ethnic origin**;
- personal data revealing **political opinions**;
- personal data revealing **religious or philosophical beliefs**;
- personal data revealing **trade union membership**;
- **genetic data**;
- **biometric data** (where used for identification purposes);
- data concerning **health**;
- data concerning a person's **sex life**; and
- data concerning a person's **sexual orientation**.

Specifically in the case of health-related personal data, The UK GDPR defines health data in Article 4(15):

"'*data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status*".

In terms of your specific request the Information Commissioner's Office (ICO) has considered similar requests in relation to medical data in the following cases:

In the recent case of ic-368440-p3l5.pdf which concerns NHS England - The ICO found that "*NHS England was entitled to withhold information on very small activity numbers (less than 5) under section 40(2) of FOIA because, in rare cases, these carries the risk of revealing personal data of individuals by allowing someone to infer the cost of an individual's treatment and infer new information about an identifiable individual, the ICO also found that* ***privacy concerns outweigh disclosure for counts under 5 because revealing costs could cause distress or harm, especially for sensitive treatments.*** " (IC-368440-P3L5)

In a separate case ic-193264-j6l1.pdf which also concerned NHS England - The ICO confirmed that "*NHS England was entitled to withhold certain information where disclosure would risk identifying individuals involved in maternity incidents. The commissioner accepted that small-number data (less than 5) constituted personal data under Section 40(2) of the FOIA 2000 and that releasing it would breach data protection principles. While the ICO acknowledged a legitimate interest in transparency around maternity incidents, it concluded that this did not outweigh the strong public interest in protecting patient confidentiality*. "(IC-193264-J6L1)

Similarly to your request the ICO also noted in the above case ic-193264-j6l1.pdf:

In this case, the information held is broken down by gender, specific hospital, type of maternity incident and date. In addition, NHS England has responded to a previous request for information (from the same complainant as this complaint) disclosing information relating to the maternity incident data broken down by category.

Given the information that is already in the public domain, the granularity of the information that has been requested, and the low number of incidents that have occurred in the examples that have been redacted, the Commissioner is satisfied that it is highly likely that data subjects could be indirectly identified by a motivated intruder and that the information in question would reveal previously unknown information about those individuals.

In our response to FOI_7504_CNST-claims-at-Lewisham-and-Greenwich-NHS-Trust.pdf we have already provided you with the claims information for a specific Trust that we believe is disclosable under the FOI Act. You have requested additional information about a small number of claims specific to Lewisham and Greenwich NHS Trust. It is worth noting that we believe the very fact that you have focussed on a particular Trust (which includes some location information) also increases the possibility of individuals being identified from the information requested.

Section 40 (2) of the FOI Act

We cannot provide the information you have requested due to the low number of cases involved. In addition we are unable to provide redacted copies of documents e.g., *Risk Management Sheets*, as we believe that disclosure of information with this level of granularity is exempt under Section 40(2) by virtue of section 40(3A) (a) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful (given the sensitive and confidential nature of the information held) to disclose such information, and any disclosure would therefore contravene the first data protection principle.

We believe **the likelihood exists that individuals who are the subject of this information may be identified either from this information alone, or in combination with other available information as this is directly narrowed to a specific trust**. In addition to this, as this information is considered to be a special category of personal data and therefore very sensitive personal data (the data subjects' medical condition); NHS Resolution believes it has a greater responsibility to protect those individuals' identities, as disclosure could potentially cause damage and/or distress to those involved. We also do not believe that it is possible to redact the documents held in a meaningful way that would make those documents truly anonymous and yet provide you with useful information.

This information can contain illustrative details which when combined with other publicly available information could identify the individuals involved.

Please note: NHS Resolution does not necessarily hold documents such as risk management sheets etc, as these are not created by us for the purposes of claims management. Such documents are typically produced by individual NHS trusts or other

organisations for their own internal processes, and therefore fall outside the scope of the information we maintain.

We believe that the information provided in response to *FOI_7504_CNST-claims-at-Lewisham-and-Greenwich-NHS-Trust.pdf* is the most reasonable data we are able to provide as regards to your request.

Further to our obligations to provide advice and assistance, you may find it helpful to review the work of the Getting It Right First Time team with whom NHS Resolution has been working with to undertake in-depth analysis of our claims data. They have produced several reports from analysing our claims data which has been shared following approval of the confidentiality advisory group to the use of confidential patient information for this purpose.

Please refer to Understanding NHS Resolution data guidance for further details on how our Claims database is categorised.

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 Joanne Appleby, Deputy 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
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https://ico.org.uk/