



## Resolution

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FOI\_3565

The following information was requested on 18 December 2018:

*For the period 2006/07-2017/8 I would like to make a freedom of information request relating to all litigation claims related to tracheostomy. I would like to request the following information*

- 1. How many claims per year were made related to tracheostomy?*
- 2. What was the amount that each successful claim in each year was settled for?*
- 3. How many claims in each year were for percutaneous tracheostomy and how many for surgical tracheostomy?*
- 4. What was the total number of claims for the period?*
- 5. What was the total amount of damages for the period?*
- 6. What individual or groups were the target of each claim? i.e. how many surgeons, anaesthetists, nurses, community based carers*
- 7. For each claim in the time period – I would like to know what the nature of the claim was. i.e. Was it for death/disability/loss of earnings etc.*
- 8. I would like to know the proportion of claimants that were adults and the proportion of claimants that were children*
- 9. What proportion of the claims occurred in hospitals vs the community*

### **Our Response**

Although NHS Resolution will hold some information relating to claims such as these, due to the way claims are recorded on our claims database, we will not be able to identify such specific cases. It might be helpful to explain that when claims are notified to NHS Resolution they are categorised against pre-defined cause, injury and speciality codes, unfortunately *tracheostomy* is not one of these. Therefore, while there may be information held in our records, we are not readily able to identify the relevant files by searching the database. To do so would involve a review of all cases to identify which ones relate to claims involving *tracheostomy*. NHS Resolution receives thousands of claims each year.

Therefore, we estimate that the cost of complying with the request in its entirety would exceed the 'appropriate limit'. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit (known as the 'appropriate limit'). The 'appropriate limit' for NHS Resolution is

£450. This equates to 18 hours of work at the rate of £25 per hour set out in the 'Fees Regulations'.

We estimate that it would take on average 10 minutes to locate, retrieve and extract the requested information from an individual file. It may therefore be the case that we would be able to examine only 108 files within 18 hours.

In addition, given the complexity of clinical negligence claims and their litigation, it is possible for a single electronic or paper-based file to contain hundreds of documents in a variety of formats.

Please also note even if we were able to carry out a review of 108 random files we may not be able to provide you with the level of detail you require owing to Data Protection grounds.

We would need to suppress low numbers or any information that could possibly lead to the identification of claimants, patients or individuals where disclosure would be likely to breach the General Data Protection Regulations.

We could provide you with the number of claims with free text that includes "*tracheostomy*", "*tracheotomy*" and "*trachy*" in the free-text Incident Description field (and to provide overall/annualised data about the damages paid/settlement amount, total number of claims per year, etc.), but this information is not always relevant to claims management and therefore it may not always be specifically recorded on our systems.

We therefore are concerned that any information disclosed against these search terms is likely to give you an incomplete/misleading picture, as there are often a number of causes for claims and they are settled for a number of multi-factorial reasons. The primary cause and injury recorded on our systems may not relate entirely to *tracheostomy*. For instance, our free-text Incident Description field may refer to 'tracheotomy' or 'trachy' rather than 'tracheostomy', and synonyms such as 'PDT' or 'ST' may be used rather than '*percutaneous tracheostomy*' or '*surgical tracheostomy*', etc., which would not be captured by the above search. This means that we may not be able to answer your question (3).

This data is also unlikely to address your question (6).

However, please let us know if you would nevertheless be interested in information generated through the above search strategy.

Additionally, damages may not always be broken down on a case-by-case basis into the kinds of category set out in your question (7). Whilst we can provide details for the nature of the organisation (e.g. acute hospital trust, ambulance trust, mental health/community provider), that provided the treatment in question, we cannot guarantee that this will give an accurate picture of whether the incident that gave rise to the claim occurred in the community or with the patient already admitted to hospital (in terms of your question 9).

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](#), Head of Corporate and Information Governance 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