



# Resolution

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January 2019  
FOI\_3578

The following information was requested on 3 January 2019:

*Please could you tell me provide the claims/payout data for the Tavistock and Portman Trust with regards to psychiatry/mental health negligence data.*

*Please could you break this down per calendar year for the last 5 years for each a) number of claims received b) number of pay out data/ as well as costs c) any negligence data you hold separately, all with regards to psychiatric/mental health negligence*

## **Our Response**

By way of advice and assistance (and in accordance with our obligations under s. 16 of the Freedom of Information Act – “FOIA”), we publish annual data about the number of claims each member of our schemes receives and their total value on our website, <https://resolution.nhs.uk/resources/factsheet-5-trust-and-authority-claims-data-2017-18/>.

You will see that in 2017-18 the number of claims for the Tavistock and Portman NHS Foundation Trust was ‘0’. Where Trusts have had small numbers of claims (more than 0 but fewer than 5) we have marked this with an asterisk (\*). As NHS Resolution manages risk pooling schemes, organisations’ clinical negligence scheme (CNST) contributions are derived from an organisation’s previous claims history.

As to other years, we are unable to provide the specific information you have asked for, as the number of claims involved is fewer than 5.

Owing to the very low numbers of claims, disclosure of information at this level of granularity is considered to be exempt under Section 40(2) by virtue of section 40(3)(a)(i) of the Freedom of Information Act (FOIA), where disclosure to a member of the public would contravene one or more of the data protection principles. In this case, 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. In addition to this, as this information is considered to be 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.

The information requested falls within the definition of Personal Data under the General Data Protection Regulation (GDPR) where disclosure of the information to you would contravene at least one of the data protection principles contained in Article 5 of the GDPR, and in particular in this case, the First Principle.

Taking into consideration the Data Protection Principles, and in particular the requirement to process personal data fairly and lawfully, in determining whether it would be fair to disclose third party personal data, we have considered the following:

***Reasonable expectations of the data subjects:*** *the data subjects here have a legitimate expectation of privacy concerning their personal information and would not anticipate it being placed into the public domain;*

***Balancing an individual's rights and the legitimate interests:*** *We have weighed individuals' privacy rights against the legitimate interests in disclosure and have concluded that the disclosure of the withheld personal information would constitute a disproportionate and unwarranted interference with the individuals' privacy rights.*

The data subjects have a reasonable expectation of Privacy, where to disclose their Personal Data to you would mean disclosing their personal data to the world at large. In terms of fairness, data subjects would not reasonably have expected their Personal Data to be made public. Furthermore disclosure of such information could be regarded as unduly intrusive.

The exemption from the duty to disclose personal data where to do so would breach one of the data protection principles is an absolute exemption so the public interest test does not apply.

Information which relates to an individual's health is also confidential and therefore would be exempt under s. 41 FOIA.

### **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