



Resolution

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January 2019
FOI_3599

The following information was requested on 22 January 2019:

Please can you tell me the number of claims you have received for breaches of confidentiality by mental health trusts for each of the years you have available. (Figures for the last five years would be helpful if available).

Please can you tell me the number of claims received each year for breaches of confidentiality by mental health trusts following sharing of serious adverse incident investigation reports?

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 accurately identify all such specific cases in the first instance.

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 *breaches of confidentiality* (and in particular breaches of confidentiality associated with Serious Incident reports) 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 *breaches of confidentiality*. NHS Resolution receives thousands of claims each year. Our experience is that 'breach of confidentiality' is often raised in addition or in alternative to claims such as allegations of breach of the Human Rights Act 1998, or breach of the Data Protection Act.

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 Regulation (or itself would amount to a possible breach of confidence by NHS Resolution).

We could provide you with the number of claims with free text that includes “*breaches of confidentiality*”, “*confidentiality*” and “*breach of confidence*” 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 *breaches of confidentiality*. For instance, our free-text Incident Description field may refer to ‘breach of data protection’ or ‘data protection breach’ rather than ‘confidentiality’, which would not be captured by the above search.

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

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:

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Water Lane
Wilmslow
Cheshire
SK9 5AF