



# Resolution

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April 2019  
FOI\_3735

The following information was requested on 5 April 2019:

1. *How many cases of litigation have been settled over the last five years relating to awareness whilst under general anaesthesia?*
2. *What was the average (mean and range) payout of such claims?*

## Our Response

Although NHS Resolution may 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 *awareness whilst under general anaesthesia* 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 *awareness whilst under general anaesthesia*. NHS Resolution receives thousands of claims each year.

We could run a report on the speciality anaesthesia, however this search will throw up many more claims which have nothing to do with “awareness under anaesthesia” – for example:

- Negligent performance of epidural
- Negligent performance of spinal block
- Inadvertent spinal tap or spinal block
- Failure to monitor spinal block
- Failure to treat/act on an inadvertent spinal tap
- Negligent nerve blocks (excluding spinal)
- Failure to ensure adequate local anaesthesia
- Failure to monitor adequately during anaesthesia leading to brain injury or death
- Negligent intubation

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 breach the General Data Protection Regulation.

Our claims database does include certain short free-text fields that may hold some of the information you are interested in (typically, this is in the "Incident Description" field). We could provide you with the number of claims with *awareness whilst under general anaesthesia* in the Incident Description field. However, this is likely to give an incomplete/misleading picture as there are a number of causes for claims and they are settled for a number of multi-factorial reasons and the primary cause and injury may not relate entirely to claims about *awareness whilst under general anaesthesia*. This approach would also be reliant on the phrase *awareness whilst under general anaesthesia* having been used (and spelt correctly) in the free text field rather than other synonyms or general descriptions of the patient's condition/treatment.

Please let us know if you would be interested in this 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](#), 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