



# Resolution

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FOI\_3818

The following information was requested on 24 June 2019:

*I am interested in accessing data on what litigation claims have been made over the last 10 years involving the incorrect setting up of oxygen cylinders or oxygen cylinders running out of oxygen without clinical staff being aware of it. This is a problem that was the subject of an NHS Improvement Patient Safety Alert in January 2018 and a subsequent Healthcare Safety Investigation Branch (HSIB) report in November 2018.*

## 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 *oxygen cylinders* 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 *oxygen cylinders*. 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 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 *oxygen cylinders* 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 *oxygen cylinders*. This approach would also be reliant on the phrase *oxygen cylinders* having been used (and spelt correctly) in the free text field rather than other synonyms or general descriptions of the patient's condition/treatment (such as gas tank). This search may not also be about cases involving the incorrect setting up of oxygen cylinders or oxygen cylinders running out of oxygen without clinical staff being aware of it.

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