



Resolution

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September 2019
FOI_4019

The following information was requested on 26 September 2019:

I was told that you might be aware of any claims that might have been made regarding: loss of patient data (in hospital or outside the hospital), mishandling of data (photos taken on mobile phones/patient data on standard memory sticks). inappropriate consent or lack of consent (regarding photography, videography and audio recording).

Is there any data that you have that might be able to help me?

Our Response

By way of advice and assistance and further to our obligations under s. 16 FOIA, NHS Resolution manages a number of risk-pooling schemes (similar to insurance) for the NHS, one of which is the Liability to Third Parties Scheme (LTPS). This covers both employers' liability (i.e. in relation to duties of care owed to employees) and public liability (i.e. in relation to duties of care owed other patients, visitors and other members of the public).

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 *loss of patient data, mishandling of data or inappropriate consent or lack of consent* 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 *loss of patient data, mishandling of data or inappropriate consent or lack of consent*. 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 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.

We do have a data breach cause code in our claims management system for LTPS claims but we do not capture the specific event, so without looking at every data breach claim we cannot provide what has been requested.

Please let us know if you would be interested in the high level data breach information.

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 *loss of patient data, mishandling of data or inappropriate consent or lack of consent* 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 *loss of patient data, mishandling of data or inappropriate consent or lack of consent*. This approach would also be reliant on the phrase *loss of patient data, mishandling of data or inappropriate consent or lack of consent* having been used (and spelt correctly) in the free text field rather than other synonyms or general descriptions of the main subject of the claim.

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
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