



Resolution

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Telephone: 020 7811 2700

November 2020
FOI_4655

The following information was requested on 1 July 2020:

1. *What is your organisations current staff headcount?*
 2. *What was your organisations annual budget for the financial year 2019-2020?*
 3. *Does your organisation have or contract with a counter fraud specialist?*
 4. *If yes to question 3, is this provision employed directly by your organisation, outsourced to a public sector provider or outsourced to a private sector provider?*
 5. *What level of provision do you have to tackle fraud, bribery and corruption within your organisation (number of funded days a year)?*
 6. *How many fraud, bribery or corruption referrals did your organisation receive specifically relating to fraud occurring within or against NHS Resolution during the financial year 2019-2020?*
 7. *How many criminal investigations did your organisation carry out during the financial year 2019-2020 relating to fraud, bribery or corruption within or against NHS Resolution?*
 8. *What was the fraud loss figure identified by your organisation during the financial year 2019-2020?*
 9. *How much of your identified fraud loss was recovered by your organisation during the financial year 2019-2020?*
- Second request to follow with questions 10 – 12*

Part 2 of request:

10. *How many criminal sanctions relating to fraud, bribery and corruption did your organisation apply specifically in relation to offences committed within or against NHS Resolution during the financial year 2019-2020?*
11. *How many disciplinary sanctions relating to fraud, bribery or corruption did your organisation apply specifically in relation to offences committed within or against NHS Resolution during the financial year 2019-2020?*
12. *What was the total cost of your organisations counter fraud staffing during 2019-2020?*

Our Response

Please see the attached response.

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

<https://ico.org.uk/>

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Request:	Response:
1. What is your organisations current staff headcount?	375 full time equivalent
2. What was your organisations annual budget for the financial year 2019-2020?	NHS Resolution running costs £32.0m. This excludes scheme income and expenditure.
3. Does your organisation have or contract with a counter fraud specialist?	Yes
4. If yes to question 3, is this provision employed directly by your organisation, outsourced to a public sector provider or outsourced to a private sector provider?	Commissioned through Government Internal Audit agency – Carried out by private sector via public sector framework.
5. What level of provision do you have to tackle fraud, bribery and corruption within your organisation (number of funded days a year)?	Section 43 - commercial interest exemption. Please see our reasoning below this table.
6. How many fraud, bribery or corruption referrals did your organisation receive specifically relating to fraud occurring within or against NHS Resolution during the financial year 2019-2020?	0 - We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
7. How many criminal investigations did your organisation carry out during the financial year 2019-2020 relating to fraud, bribery or corruption within or against NHS Resolution?	0 - We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
8. What was the fraud loss figure identified by your organisation during the financial year 2019-2020?	0 – We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
9. How much of your identified fraud loss was recovered by your organisation during the financial year 2019-2020?	0 – We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
10. How many criminal sanctions relating to fraud, bribery and corruption did your organisation apply specifically in relation to offences committed within or against NHS Resolution during the financial year 2019-2020?	0 – We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
11. How many disciplinary sanctions relating to fraud, bribery or corruption did your organisation apply specifically in relation to offences committed within or against NHS Resolution during the financial year 2019-2020?	0 - We understand this to mean internal fraud or finance related fraud including fraud concerning third party suppliers. We note your request states: <i>"specifically relating to fraud occurring within or against NHS Resolution"</i> .
12. What was the total cost of your organisations counter fraud staffing during 2019-2020?	The approximate annual contract spend is £18k.

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Section 43 – Commercial Interests Exemption

The relevant section relied on is section 43 (2) of the Freedom of Information Act 2000 (FOIA). Section 43(2) of the FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

For section 43(2) to be engaged three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed must relate to the commercial interests;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice to those commercial interests; and
- Thirdly, it is necessary to establish whether the alleged prejudice would, or would be likely, to occur.

The Information Commissioner's Office (ICO) guidance explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or services. In this case, the withheld information relates to the level of provision of a fraud contract, specifically number of funded days a year. We believe that the information relates to the purchase and sale of services and is therefore commercial.

We believe that disclosing the number of funded days per year would be likely to prejudice both our own commercial interests and those of the counter fraud provider.

Specifically we believe our commercial interests would be prejudiced if counter fraud providers were less willing to accept instructions (or charged higher fees because of the prospect of disclosure of their level of provision). This would cause challenges for us and the provider because it would provide a benchmark for other fraud experts. Disclosure of information about the level of provision amounts to some extent to unit costs and could create an inflationary pressure for future fraud contracts. We do not generally advise fraud experts that details of their level of provision would be disclosed and therefore we consider that the disclosure would be likely to be damaging to the wider business relationship between NHS Resolution and the counter fraud provider.

With regards to the contract provider's commercial interests, the counter fraud provider has indicated their concerns about the disclosure of the requested information and the impact it would have on them as an independent contractor. The contractor does not consent to the disclosure of their level of provision and they would not expect NHS Resolution to publish this information.

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Public Interest

In order for section 43 (2) of the FOI to apply we need to demonstrate that the public interest in favour of maintaining the exemption outweighs the public interest in disclosing the requested information. Please see below for our public interest considerations.

Public interest arguments in favour of disclosure

We acknowledge there will always be some public interest in disclosing information which would promote transparency and accountability of how a public authority such as NHS Resolution carries out its functions. This public interest is heightened where the information relates to the spending of public money.

Public interest arguments in favour of maintaining the exemption

We believe that the disclosure of the requested information prejudices our ability to effectively discharge our counter fraud duties. We believe fraud experts would be discouraged from working with us and it would prejudice our ability to negotiate value for money contracts if contractors believed their unit fees and level of provision would be disclosed.

There is a recognised need to protect commercially confidential information, a clear public interest in a fair market and competition reflected in the exemption, and a public interest in having due regard to the NHS Resolution's interests and views of its suppliers in the decisions it takes. We believe that the public interest in promoting economy and value for money would be undermined by the disclosure of the requested information.

Balance of public interest arguments

NHS Resolution is of the view that the public interest is served by having access to broader information about its expenditure. As part of the response to this request we have provided you with the annual contract value for the provision of our counter fraud service. We believe that this diminishes the public interest in favour of disclosure of the withheld information requested. Therefore, NHS Resolution considers that the public interest in ensuring we are not put to the disadvantages covered by the exemption outweighs any public interest in disclosure of the requested information.