



Resolution

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June 2021

FOI_5070

The following information was requested on 24th May 2021 and clarified on 25th May and also on 8th June 2021:

I would be very grateful if you could provide me with 2021 litigation data packs for the individual Trusts specified below:

*West Hertfordshire Hospitals NHS Trust
East and North Hertfordshire NHS Trust
Princess Alexandra Hospital NHS Trust
Hertfordshire Community NHS Trust
Hertfordshire Partnership NHS Foundation Trust*

Barking, Havering and Redbridge University Hospitals NHS Trust East Suffolk North Essex NHS Foundation Trust Basildon and Thurrock University Hospitals NHS Foundation Trust Mid Essex Hospital Services NHS Trust Medway NHS Foundation Trust Southend University Hospital NHS Foundation Trust Dartford and Gravesham NHS Trust North Middlesex University Hospital NHS Trust Oxleas NHS Foundation Trust

Cambridge University Hospitals NHS Foundation Trust North West Anglia NHS Foundation Trust Bedford Hospital NHS Trust West Suffolk NHS Foundation Trust East of England Ambulance Service NHS Trust Papworth Hospital NHS Foundation Trust Cambridgeshire and Peterborough NHS Foundation Trust Cambridgeshire Community Services NHS Trust

[Clarified on 25th May 2021]

Yes I am interested in the claim data for these Trusts as contained within the litigation data packs. I reference this article which was published on 10 May 2021:

https://www.litigationfutures.com/news/nhs-to-put-stronger-focus-on-learning-from-litigation-claims?dm_i=2SRY,15I7J,840OYM,4G0P5,1

The article states:

"The 2021 litigation data packs are now being issued to trusts and legal teams asked to complete GIRFT's five-point action plan with the support of clinicians and panel law firms."

Please may I have the data that is contained within these packs that are being sent to individual Trusts?

[Clarified on 8 June 2021]

Many thanks for your response and for providing the above claim data from the NHS Resolution website.

I note that this claim data is aggregated for each hospital. The information I am seeking is the data contained within the 2021 litigation data pack, which I imagine, will include, but not be limited to, individual claim data (rather than one aggregated amount on a per hospital basis) for the specific hospital it pertains to. Each hospital will, I imagine, be sent data specific to their own Trust that they will then seek to use to improve patient safety.

I note in your email above you state "In terms of the links referred to above this information (2020/21) will be published later this year. It is currently going through an audit. " Do you mean that the 2021 litigation data packs will be available later this year? If so, please can you advise approximately when they will be available. If you mean that the aggregated claim data you provided in the links above will be available later this year, then this is not the information I am looking for.

Is it possible for you to seek clarification from someone in your organisation as to who is responsible for sending out the 2021 litigation data packs? They are coming from NHS Resolution so presumably someone has collated this information and will know what I am referring to.

Our Response

For details of the claims data that we publish please see the following links:

Annual report statistics: - <https://resolution.nhs.uk/resources/annual-report-statistics/>

Factsheet 5: - [Factsheet 5 - trust and authority claims data 2019/20 - NHS Resolution](#)

<https://resolution.nhs.uk/resources/this-factsheet-provides-information-about-trust-and-health-authority-claims-handled-by-nhs-resolution-in-2018-19/>

We note in your e-mail of 8 June 2021 you state:

Many thanks for your response and for providing the above claim data from the NHS Resolution website.

I note that this claim data is aggregated for each hospital. The information I am seeking is the data contained within the 2021 litigation data pack, which I imagine, will include, but not be limited to, individual claim data (rather than one aggregated amount on a per hospital basis) for the specific hospital it pertains to. Each hospital will, I imagine, be sent data specific to their own Trust that they will then seek to use to improve patient safety.

Please note we would not be able to provide you with information about individual claims as we believe that disclosure of information with this level of granularity is exempt under Section 40(2) by virtue of section 40(3)(a)(i) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful (given the sensitive and confidential nature of the information held) to disclose such information, and any disclosure would therefore contravene the first data protection principle.

In some instances the low numbers of claims in each category, the likelihood exists that individuals who are the subject of this information may be identified either from this information alone, or in combination with other available information. Particularly as it relates to individual Trusts we believe the possibility of identification would increase. In addition to this, as this information is considered to be sensitive personal data (the data subjects' medical condition); NHS Resolution believes it has a greater responsibility to protect those individuals identities', as disclosure could potentially cause damage and/or distress to those involved.

We also wish to note that you have requested the data packs for 22 individual Trusts and whilst it may be possible to extract/remove some of the personal data from these packs it would be a disproportionate exercise as we believe it would likely remove the information you seek and desire, and it would also likely exceed the appropriate limit set under the FOI Act.

Section 12(1) of the Freedom of Information Act 2000 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'.

Each data pack requested is approximately 60 pages and the time to review each page to identify and remove the sensitive data is approximately 3-4 minutes. To complete this task for the number of Trusts you have requested is likely to exceed 60 hours. This exceeds the 18hour appropriate limit set under the act.

Whilst we understand that we cannot include the time to carry out redactions when calculating the appropriate limit we would rely on section 14 of the FOI Act. Under section 14(1) of the Act, public authorities do not have to comply with vexatious requests.

In applying this exemption we have referred to the Information Commissioner's Office guidance on section 14 located [here](#). On page 11 of the guidance it states:

In *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013), Judge Wikeley recognised that the Upper Tribunal in *Wise v*

The Information Commissioner (GIA/1871/2011) had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that; *'Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it.'*

We understand that there is a legitimate purpose to your request in seeking to understand the claims data for individual Trusts and how Trusts can use this data to improve patient safety. However, we believe this interest and purpose is met by the information publicly available and referred to above which provides the number of claims received by individual Trusts.

We believe that the time taken to review all of the data packs requested would be burdensome and place a disproportionate amount of resources on one request to the detriment of other work. We also believe it would not provide the information you desire as described in your e-mail of 8th June 2021.

We would also need to consult with the individual Trusts concerned to seek their views on any intended disclosure. We would also need to consult with the [Getting It Right First Time team](#) with whom NHS Resolution has been working with to undertake in-depth analysis of our claims data.

For the reasons described above we are unable to provide the information you have requested.

In order to assist you further we would be willing to provide you with the total number of claims received in a financial year for each Trust you are interested in, a breakdown by Specialty, Cause of claims and the Injury recorded on the system. Please note this would not include any low numbers and numbers below 5 will need to be suppressed to prevent claimants or individuals being identified. Please refer to our section 40 reasoning above.

Please let us know if you would be interested in this data.

Further to our obligations to provide advice and assistance, you may find it helpful to review the work of the [Getting It Right First Time team](#) with whom NHS Resolution has been working with to undertake in-depth analysis of our claims data. They have produced a number of [reports](#) from analysing our claims data which has been shared following approval of the confidentiality advisory group to the use of confidential patient information for this purpose.

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

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