



Anthony John

By email to: request-1042603-cf7fde33@whatdotheyknow.com

4 December 2023

Annex A: DHSC response to initial request

Annex B: Request for internal review

Dear Mr John,

FREEDOM OF INFORMATION ACT 2000 (FOIA): INTERNAL REVIEW

CASE REFERENCE: IR-1483450 (FOI-1474982)

You originally wrote to the Department of Health and Social Care (DHSC) on 30 October 2023 requesting information relating to DHSC guidance re: clinical negligence claims made against NHS Trusts. We responded to you on 27 November and a copy of our response, including the full text of your request, can be found in Annex A.

You subsequently emailed DHSC on 27 November requesting an internal review into the handling of your original request. A copy of your email can be found in Annex B.

The purpose of an internal review is to assess how your Freedom of Information (FOI) request was handled in the first instance and to determine whether the original decision given to you was correct. This is an independent review as I was not involved in the original decision.

I can confirm DHSC does not hold any further information other than what was provided by attachment (titled: *NHSLA (Transfer of Liabilities) 1996 Order.pdf*) and withheld under section 21 of the FOIA.

When stating the word 'some', we were referring to that part of the information which was already accessible in the public domain. I trust that clarifies the matter.

DHSC upholds its original decision.

Conclusion

After careful consideration, I have concluded that the response you received to your FOI request was compliant with the requirements of the FOIA.

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by DHSC.

Guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us> and information about making a complaint can be found at <https://ico.org.uk/make-a-complaint>.

Yours sincerely,

Mr D Stanton
FOI Internal Reviews
freedomofinformation@dhsc.gov.uk

The Clinical Negligence Scheme for Coronavirus (CNSC), which will meet liabilities arising from the special healthcare arrangements taken in response to the Covid-19 pandemic [Coronavirus Act 2020 \(legislation.gov.uk\)](#) (section 11 is the relevant part of the Act).

CNSGP, which covers clinical negligence liabilities arising in general practice in relation to incidents that occurred on or after 1 April 2019 [The National Health Service \(Clinical Negligence Scheme for General Practice\) Regulations 2019 \(legislation.gov.uk\)](#).

The Existing Liabilities Scheme for General Practice (ELSGP), a state indemnity scheme for general practice, providing indemnity cover for NHS clinical negligence claims made against current and former GP members of medical defence organisations in respect of liabilities incurred before 1 April 2019 [The National Health Service \(Existing Liabilities Scheme for General Practice\) Regulations 2020 \(legislation.gov.uk\)](#).

The Existing Liabilities Scheme (DHSC), which covers clinical negligence claims against NHS organisations for incidents occurring before 1 April 1995 [The National Health Service \(Existing Liabilities Scheme\) \(England\) Regulations 2018 \(legislation.gov.uk\)](#).

DHSC Clinical covers clinical negligence liabilities that have transferred to the Secretary of State for Health and Social Care following the abolition of any relevant health bodies [NHS Litigation Authority \(NHS LA\) Directions 2013 \(publishing.service.gov.uk\)](#) and [The National Health Service Litigation Authority \(amendment\) directions 2013 \(publishing.service.gov.uk\)](#).

The Ex-Regional Health Authority Scheme, which covers clinical negligence claims against former Regional Health Authorities abolished in 1996 (see attached document *NHSLA (Transfer of Liabilities) 1996 Order.pdf*).

You may also wish to contact NHSR, which may hold information relevant to your request, as it also has scheme rules for the main schemes (CNST and CNSGP). Information about contacting NHSR can be found here [Contact - NHS Resolution](#).

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be sent to freedomofinformation@dhsc.gov.uk or to the address at the top of this letter and be submitted within two months of the date of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a

decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

Guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us> and information about making a complaint can be found at <https://ico.org.uk/make-a-complaint>.

Yours sincerely,

Freedom of Information Team
freedomofinformation@dhsc.gov.uk

Annex

From: Anthony John <request-1042603-cf7fde33@whatdotheyknow.com>

Sent: 30 October 2023 19:27

To: FreedomofInformation <freedomofinformation@dhsc.gov.uk>

Subject: Freedom of Information request - Clinical negligence claims settlement policy

Dear Department of Health and Social Care,

Please could you provide any documents you hold providing guidance or instructions to NHS Trusts or DHSC (including NHS Resolutions) employees, civil servants and ministers on whether and how to settle clinical negligence claims made against NHS Trusts.

For example (and without prejudice to the generality of the above), any documents that you hold which guide or instruct NHS trusts, employees, civil servants or ministers to only accept or make offers to settle claims where the claim has a greater than 50% chance of success at trial on liability.

Yours faithfully,

Anthony John

Please use this email address for all replies to this request:
request-1042603-cf7fde33@whatdotheyknow.com

Annex B: Request for internal review

Dear Department of Health and Social Care,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Health and Social Care's handling of my FOI request 'Clinical negligence claims settlement policy'.

Thank you for taking the time to reply to my FOI. In your response you say:

"DHSC holds information relevant to your request.

However, as the some of the information held by DHSC is in the public domain we will, under section 21 of the FOIA (information accessible to the applicant by other means), refer you to the published source."

Your reply is ambiguous. You say that you hold information relevant to the request and that 'some' of this information is in the public domain. That 'some' of the information you hold is already in the public domain cannot justify withholding whatever portion of information is not in the public domain. Please could you therefore: a) state that all the information you hold within the scope of my request falls under the public domain exemption; or b) release any further information you hold that falls within the scope of my request; or c) advise which other grounds you rely on for withholding the information which falls within the scope of my request.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fclinical_negligence_claims_settl&data=05%7C01%7Cdhmail%40dhsc.gov.uk%7C985660c1b4c14eb7d84208dbef65c3b5%7C61278c3091a84c318c1fef4de8973a1c%7C1%7C0%7C638366992566965585%7CUnknown%7CTWFPbGZsb3d8eyJWljoimc4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=%2Fh2GYPNe%2BXd3wahfa%2FrlmxhbfhYq0UK1Ffq%2B9m77X24%3D&reserved=0

Kind regards,