

Date: 21 June 2021
Our reference: N/21/3300

Dear Requestor

RE: Freedom of Information Request

Within your request for information, you provided the below context alongside a number of questions (as outlined on page 2 of this response). We have provided a response, with explanatory narrative, for each of the questions asked.

This request concerns your shared care record, Connected Nottinghamshire, and specifically:

- *the disclosure of personal confidential information (clearly identifiable or pseudonymised) by contributing data controllers such as GP surgeries*
- *to a third party outside of the care team, i.e. a data processor (and so access to that information by the data processor)*
- *any onward disclosure to a sub-processor*
- *and its subsequent*
 - *linkage*
 - *deidentification (anonymisation/pseudonymisation)*
 - *analysis/monitoring/audit of direct care*
 - *onward disclosure to “data recipients” or via a “data mart” (in clearly identifiable/pseudonymised/anonymised formats)*

*by the data processor/sub-processor for secondary purposes - **that is, purposes beyond direct medical care, such as planning, commissioning and “population health management” (or “analytics”).***

The processing of such data derived from contributing data controllers - such as GP surgeries, hospital trusts, mental health providers, community providers, local authorities - for secondary purposes requires a legal basis to satisfy the common law of confidentiality (CLoC).

The absence of such a legal basis results in both a breach of confidentiality and a breach of Article 5(1)(a) of GDPR. Processing in the absence of a CLoC legal basis is therefore, manifestly unlawful.

NHSX have written to you (and other similar schemes) concerning the absence of any such legal basis for secondary uses processing within your project.

Secondary uses processing by your project is not exempt from complying with the common law of confidentiality.

That letter is attached, [is in the public domain here](#), and was prompted by concerns raised by the National Data Guardian (NDG) about your project.

The secondary uses processing within your project predates COVID-19, and (as is clearly evident by your DPIA), is neither in part nor whole solely for COVID-19 purposes.

As detailed [within your DPIA](#):

- *clearly identifiable, or pseudonymised, and so*
- *personal confidential information*
- *is disclosed from contributing data controllers*
- *to a data processor*

Disclosure of such information, for such purposes, from contributing data controllers, is:

- *neither a legal obligation, nor*
- *authorised under COPI 3(4), nor*
- *completely anonymised at source (prior to disclosure)*

Pseudonymisation, as you know, neither renders personal data as non-personal, nor confidential information as non-confidential. It is a security principle only.

Accordingly, I would be grateful if you would provide me with the following information under FOI:

- *Has Connected Nottinghamshire now stopped processing personal confidential information for secondary uses, subsequent to the letter from NHSX and the concerns raised by the NDG?*
 - Connected Nottinghamshire is neither a legal entity nor a product and does not process any data.
 - The Data Management Team (DMT) of NHS Nottingham and Nottinghamshire CCG is the Data Processor for Personal Confidential information (PCI) for primary care, secondary care, community trusts and councils. The PCI is processed within the General Practice Repository for Clinical Care (GPRCC) clinical portal, to which the rest of the CCG has no access.
 - DMT acts on the basis of instructions from each of the health and social care organisations, who remain the Data Controllers for their own data.
 - All data received by DMT for our health and social care providers is processed for the purpose of Direct Patient Care. No data flows from health and social care providers to DMT without it being useful for Direct Patient Care.
 - DMT has never processed Personal Confidential Information held in GPRCC for secondary uses.
 - DMT continues to process GPRCC data under instructions of the Data Controllers for Direct Patient Care.

If not, and disclosure and processing continue, what is the legal basis for the disclosure of, and subsequent access to, personal confidential information for secondary uses processing (such as population health management) by contributing data controllers such as GP surgeries, and its subsequent linkage, deidentification, and analysis?

- DMT has never processed Personal Confidential Information held in GPRCC for secondary uses.
 - Only the DMT, a ring fenced team in the CCG acting as Data Processors for all health and social care partners, has access to process this information within the GPRCC for Direct Patient Care purposes.
 - No other members of the CCG and providing health and social care partners other than those involved in Direct Patient Care have access to personal confidential information, whether as clear text or as pseudonymised strings.
 - CCG members and other partner organisations can see aggregated figures (e.g. counts) with small number suppression of the data prepared for clinical audit. They cannot drill down to underlying cases.
- *Is it the explicit permission of each individual obtained prior to disclosure?*
 - Each practice has individually signed a Data Processing Contract with the CCG. Data is processed for Direct Patient Care which includes clinical audit.
 - Explicit consent is not required for Direct Patient Care, and therefore not obtained from individual patients.
 - *Or has authority been specifically granted for all such processing under Regulation 5 of COPI 2002 (HRA/CAG approval)?*

If so, please could you provide:

- *The CAG approval reference*
- *Which classes of support has your project been granted*
(<https://www.legislation.gov.uk/ukxi/2002/1438/schedule/made>), given that access to, linkage, deidentification, analysis, and further disclosure of, such information occurs
- CAG approval relates to the processing of patient confidential information for secondary purposes. This has not been sought as the DMT does not process patient confidential data held within the GPRCC for secondary purposes.



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If you are unhappy with the way in which your request has been handled, NHS Nottingham and Nottinghamshire Clinical Commissioning Group have an internal review procedure through which you can raise any concerns you might have. Further details of this procedure can be obtained by contacting Lucy Branson, Associate Director of Governance via lucy.branson@nhs.net or by writing to NHS Nottingham and Nottinghamshire CCG, 1 Standard Court, Park Row, Nottingham, NG1 6GN.

If you remain dissatisfied with the outcome of the internal review, you can apply to the Information Commissioner's Office, who will consider whether the organisation has complied with its obligations under the Act, and can require the organisation to remedy any problems. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by NHS Nottingham and Nottinghamshire Clinical Commissioning Group. You can find out more about how to do this, and about the Act in general, on the Information Commissioner's Office website at: <https://ico.org.uk/for-the-public/>

Complaints to the Information Commissioner's Office should be sent to: FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Telephone 0303 123 1113 or report a concern: <https://ico.org.uk/concerns/>

Yours sincerely,

Freedom of Information Officer on behalf of *NHS Nottingham and Nottinghamshire Clinical Commissioning Group*.

notts.foi@nhs.net

All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the [Open Government Licence](#) (OGL) a request to re-use is not required, but the license conditions must be met. You must not re-use any previously unreleased information without having the consent of NHS Nottingham and Nottinghamshire Clinical Commissioning Group. Should you wish to re-use previously unreleased information then you must make your request in writing (email will suffice) to the FOI Lead via notts.foi@nhs.net. All requests for re-use will be responded to within 20 working days of receipt.



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