

Data sharing requirements in the current information governance landscape

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Matthew Wolton

Information Governance

“The activities and technologies that organisations employ to maximise the value of their information while minimising associated risks and costs”

“A set of structures, policies, procedures, processes and controls implemented to manage information, supporting an organisation's immediate and future regulatory, legal, risk, environmental and operational requirements”

Legal Background

- Data Protection Act 1998
 - intended to ensure information is kept safe and secure
- Freedom of Information Act 2000
 - intended to ensure information is disclosed
- The Human Rights Act 1998 (Article 8)
- Common law duty of confidentiality
- NHS Care Record Guarantee
- NHS Codes of Practice

Data Protection Act 1998

- Personal Data
- Sensitive Personal Data
- Data Controller / Data Processor
- Data Protection Principles

Personal Data

Data which relate to a living individual who can be identified:

- from those data; or
- from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller;

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

[NB “Anonymised Data” vs “Pseudonymised Data”]

Sensitive Personal Data

Personal data consisting of information as to:

- the racial or ethnic origin of the data subject;
- his political opinions;
- his religious beliefs or other beliefs of a similar nature;
- whether he is a member of a trade union;
- **his physical or mental health or condition;**
- his sexual life;
- the commission or alleged commission by him of any offence; or
- any proceedings in relation to any offence.

Data Controller / Data Processor

Data Controller

- a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed

Data Processor

- any person (other than an employee of the data controller) who processes the personal data on behalf of the data controller

Data Protection Principles

- A series of eight principles by which personal data must be processed, maintained and transferred if the use of such data is to be considered fair, lawful and proportionate
- Purpose – “to facilitate data flows while also protecting individual privacy”

Data Protection Principles (cont.)

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:
 - at least one of the conditions in Schedule 2 is met, and
 - in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Data Protection Principles (cont.)

Schedule 2 conditions (examples):

- consent has been obtained from the data subject
- processing is in the vital interests of the data subject
- processing is “necessary for the exercise of functions of a public nature exercised in the public interest by any person”
- processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data is disclosed

Data Protection Principles (cont.)

Schedule 3 conditions (examples):

- explicit consent has been obtained from the data subject
- processing is necessary for protecting the vital interests of the data subject or another person *and* it is either impossible or unreasonable for explicit consent to be obtained
- processing is necessary for medical purposes and is undertaken by a medical professional, or equivalent other professional, who owes a duty of confidentiality with regard to patient information

Data Protection Principles (cont.)

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

Data Protection Principles (cont.)

4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

Data Protection Principles (cont.)

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

HQIP documentation

- As a data controller, HQIP is responsible for compliance with legislation
- Data Sharing Agreement, Deed of Appointment etc designed to ensure that:
 - HQIP is not in breach of its own obligations;
 - other parties comply with their relevant obligations

Any Questions



Contact Details

Matthew Wolton
Clark Holt
Hardwick House
Prospect Place
Swindon
SN1 3LJ

t: 01793 492264
e: mattheww@clarkholt.com