



28<sup>th</sup> June 2021

Dear Requester

**RE: Request for information under the Freedom of Information Act 2000**  
**Reference Number: FOI 6055**

Thank you for your correspondence dated 24<sup>th</sup> May 2021 making a request under the Freedom of Information Act 2000 for information which may be held by the Countess of Chester Hospital NHS Foundation Trust.

**You requested the following information and our response is detailed below:**

I would like to make another request under the FOI Act.

For the purposes of the Act, please take the date of your receipt of this request as 24<sup>th</sup> May 2021.

This request concerns your shared care record, *the Cheshire Care Record*, 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
  - o linkage
  - o deidentification (anonymisation/pseudonymisation)
  - o analysis/monitoring/audit of direct care



- o 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 *Cheshire Care Record* now stopped processing personal confidential information for secondary uses, subsequent to the letter from NHSX and the concerns raised by the NDG? - **The Cheshire Care Record's sole purpose is to aid the delivery of direct care services to the people of Cheshire and some surrounding areas. There never has, nor will there be any secondary uses of data. With this in mind, there is no requirement to answer the following queries as these do not apply.**

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?

- Is it the explicit permission of each individual obtained prior to disclosure?
- 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

### Right of appeal:

Should you require any further information or clarification regarding this response, or do not feel that your request has been answered as you would expect, please contact the FOI team to discuss. However, if you remain dissatisfied with the service you have received in relation to your request and wish to request a review of our decision, this can be formally requested in writing initially to the freedom of information officer by email or post to Countess of Chester Hospital Health Park, Liverpool Road, Chester, CH2 1UL. The freedom of information team will review your request and provide a response within 20 working days.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioners Office (ICO) for a decision. The ICO can be contacted at:  
Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF  
[www.ico.gov.uk](http://www.ico.gov.uk)

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<https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>



Yours Sincerely,

Freedom of Information Officer  
Countess of Chester Hospital NHS Foundation Trust