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London,  
SE1 7NT

Email: [NELCSU.foi@nhs.net](mailto:NELCSU.foi@nhs.net)

Dear Dr Bhatia

Reference: FOI.21.SHS081

1 September 2021

**Re: Freedom of Information request**

Thank you for your request under the *Freedom of Information Act 2000* (the Act). This response is provided on behalf of NHS Surrey Heartlands Clinical Commissioning Group (CCG). Your request along with the CCG's response is detailed below.

**Context**

This request concerns your shared care record/PHM scheme, The Surrey Care Record, and specifically the secondary uses of personal, confidential and private medical information ostensibly extracted and uploaded to a data processor for direct care purposes. Your website details some of these “secondary uses”:

**Population Health Management**

Population Health Management improves population health by data-driven planning and delivery of care to achieve maximum impact. It includes data analysis to identify patterns of health needs and risks for individuals and groups, and in turn designing and targeting interventions to prevent ill-health and to improve care. This approach provides more proactive support for people with ongoing health conditions and reduces unwarranted variations in outcomes for patients.

**Ensuring Effective Design and Operation of Health Services**

This includes the planning, commissioning, and monitoring of integrated Health & Social Care services provided by the Surrey Heartlands Integrated Care System (ICS Partnership), Integrated Care Partnerships / Provider Led Partnerships, and Primary Care Networks.

## Research

Including that relating to COVID-19, cancer, and other illnesses.

I am interested in the governance around:

- the disclosure of personal confidential, private, information (clearly identifiable) by contributing data controllers such as GP surgeries.
- to a third party outside of the care team ("outside the data controller's own boundaries", to quote the ICO), i.e., a data processor.
- any onward disclosure to a sub-processor, such as Microsoft UK (if responsible for secondary uses processing).
- and the subsequent access to the information, linkage, deidentification (anonymisation /pseudonymisation), analysis/monitoring/audit of direct care, use of geographical location (research), processing information to identify and contact patients for the purpose of obtaining consent (research), onward disclosure to "data recipients" (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, "population health management" (or "analytics"), and research.

The disclosure, and 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 avenue to satisfy the common law of confidentiality (CLoC), unless the information is completely anonymised at source (e.g., by the surgery, "at the surgery"). The absence of such a legal avenue results in a breach of confidentiality, a breach of privacy, and a breach of Article 5(1)(a) of GDPR. Processing in the absence of a CLoC legal avenue is therefore, manifestly unlawful. Disclosure of such information, for such purposes, from contributing data controllers, is, as far as I can see neither a legal obligation, nor authorised under COPI 3(4), nor authorised under Regulation 2 or 5 of COPI 2002, nor completely anonymised at source, by the data controllers (prior to disclosure).

Please note that I am not interested in the GDPR "legal bases", as required for Articles 6 and 9. (As regards "risk stratification for case finding", I would point out the following to the Surrey Shared Record: CAG 7-04 (a)/2013 does *not* authorise disclosure and processing of information for risk stratification within a ShCR/ICR/LHCR. It only authorises disclosure of a defined dataset (data minimisation) to an "approved organisation". CAG have made clear that CAG 7-04 (a)/2013 approval

under Regulation 5 was limited to risk stratification for case finding only, and specifically excluded population health analytics )

Accordingly, I would be grateful for the following information:

- 1) Could you kindly provide me with the latest DPIA produced for, or which covers, such secondary uses processing?

Please find attached the DPIA which was reviewed by the Surrey Heartlands Data Governance Group on the 16 April 2021. Please note that we have redacted personal data from the copy being disclosed to you as this is exempt from disclosure under Section 40, Personal information. Please also see the approved Data Sharing Schedules for PHM via Surrey Care Record which are available at link: <https://www.surreyheartlands.uk/about/information-sharing-agreement/>

GP Practice PHM Schedule: Attached and available at link: [TSU001\\_SyCR\\_TV\\_S\\_Secondary\\_Uses.pdf \(surreyheartlands.uk\)](#)

- 2) What is the legal avenue under the common law of confidentiality for the disclosure of, and subsequent access to, linkage, de-identification, data analysis, and onward disclosure of information for secondary uses processing by contributing data controllers such as GP surgeries?

The common law duty of confidentiality for processing of personal data for these activities is met via implied consent. The Surrey Care Record Privacy Notice (see link below) is used to ensure that individuals are fully informed that their personal data will be processed for these activities. The Privacy Notice also explains what individuals (including GP Practice patients) should do if they wish to object or opt-out of having their data processed in this way.

<https://www.surreyheartlands.uk/surrey-care-record-privacy-notice/>

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

No.

- 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>

Not applicable.



### Copyright and Re-Use of Public Sector Information

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- Make a request in writing to the address below,
- State the name of the applicant and an address for correspondence,
- Specify the document to be re-used,
- State the purpose for which the document is to be re-used

#### Email

[NELCSU.foi@nhs.net](mailto:NELCSU.foi@nhs.net)

#### Postal address

NEL,  
1 Lower Marsh,  
London,  
SE1 7NT

#### Website address

[www.nelcsu.nhs.uk](http://www.nelcsu.nhs.uk)

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<http://nationalarchives.gov.uk/documents/information-management/ogl-user-guidance.pdf>

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### Privacy Notice (formerly known as Fair Processing Notice)

We will record your contact and request details in order to monitor and improve the service we provide and in order to discharge our statutory obligations under the Act. This information will be handled in accordance with the NHS Confidentiality Code of Practice and the *Data Protection Act 2018*.

### Using personal data we provide

You are required not to use personal data which is provided to you for electronic marketing (telesales, fax, e-mail) to our staff and comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003. Provision of such personal data in response to a Freedom of Information or Environmental Information request does not constitute consent from the individual concerned.

The *Data Protection Act* gives individuals rights to prevent processing likely to cause substantial unwarranted damage or unwarranted distress (section 10) and to prevent processing for the purposes of direct marketing (section 11). You should be aware that selling, giving or sharing of personal data could breach the *Data Protection Act*. NEL advises staff of their rights on behalf of Clinical Commissioning Groups.

### Review procedure

If you feel that we have not met the requirements of the Freedom of Information Act 2000, you should contact the FOI Team at: [NELCSU.foi@nhs.net](mailto:NELCSU.foi@nhs.net)

If you remain dissatisfied, you can ask us to review our decision by making a written request for an internal review. In order to assist with the review, you should include your address, a description of the original request and the reasons why you are dissatisfied. Please send this to:

#### Email

[NELCSU.foi@nhs.net](mailto:NELCSU.foi@nhs.net)

#### Postal address

NEL CSU,  
1 Lower Marsh,  
London,  
SE1 7NT

#### Website address

[www.nelcsu.nhs.uk](http://www.nelcsu.nhs.uk)

The review will be handled by more senior staff who were not involved in the original decision. Although this will not apply to Section 36 claimed exemptions in accordance with Department of Health Directive,



your request will still be reviewed. We aim to complete all internal reviews within 20 working days. If you then wish to appeal you should contact the Information Commissioner for an independent review at the following address:

**Telephone**

0303 123 1113

**Postal address**

The Information Commissioner,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire, SK9 5AF

**Website address**

[www.ico.org.uk](http://www.ico.org.uk)

**Feedback**

Your feedback is welcome to help us improve the service we provide. Please send comments or suggestions to our address.

Yours sincerely,

**Freedom of Information Team**

NEL