

To: Data Protection Officers

29 September 2021

Dear Colleagues,

## **RECORD SHARING PROGRAMMES AND INFORMATION GOVERNANCE**

I am pleased to confirm that last week NHSX published the Information Governance Framework for Integrated Health and Care on the [NHSX IG Portal](#). Thank you to those who have contributed to the development, drafting and refinement of the framework over the last year or so. Your help has been invaluable.

The IG Framework aims to assist local health and care systems to deliver routine and reliable data sharing to support direct health and care purposes whilst remaining compliant with their legal obligations. In order to meet these requirements you must establish a continuing programme to inform your patients and service users about the establishment of the record sharing programmes within your locality. You should adopt a range of approaches including consultation events; distribution of information materials; newsletters; web content; and updates to your privacy notices.

As you will be aware, sharing for purposes other than direct care requires careful consideration as people may not have an expectation that their information will be shared for such purposes. It is a responsibility of the joint data controllers within your Integrated Care System or partnership to ensure that there is a robust legal justification for processing data for secondary health and care purposes.

It is hoped that the Framework will be expanded to cover the use of information for other purposes. This is not in scope of this first version because it is important that we produce guidance that complies with legal and ethical requirements, is clear and workable, and aligns with the Information Commissioner's advice on anonymisation which is currently the subject of consultation<sup>1</sup>. Any such guidance will also need to take into account changes to the legal framework that may take place as a consequence of the Data Strategy for Health and Care, to support the delivery of patient centred care<sup>2</sup>.

In the meantime, I thought it may be helpful to remind you that if you are sharing information from your local record sharing system for purposes other than direct care then you are required to consider how you will satisfy or set aside the common law duty of confidentiality as implied

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<https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/ico-call-for-views-anonymisation-pseudonymisation-and-privacy-enhancing-technologies-guidance/>

<sup>2</sup> <https://www.gov.uk/government/news/data-strategy-to-support-delivery-of-patient-centred-care>

consent will not be appropriate. You will be aware that you will need to meet one of the following conditions:

- You use anonymised information where the anonymisation process has been carried out by person(s) who already process the information for direct care purposes; or
- You have obtained explicit patient consent; or
- There is a legal requirement (e.g. a court order); or
- You have established there is approval under S251 of the NHS Act 2006; or
- Where there the public interest served by disclosure outweighs the public interest served by protecting confidentiality; or
- The purpose(s) are covered by the COPI Notice (i.e. supporting the response to the coronavirus pandemic (temporary)).

Wherever practicable you should use anonymised data from your shared record system for secondary health and care purposes to support the effective functioning of the local health and care system. While it is possible for local record sharing programme partners to undertake anonymisation themselves within the existing legal framework, it is important for organisations to act cautiously at this time - bearing in mind that both staff and patients are still getting used to the new arrangements in relation to shared health and care records for direct care and the ongoing ICO review of anonymisation guidance. You should therefore consider whether you need to apply for approval under s251 of the NHS Act 2006 if there is an uncertainty about the processes you are using locally to anonymise or otherwise process personal data for secondary health and care purposes.

In all cases you must be able to demonstrate which legal gateway you are relying on. It is advisable to document both which gateway you are using and also your rationale for doing so. You must also be transparent about the fact that you process information in order that it can be anonymised and used for secondary health and care purposes. You should therefore ensure that your patient and service user information materials, including your privacy notice, are updated to include these activities.

We will be organising a dedicated DPO webinar to discuss record sharing in more detail and to address any questions you may have - if you have not already done so please subscribe to the NHSX Information Governance newsletter to receive further details (email: [datapolicyhub@nhsx.nhs.uk](mailto:datapolicyhub@nhsx.nhs.uk) to sign-up).

Further advice can be obtained by contacting the NHSX Information Governance Policy Team at: [datapolicyhub@nhsx.nhs.uk](mailto:datapolicyhub@nhsx.nhs.uk)

Yours faithfully,



**Simon Madden**  
**Director of Data Policy**