



Our ref: **NIC-268320-W3J7Z**

3rd June 2014

Dear Mr Wheeler,

Re: Information Request – Freedom of Information Act (FOIA) 2000

I can confirm that the Health and Social Care Information Centre (HSCIC) has considered your query dated the 2nd May 2014 and your clarification email of the 23rd May 2014.

"I would like to know why you need to retain the proof of identity documents for the time period stated. That is, once you have accepted the documents as satisfying your purpose of proof of identity to initiate the anonymisation process for SUS/HES, why do you need to retain these proof of identity documents and specifically what is the lawful basis for this since your 3 year period appears inconsistent with the Data Protection Act principle 5.

"Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes."

Could you also please clarify for me the anonymisation of SUS / HES records held by HSCIC.

a) Once you agree to anonymise a individual personal record held under SUS/HES any information held on an individual that is received by HSCIC after the anonymisation event will be anonymised but that information already held by HSCIC will not be anonymised. (I.e. an individual might have a partially anonymised record)

Or

b) That all information held by HSCIC on an individual will be anonymised from the anonymisation event, but any individual information already provided to an HSCIC customer will not be retrospectively anonymised (i.e. recalled)

(Incidentally, I note that you refer to this as withdrawal of consent. I did not know I had consented in the first place. I thought that HSCIC or predecessor had just appropriated my personal confidential information)."

Thank you for your enquiry. The HSCIC's minimum retention periods are determined according to the Records Management: NHS Code of Practice, a document produced by the Department of Health for NHS and partnership organisations as a guide to the required standards of records management practice. The content was determined by legal requirements, including the Data Protection Act 1998 principles, and professional best practice.

All documentation relating to a request made under the Data Protection Act (originating request, internal correspondence, released or withheld content, full and redacted details and final response) is retained as a complete record of findings and subsequent proceedings and held securely for a period of 3 years after the request. Proof of identity is key to substantiating requester identity, ensuring that the right data for the right person is supplied/acted upon in accordance with the individual's wishes. If the organisation was alleged to have incorrectly released/actioned personal information, there is a need to produce this supporting documentation as evidence that the correct process defined by the Information Commissioner's Office has been adhered to. This supporting evidence is an essential piece of verifying data underpinning the integrity of the information supplied. If the organisation was

to destroy prior to this deadline and ahead of the rest of the documentation, there would no longer be appropriate evidence to support the response.

The retention life of subject access request records is 3 years and proof of identification is underpinning documentation and therefore should be retained to offer a complete record of proceedings. The information is obtained for a specified and lawful process and not further processed in any manner incompatible with that purpose, in line with principle 2 of the Data Protection Act.

In response to your request for clarification in relation to the anonymisation of SUS/HES records held by the HSCIC we can confirm that both of the statements that you have provided are correct.

Your first statement (a) is correct in that upon withdrawal of consent by an individual any new records received by the Secondary Uses Services (SUS) for the individual will be anonymised upon receipt. The same process applies to new records received within Hospital Episode Statistics (HES).

Records are not currently anonymised retrospectively within SUS or HES. This is because the information is required to ensure the appropriate management of NHS systems, such as supporting patient choice, improving patient care, recording internal payments and monitoring the provision of NHS Services.

Your second statement (b) is correct in that the HSCIC does not currently retrospectively anonymise personal data relating to individuals that has already been released to customers following the withdrawal of consent by an individual.

The HSCIC may only process personal data where there is a legal basis to do so. Likewise personal information will only be made available to customers where there is a legal basis to do so and where they have signed a data sharing agreement or data reuse agreement which sets out the purpose and restrictions on the use of the data including arrangements for destroying the data after the agreement end date. The HSCIC does not retain an exact copy of the data supplied to customers in line with data retention best practice.

We would also like to point out that the majority of information released to customers is de-identified for limited disclosure i.e. anonymised or pseudonymised. In these instances the data does not identify an individual and subsequently the customer would be unable to identify and remove records for an individual that had withdrawn their consent.

With regards to your reference about referring to your request as a withdrawal of consent request. There are no national mechanisms at present to obtain consent of patients individually for data collected for secondary uses purposes from the use of data in other systems, such as the Summary Care Record.

Section 60 of the Health and Social Care Act 2001 as re-enacted by Section 251 of the NHS Act 2006 allows the Secretary of State for Health to make regulations to set aside the common law duty of confidentiality for defined medical purposes. The Regulations that enable this power are called the Health Service (Control of Patient Information) Regulations 2002. As such when an individual objects to the processing of data in this way the HSCIC refer to this as a Withdrawal of Consent enquiry.

In line with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the HSCIC website.

I trust you are satisfied with our response to your request for information. However, if you are not satisfied, you may request a review from a suitably qualified member of staff not involved in the initial query, via the enquiries@hscic.gov.uk e mail address or by post at the above postal address.

I will assume that your request to the organisation is now closed.

Yours sincerely,

Julie Shippen
Higher Information Governance Officer

Further information about your right to complain under the Freedom of Information Act is available from the Information Commissioner's Office, Wilmslow, Cheshire, and on The Information Commissioner's website www.ico.gov.uk.

The Health and Social Care Information Centre values customer feedback and would appreciate a moment of your time to respond to our Freedom of Information (FOI) Survey to let us know about your experience. Please access the survey through this link

https://www.surveymonkey.com/s/HSCIC_FOI_Feedback