



Department of Health

23/06/2015

DE00000936918

Dear Mr McMorrow,

Thank you for your request of 26th May 2015 under the Freedom of Information Act (2000). Your exact request was:

“Under Freedom of Information I would like to ask...

When contracting out NHS services to third parties / independent providers

- A. What laws & regulations are imposed on the provider I'm particularly interested in Data Protection and use of patients data including views of a Doctor ?*
- B. Who regulates this agreements ?*
- C. What are the consequences of breaking the contract/agreement ?*
- D. How many contracts have been broken in the last year ?*
- E. What are the requirements for a provider to apply for a tender ?*
- E.1. If a contract/agreement is broken is the provider blocked from further tenders ?*
- E.2. How long is a tender ?*
- E.3. What information about a provider is explored ?*
- F. Dose http://www.mage-net.net/wp-content/2014/02/dh_4069254.pdf Apply to third parties or independent providers ?*
- G. What are the consequences of a Dr (Or other medical professional) breaking a patients confidentiality and disclosing information about their care and/or prognosis ?*

To be clear I'm not after financial information or contractual payments. Just what laws & regulations are imposed.”

I can confirm that the Department holds the information relevant to your request.

In response to questions A, B, C and G, a health record (sometimes referred to as a medical record) should contain all the clinical information about the care you received. This is important so every health professional involved at different stages of a patient's care has access to their medical history such as allergies, operations or tests. Based on this information, the health professional can make judgments about that patient's care.

Health and social care records can be used to improve social care, public health and the services provided by the NHS. Patients' health records can also be used:

- to determine how well a particular hospital or specialist unit is performing
- to track the spread of, or risk factors for, a particular disease (epidemiology)
- in clinical research, to determine whether certain treatments are more effective than others

When health records are used in this way, patient's personal details are not given to the people who are carrying out the research. Only the relevant clinical data is given, for example the number of people who were admitted to hospital every year due to a heart attack.

There are strict laws and regulations to ensure health records are kept confidential and can only be accessed by health professionals directly involved in the patient's care. There are a number of different laws that relate to health records. The two most important laws are:

- Data Protection Act (1998)
- Human Rights Act (1998)

Under the terms of the Data Protection Act (1998), organisations such as the NHS must ensure that any personal information it gathers in the course of its work is:

- only used for the stated purpose of gathering the information (which in this case would be to ensure that you receive a good standard of healthcare)
- kept secure

It is a criminal offence to breach the Data Protection Act (1998) and doing so can result in imprisonment. The Human Rights Act (1998) also states that everyone has the right to have their private life respected. This includes the right to keep your health records confidential. If clinicians breach either the Data Protection Act (1998) or the Human Rights Act (1998), then it could potentially lead to a review of their fitness to practice.

The Information Commissioners Office (ICO), informs clinicians that if they handle and store information about identifiable, living people – for example, about patients – they are legally obliged to protect that information.

Under the Data Protection Act, they must:

- only collect information that they need for a specific purpose;
- keep it secure;
- ensure it is relevant and up to date;
- only hold as much as they need, and only for as long as they need it; and

- allow the subject of the information to see it on request.

In response to Question D, the Department does not hold that information, however the Information Commissioners Office should have record of any cases of data breaching that they have investigated.

In response to questions, E, E1, E2, E3 and F. Firstly, yes the attached Confidentiality Code of Practice does apply to all providers of NHS care, whether they are NHS or non-NHS providers. Competition between providers of NHS services has been pursued on the basis of competition for quality through a system of fixed national tariffs. Our position on who should provide services is taken to ensure patients receive the best possible services and outcomes. However, the awarding of contracts to provide NHS clinical services is carried out by clinically-led Clinical Commissioning Groups who are best placed to shape their services and award contracts to whichever provider they deem to be the best option for patients.

As a consequence, most of the information that you have requested, is not held centrally by the Department of Health, as the contracting process is under the control of each individual Clinical Commissioning Group. This means that details such as bidding criteria, contract length and service type are all determined by individual CCGs, at the time of launching the process to tender. However, contracts awarded to all providers of NHS clinical services, whether they be NHS or non-NHS providers, are subject to conditions set out in the NHS Standard Contract¹. This ensures that NHS patients should expect to receive the same safe, high quality standards of care, wherever they are treated.

When things go wrong, the NHS Standard Contract also allows commissioners to hold private providers to account. This involves a range of sanctions including potentially the termination of contracts where service improvements are not made. The NHS Standard Contract already places a duty of candour on providers of NHS services, including private providers. And from next year, we will implement a legal duty of candour through regulations that will mean private hospitals are legally required to report and apologise for mistakes, increasing transparency for patients and families.

Ultimately, the terms of each tendering process are decided by each Clinical Commissioning Group individually. It is they who will determine, for example, the length of the contract and it is they who will design the service that they require. Which bids are shortlisted for and which is eventually awarded the contract is also their decision. While the NHS Standard Contract affords to commissioners, the power to decide whether or not to publish documents relating to the contracting of NHS services for both NHS and non-NHS providers of health services, they are under no obligation to do so, though they are able to take the executive decision to publish any or all documents relating to the contracting of NHS services.

¹ <http://www.england.nhs.uk/nhs-standard-contract/>

You may wish to contact any relevant NHS authority directly.

Contact details for Clinical Commissioning Groups (CCGs) can be found on the following website:

<http://www.england.nhs.uk/ccg-details/>

Contact details for all other NHS authorities can be found on the NHS Choices website:

<http://www.nhs.uk/nhsengland/thenhs/about/pages/authoritiesandtrusts.aspx>

If you have any queries about this email, please contact me. Please remember to quote the reference number above in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Head of the Freedom of Information Team
Department of Health
Room 520
Richmond House
79 Whitehall
London
SW1A 2NS

Email: freedomofinformation@dh.gsi.gov.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely,

Anna Coundley

Freedom of Information Officer
Department of Health

freedomofinformation@dh.gsi.gov.uk