

John Slater

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Our ref: 6765/6684

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Date : 12 April 2017

Dear John Salter,

Internal review request

I have now completed your request for an internal review of the way in which your request for information was handled by Chris Dunn of our Information Governance Team.

Your request was as follows:

"When applying for a EHIC online the applicant is required to agree to the EHIC Declaration included on the form. If they do not agree to the terms they cannot apply for a EHIC. The Data Protection Act 1998 requires consent for any data processing to be freely given (i.e. no coercion) unless the organisation can rely on statutory powers for said processing. Given that the applicant cannot amend the declaration I assume that this must be the case for the processing of the information on the EHIC application form. One part of the EHIC Declaration has been reproduced below: "I agree to the disclosure of information on this form for the purposes of verification and, in compliance with the Data Protection Act, to and from other organisations including - Local Authorities to which Council Tax is paid in respect of my dwelling throughout the United Kingdom - Organisations from which I am receiving benefits and/or support - The Department for Work and Pensions - HM Revenue and Customs - Credit reference agencies"

RFI1: Please disclose what information from the EHIC application form is shared with these organisations.

Answer (taken from data sharing/service level agreement)

Personal information provided by the applicant to NHSBSA when applying for/requesting an EHIC card.

RFI2: Please direct me to the relevant primary and/or secondary legislation (including the relevant sections or regulations) that allows the NHS to disclose information on the EHIC application from with the organisations listed. Yours faithfully, John Slater"

In your request for an internal review you stated:

"The answer provided by the NHBSA does not satisfy part 2 of my request for information. Therefore:

"Please direct me to the relevant primary and/or secondary legislation (including the relevant sections or regulations) that allows the NHS to disclose information on the EHIC application from with the organisations listed."

Based on the current declaration on the EHIC application form the NHBSA needs to direct me to legislation that allows it to gather the personal information of the applicant and share it for the purposes of entitlement of an EHIC (i.e. residency). Given that the current declaration makes no reference to other uses being made of the personal data I fail to see how the NHBSA can lawfully use it for anything else."

I have carefully and objectively reviewed the steps that Chris Dunn followed in processing your request for information and I have concluded that these did not meet the steps required by the NHS Business Services Authority's procedures at the time of your request.

It should have been pointed out to you that the EHIC declaration referred to in your request is not the NHSBSA declaration available at <https://www.ehic.org.uk/Internet/dataProtection.do> .

This states the following:

"The NHS Business Services Authority and Department of Health acting as joint Data Controllers, will only use the information provided on this form for processing and verifying your application for the European Health Insurance Card (EHIC). Your details, in relation to this application, will be removed from our files no later than 24 months after the expiry of your EHIC. We will not transfer your Personal Data outside of the European Economic Area. Your information may be disclosed to: The Department for Work and Pensions and HM Revenue and Customs for the purpose of validating EHIC applications and claims, and NHS Protect and Department of Health - International Division and local authorities in order to prevent, detect and investigate fraud and errors. We may contact you to discuss your application by any of the methods you have provided on the application. Further details are available at www.nhsbsa.nhs.uk/DataProtection.aspx."

The NHSBSA declaration does not mention:

*"-Organisations from which I am receiving benefits and/or support" or
"-Credit reference agencies"*

Therefore we should have stated the following in our response to you:

I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested on data sharing with Credit Reference Agencies and organisations from which you receive benefits and/or support (other than HM Revenue and Customs or the Department for Work and Pensions) is not held by the NHS Business Services Authority.

You will need to contact the organisation that provided you with details of that data sharing to confirm what the legal basis is.

The original response you received is correct regarding the link to the primary legislation providing a legal basis for the Data Sharing that may occur with the organisations listed in the NHSBSA statement. Please refer to Schedule 2 paragraph 5 c) and 5 d).

The Secretary of State for Health has directed the NHSBSA to administer the EHIC scheme. This is detailed on page four of the NHSBSA directions published at:

http://www.nhsbsa.nhs.uk/Documents/NHSBSA_publication_centre/Section_2_-_B1_NHSBSA_Directions_2016.pdf

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision.

The Information Commissioner can be contacted at:

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

If you have any queries about this letter, please contact me on the above number.

Please quote the reference number above in any future communications.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Gooday', is centered within a light blue rectangular box.

Chris Gooday
Information Governance Manager

cc Mark Dibble, Corporate Secretary
Gordon Wanless, Head of Internal Governance