

11 June 2021

Our ref: NIC-458613-J1B0K

(Sent via email)

Dear Sir / Madam

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

Thank you for your 2 emails dated 13 May 2021 and 18 May 2021 requesting information from NHS Digital. This response covers questions raised under references NIC-458613-J1B0K and NIC-460525-H9N9J.

We have considered your requests and in accordance with S.1 (1) of the Freedom of Information Act 2000 (FOIA) Please see below responses to your individual requests, which we have aggregated.

Request 1 NIC-458613-J1B0K

I am interested in NHS Digital's newly announced "care.data2" scheme - the General Practice Data for Planning and Research extraction.

<https://digital.nhs.uk/data-and-information/data-collections-and-data-sets/data-collections/general-practice-data-for-planning-and-research>

I would like the following information please:

- *The latest version of the Data Protection Impact Assessment (DPIA) for this project*

I can confirm that we do hold the information that you have requested, however we consider that an exemption applies to this, as we plan to publish the DPIA in the very near future. We consider that the exemption in section 22 of the FOIA is engaged in this instance.

Section 22 provides for an exemption for information that is intended for future publication where:

- It is reasonable in all the circumstances that the information should be withheld from disclosure until the future date of publication, and
- The public interest in maintaining the exemption outweighs the public interest in disclosure.

The DPIA is not a document which is required by law to be published and it is a living document which is constantly being reviewed and updated, particularly for a Programme of this nature. It was however our clear and settled intention at the time of your request to publish the DPIA for the Programme once it had been baselined and had gone through its final assurance processes and stakeholder review for publication, including legal review and incorporating feedback from that final assurance process.

We expect the DPIA to be shortly, and you will be aware that the commencement of the data collection under the Programme has now been postponed to 1st September. We consider it reasonable in the circumstances to withhold the DPIA given it will be published shortly.

In relation to the public interest in disclosing the DPIA, we have considered the arguments both in favour of disclosure and withholding the information, and have concluded the following outcome:

- We fully understand that releasing the DPIA would increase transparency in relation to the data protection aspects of the Programme and that it would increase trust and confidence in NHS Digital and the Programme for this to be made available. This is why we fully intend to publish the DPIA, which is a comprehensive document.

However, it is not appropriate to publish a document which has not been fully assured for publication, which does not fully reflect the detailed privacy impact assessment which has been carried out on the Programme and which is not the most up to date document.

We therefore need a short period of time to ensure the document has been fully assured and baselined appropriately for publication and fully reflects the most up to date position, particularly as GP Practices will also wish to refer to it to support their own obligations under UK GDPR.

- We will alongside the Programme DPIA also be publishing a shorter DPIA for GP Practices to use as a template. This will more easily assist GP Practices with their own obligations under UK GDPR and will reduce burden on them. It is important the two documents align and we still need a short period of time to complete assurance on their alignment. It would not be in the public interest to publish an unassured version of the Programme DPIA which could be used by GP Practices when an assured and more up to date version will be published shortly, together with a template they can also use.
- It would not be in the public interest to share the DPIA in a form which did not fully reflect the full impact assessment carried out, and which had not been fully assured and which has since been updated, given the nature of this Programme. It could also be misleading in a way that could not be fully explained without providing the final assured and most up to date version of the DPIA. Disclosure of a now out of date and unassured document would result in reduced public confidence in relation to NHS Digital and the Programme and undermine the Programme and the purposes for the data collection.
- The public interest in permitting public authorities to publish information in a manner and form and at a time of their own choosing is important. It is part of the effective conduct of public affairs that the general publication of information is an appropriately planned and managed activity within the reasonable control of public authorities. Where they have taken the decision in principle to publish, public authorities do have a reasonable entitlement to make their own arrangements to do so.
- It is in the public interest that the assurance process on the DPIA is able to conclude and that when published the DPIA also reflects the most up to date position, which includes in this case a recent change to the commencement date of the collection, which is now 1st September 2021, before making information available to the public to ensure confidence and accuracy in the information disclosed.

On balance, we consider that the public interest in favour of maintaining the exemption and publishing the fully assured up to date DPIA shortly, outweighs the public interest in disclosure.

*Whilst I understand NHS Digital's assertion that a Type 1 opt-out recorded in a patient's GP record *after* 1st July will not *automatically* delete their personal confidential information, as had been extracted and uploaded to NHS Digital, it is clear that NHS Digital can - and, in some cases, will - re-identify individuals and, therefore, their personal information dataset.*

Accordingly, please could you tell me the process by which patients can apply (on an individual basis) to NHS Digital to ensure permanent erasure of all such information about them, as extracted and uploaded under GDPR.

Such patients would have (by now) already expressed a Type 1 opt-out to their GP surgery.

- *To whom do they apply (name/role/address/email etc)?*
- *Is there a specific form that they must use to request deletion? Please provide this, or a link to it*
- *If not already detailed in the form, how are patients expected to verify their identity?*
- *How long will NHS Digital take to delete the information?*
- *Is there a cost to an individual in requesting deletion of their "GDPR" data?*

This information is not held as patients do not have a right under the UK GDPR to request deletion of their data collected by NHS Digital as part of this data collection. This is because the legal basis under the UK GDPR for the data to be collected is Article 6(1)(c), legal obligation and the right to be forgotten under Article 17 does not apply in these circumstances.

Finally, please could you describe the process by which an individual can exert their data subject right of access, in order to obtain a copy (DSAR) of their "GDPR" data as held by NHS Digital.

- *Again, to whom do they apply, is there a form, how is identity verified?*

Individuals can make a subject access request to NHS Digital. Information about how to make a subject access request, who to send it to and how identity is verified is all explained on NHS Digital's website here:

[How to make a subject access request - NHS Digital](#)

Under section 21 of FOIA, we are not required to provide the information in response to a request if it is already reasonably accessible via other means, which in this case is the information on our website.

Request 2 (NIC-460525-H9N9J)

This request is a further one relating to the GPDfPR extraction, due to go live on 1st July.

- *Please could you provide me with any information/documents that NHS Digital holds assessing how GPDfPR differs (or is the same as) "care.data", the similar 2013-2015 programme for which this is the successor.*

If no such formal assessment exists, then please say so without delay.

We have provided an explanation of why the GPDfPR Programme is not the same as care.data on NHS Digital's website here, under the heading "This is not care.data":

[Collecting GP data - advice for the public - NHS Digital](#)

Under section 21 of FOIA, we are not required to provide the information in response to a request if it is already reasonably accessible via other means, which in this case is the information on our website.

In line with the Information Commissioner's guidance 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 NHS Digital 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@nhsdigital.nhs.uk email address or by post at the above postal address.

If following an internal review, you remain unsatisfied with the way in which we have handled your request you are entitled to ask the Information Commissioner to assess whether we have complied with our obligations under FOIA by writing to them at the following address:

Information Commissioner's Office
Wycliffe House Water Lane
Wilmslow
Cheshire SK9 5AF
Email: casework@ico.org.uk

NHS Digital 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 [here](#)

Yours faithfully,

Information Governance Advisor