

20 October 2017

Our ref: NIC-136626-R7V9M Full Response

Dear Lara Ten Caten,

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

Following on from our supplementary response to you dated 27 September 2017, I can now confirm that NHS Digital has concluded our investigation, and we can now provide you with the following consolidated full response to your enquiry.

"I refer to the memorandum of understanding between NHS Digital, the Department for Health and the Home Office (the MOU), effective from 1 January 2017 and published here (<https://www.gov.uk/government/publications/information-requests-from-the-home-office-to-nhs-digital>).

"1. Please provide copies of any risk assessments and equality impact assessments that were carried out before NHS Digital entered into the MOU."

We do not hold risk assessments and equality impact assessments carried out before NHS Digital entered into the MOU. The MOU formalises a service which has existed for some years, and predates the creation of the Health and Social Care Information Centre. Patient registration data and demographic data has been provided from the NHS Central Register system (now superseded by the Personal Demographics Service) since the NHS Central Register was established to support the operations of the National Health Service in 1948.

NHS Digital's review of the National Back Office functions considered with great care the legitimacy and risks associated with its disclosures, alongside NHS Digital's statutory and legal obligations to protect the confidentiality, rights and interests of individuals; its obligations on matters of public interest; and enabling the legitimate functions of government.

This review is planned for future publication in November 2017 and for this reason we believe section 22 of the FOIA is engaged.

In addition, as you are aware from our previous response to you dated 27th September 2017, a Public Interest Test was undertaken to determine factors for and against release. To reiterate, the findings from this are as follows:

Public interest considerations favouring disclosure

- Releasing all drafts of the review report would increase transparency into the workings of public authorities and government. The drafts of the review report would also make public authorities and government more accountable to the electorate.
- It can be argued that releasing all the drafts of the review report would increase the public's trust and increase their confidence in the perceived ability of public authorities to carry out their functions.

- We also recognise that there is a general public interest in the subject matter of this report.

Public interest considerations favouring withholding the information

- 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 a conveniently 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.
- As the subject matter is of public interest, we feel that it is important that the public can access the report simultaneously rather than piecemeal by disclosure to a small number of individuals under the FOIA. Therefore, the wider public interest is in the ability of the public to access this information by adhering to the publication schedule and to receive information that has been reviewed and finalised.

Therefore, after careful consideration, we have concluded that Section 22 still applies in this case. We are preparing the review for publication and consider it reasonable to not disclose the information until that point.

“2. The board of NHS Digital was informed on 28 March 2017 by Sir Ian Andrews that “one key outcome of the review was the signing a tri-party memorandum of understanding (MOU) between the Department of Health, NHS Digital and the Home Office” (at paragraph 4.1(a)).

Please:

- Confirm who, and on the basis of what authority, approved the signing of the MOU by NHS Digital;*

Please refer to page 15, item 19.3 of the MoU which is publicly available:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf

19.3 Signed on behalf of NHS Digital:

I accept the terms of the MoU on behalf of NHS Digital. Signature:

Name: Andy Williams

Date: 1 November 2016

Position: Chief Executive Officer

- Confirm whether the NHS Digital board considered the MOU before it was signed and provide copies of any minutes;*

The NHS Digital Board received information from the NBO Review Chair, Professor Maria Goddard at the meetings listed below, but did not review the MOU itself:

- Board Development Day – July 27th item 10, and two accompanying papers. The papers include the recommendation to establish an MOU with HO.
- Private Board – September 7th item 4, and two accompanying papers. The papers update the board on progress.
- Private Board – November 30th item 5, and two accompanying papers. The papers confirms that agreed actions have been completed and the MOU signed.

In relation to the request for copies of minutes:

- this information pertains in part to legal advice received, and for this reason we believe section 42 of the FOIA is engaged.
- this information also pertains in part to information that would, or would be likely to, inhibit (i) the free and frank provision of advice, or (ii) the free and frank exchange of views for the purposes of deliberation, and for this reason we also believe section 36 of the FOIA is engaged.

To the extent where we believe sections 42 and 36 apply, we have redacted the documents and have attached the extracted elements pertaining to the NBO service following completion of the public interest test assessment.

Please find attached the information that relates to this question in Annex section 2b

- c. *Confirm whether any committee of the NHS Digital board considered the MOU before it was signed and provide copies of any minutes;*

Please refer to a previous information request published at <https://www.digital.nhs.uk/article/6939/Freedom-of-Information-request-NIC-89818-K6X9X>. This includes Minutes from the 'NBO Tracing Service Review Steering Group Meeting 31st October 2016' and 'SG Note 30012017'.

- d. *Provide copies of any board papers, updates or other materials (including any correspondence between NHS Digital and the Home Office) that enabled the board, such committee, or any officer or employee to conclude that the terms of the MOU would be lawful and appropriately safeguard NHS patients' confidential data; and*

We have assumed by this question that you are asking for board papers and submission materials that were provided to the NHS Digital Board to support the meetings relating to the tri-partite MOU.

As per response to 2b, to the extent where we believe sections 42 and 36 apply, we have redacted the documents and attach the extracted elements pertaining to the NBO service following completion of the public interest test assessment.

A review of all correspondence of all staff involved in the development of the MOU, and an assessment of each email regarding whether this was sent or copied to a board member directly or indirectly, and/or otherwise pertained to the board decision, would take us beyond the time available to respond. Therefore, in relation to emails, we have narrowed this query down to email correspondence between steering group members who are still working in NHS Digital and only in the two weeks prior to the relevant board meeting, in order to offer a reasonable response within the time frame.

Emails from NHS Digital Head of Legal are excluded as this information pertains in part to legal advice received, and for this reason we believe section 42 of the FOIA is engaged.

Please find attached the documents that relate to this question in Annex section 2d.

e. *Provide a copy of the review mentioned by Sir Ian Andrews.*

As per question one, this information is intended for future publication and for this reason we believe section 22 of the FOIA is engaged. Section 22 is a qualified exemption and requires a public interest test where we must consider the public interest in maintaining the exemption outweighs the public interest in disclosure. Please see question one for details of the public interest test applied.

“3. Please confirm whether there have been any previous data sharing agreements, memoranda of understanding or guidance on data sharing between NHS Digital / HSCIC and the Home Office. If so, please provide copies of any such agreements.”

We are not aware of any previous data sharing agreements, memoranda of understanding on data sharing between NHS Digital / HSCIC and the Home Office which relate to the National Back Office tracing service.

There is however an MOU dated 2015 that was signed prior to the NBO Tracing service MOU between the Department of Health, NHS Digital and the Home Office which relates to the Visitor & Migrant NHS Cost Recovery Programme. We believe this is unrelated to your query, but have referenced here with further detail below.

Introductory information regarding the Visitor & Migrant NHS Cost Recovery Programme is available here:

- <https://www.gov.uk/government/publications/recovering-costs-of-nhs-healthcare-from-visitors-and-migrants>
- See also the Health and Social Care Information Centre ([Immigration Health Charge](#)) Directions 2015.

Prior to adoption of the MOU, the National Back Office team had developed a standard process to be followed by staff responding to requests from the Home Office.

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 NHS Digital website.

I trust you are satisfied with our full 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.

Yours sincerely,

Julie Shippen
Higher Information Assurance Specialist

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.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](#)

Annex

2b – NHS Digital Board Minutes (redacted)

01. July 16_Board Business Meeting_Minutes_redacted
02. Sept 16_Part 2 minutes _REDACTED-Redacted
03. July 16_NBOUpdate_supplementary paper_HO Data Flows V0 4 (DW)_Redacted
04. July 16_NBO_Cover Sheet_Redacted
05. July 16_NBO_Paper V01-1_Redacted
06. Sept 16_NBO_Paper_Redacted
07. Sept 16_NBO_Board Cover Sheet_Redacted

2d - Correspondence pre-dating Board meetings (redacted)

1. DW 23 Aug 2016 – Board Paper Sub_Redacted
2. DW 19 Aug 2016 – NBO SG Meeting Supporting Paper Advice
3. DW 20 Aug 2016 – NBO SG Meeting Supporting Paper Advice_Redacted
4. DW 26 July 2016 – Board – MOU Sub thread_Redacted
5. DW 08 July 2016 NBO Steering Group_Redacted
6. DW 25 July 2016 – Steering Group – NBO Tracing Review Board Paper
7. DW 26 July 2016 – Steering Group – NBO Tracing Review Board Paper
8. DW 25 July 2016 – Steering Group – NBO Tracing Review Board Paper_Redacted
9. DW 18 July 2016 – Steering Group_Redacted
10. DW 17 Oct 2016 – MOU – Chair CEO_Redacted
11. DW 17 Oct 2016 – NBO HO MOU Briefing note – Chair CEO_Redacted
12. DW 05 Oct 2016 - NBO MOU – CEO_Redacted
13. DW 06 Oct 2016 - NBO MOU – Chair_Redacted
15. DW 01 Nov 2016 – Steering Group – MOU and Form_Redacted
16. DW 05 Oct 2016 – Steering Group Agenda Papers_Redacted
17. DW 23 Sept 2016 – Home Office MOU – Ceo Note_Redacted
18. DW 27 Sept 2016 – Steering Group – MOU_Redacted
19. SS 08 Sept 2016 – Confidential - Tracing Service Submission to New Board_Redacted
20. MS 06 Sept 2016 FW RE Confidential – Home Office Tracing MOU_Redacted
Date of correspondence – 06 September 2016 to 16 September 2016
Please note, this attachment has not been included as the content was all redacted under s.36.
21. MS 09 Aug 2016 FW Re NBO-Your View on The state of play addressee only_Redacted v0.2
Date of correspondence – 28 July 2016 to 09 August 2016
Please note, this attachment has not been included as the content was all redacted under s.36.
22. MS 06 Sept 2016 FW RE NBO MOU_Redacted

2d – attached files held within correspondence (redacted)

- 3.1 SG Tracing Service Briefing Note 19/08/2016 _ Redacted
- 4.1 Board PRIVATE Cover July 2016
- 9.1 Steering Group_Checkpoint_Agenda_19072016_Redacted
- 16.4 Steering Group_Checkpoint_Agenda_31102016

Please note, any information which goes to the lawfulness of the MoU has been redacted under section 36, and therefore has not been disclosed.

These emails have been identified, and a brief description of dates and topics have been issued above.