

1. E-mails between 20 October and 30 October 2017 regarding policy advice around the lawful basis for the Streams app when it is in live use.

-----Original Message-----

From: GRAY, Simon (OFFICE OF THE NATIONAL DATA GUARDIAN)

Sent: 30 October 2017 14:30

To: OFFICE, NDG (OFFICE OF THE NATIONAL DATA GUARDIAN)

Subject: 651 Query re implied consent for direct care as a basis for live use of the Streams app

Karen

Alan and I had a call with Vicky this afternoon to provide her with some informal guidance on this matter.

Vicky will come back to us should she require formal guidance that the ICO can reference in any correspondence.

Thanks
Simon

Simon Gray
Director
Office of the National Data Guardian

From: Victoria Cetinkaya

Sent: 20 October 2017 16:39

To: GRAY, Simon (OFFICE OF THE NATIONAL DATA GUARDIAN)

Subject: Query re implied consent for direct care as a basis for live use of the Streams app

Hello Simon

I hope you're well. I'm working on some policy advice around the lawful basis for the Streams app when it is in live use. As part of that, just as in the Royal Free case where we obtained the NDG's views on the implied consent for direct care basis when the app was at the clinical testing stage, I need to consider whether that basis could apply in live use.

On looking at [Alan Hassey's article](#) from December 2016, he sets out the NDG panel's view on when confidential personal information can generally be shared on an implied consent basis for direct care, namely:

"To inform and improve decisions about an individual's health and care by those who are delivering care to that individual or supporting such care and it is reasonable to believe that the people concerned understand the information sharing involved, have indicated by their actions that they are content, and have not raised any objections."

I'm wondering whether the reference to the "individual" would make it problematic to use as a basis for the processing of the million-plus records in the Streams app, because the majority of those individuals will

not have decisions made about their own health and care as a result of the processing, only those who re-present at hospital and have their test results analysed by the app and their risk factors identified will. Is this how the implied consent for direct care basis is usually understood, or can it be interpreted on a more general level?

I'd be happy to receive a response from you or a colleague via email, or equally happy to discuss on the telephone if that would suit you better, although I'm going to be on leave next week and won't return to the office on Monday 30 October.

Kind regards
Vicky



Victoria Cetinkaya
Senior Policy Officer - Policy & Engagement
(Public Sector)

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

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2. Emails between 9 August and 21 August 2018 regarding the advice requested on the approach taken to the duty of confidentiality in the audit report and the attached PDF letters between the ICO and the NDG.

-----Original Message-----

From: Veera Antonina Howells

Sent: 21 August 2018 09:47

To: OFFICE, NDG (OFFICE OF THE NATIONAL DATA GUARDIAN)

Subject: RE: 651 Letter from the National Data Guardian Dame Fiona Caldicott

Dear Karen,

I confirm receipt of your email sent for the Information Commissioner and we will respond as quickly as possible.

Thank you.
Veera



Veera Howells

Personal Assistant to Information Commissioner

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

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From: OFFICE, Ndg (OFFICE OF THE NATIONAL DATA GUARDIAN)

Sent: 21 August 2018 09:07

To: Veera Antonina Howells ; Elizabeth Denham

Cc: OFFICE, Ndg (OFFICE OF THE NATIONAL DATA GUARDIAN) ; Victoria Cetinkaya

Subject: 651 Letter from the National Data Guardian Dame Fiona Caldicott

Dear Elizabeth

Please see the attached response from Dame Fiona Caldicott for your attention.

Could you please confirm receipt of this letter which is being sent by email only.

With kind regards
Karen

Karen Swift
Principal Business and Operational Delivery Administrator
Office of the National Data Guardian

From: Veera Antonina Howells

Sent: 09 August 2018 17:48

To: OFFICE, Ndg (OFFICE OF THE NATIONAL DATA GUARDIAN)

Subject: 607/651 Letter from Information Commissioner Elizabeth Denham

Please find attached letter from Information Commissioner Elizabeth Denham to Dame Fiona Caldicott.

Could you please confirm receipt of this letter which is being sent by email only.

Thank you.
Regards.
Veera



Veera Howells

Personal Assistant to Information Commissioner

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

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3. E-mails between 16 and 21 February 2019 regarding a risk stratification query with regards to the confidentiality aspects of the Royal Free report.

-----Original Message-----

From: WESTAWAY, Jenny (OFFICE OF THE NATIONAL DATA GUARDIAN)

Sent: 21 February 2019 08:43

Subject: RE: Ref 651 and 572 Further quick query re yesterday's discussion

All

Sorry for slow response. I've been on leave and also needed to check in about this one. I've taken guidance from Dr Joanne Bailey who is on the NDG advisory panel and has also pulled on her knowledge as a member of IGARD to advise.

Her understanding is that broadly speaking, risk stratification is being undertaken by approved organisations for dual purposes: case finding and commissioning. Risk stratification for case finding processes local population datasets to identify high risk individuals so that they may be offered care by their direct care team. Risk stratification for commissioning classifies the local population into different strata to help predict future demand for care pathways so that services can be better planned or commissioned.

The risk stratifying process is undertaken on confidential patient information under the support of s251 of the NHS Act 2006 with NHS number as the only identifier. As we understand it, the processing is undertaken at once for both purposes with different outputs according to the purpose.

The direct care team (GP practice) can access the data on high risk patients with whom they have a legitimate relationship in order to offer appropriate direct care. The commissioning organisation can only access anonymised or pseudonymised data for patients registered in the relevant area.

With regard to risk stratification for case finding, ie direct care, given the breadth of information that is processed on a large number of individuals to potentiality benefit only a relatively few, organisations would be expected to carry out proportionality and necessity assessments, including the practicability of excluding those patients who would have a minimal chance of being selected. We note however that in the model outlined above the assessment would need to consider the dual purposes of the processing.

I hope that's helpful.

With kind regards

Jenny

From: Victoria Cetinkaya

Sent: 16 February 2019 10:37

To: WESTAWAY, Jenny (OFFICE OF THE NATIONAL DATA GUARDIAN)

Subject: Further quick query re yesterday's discussion

Hello Jenny, all

Firstly, thanks for a really helpful meeting yesterday – it was good to see you all and really useful to clarify some points and to set out where we still need to go.

I'm emailing because I have a quick query from my table that we didn't quite get to discuss. We spoke about proportionality being an issue at the 'direct care' use stage, but we didn't mention risk stratification, which Dame Fiona referred to in her letter to Elizabeth Denham in August 2018 (hence my directing this mainly at Jenny, but of course if anyone else can answer, please feel free to.)

Can I just check then – if an organisation is processing patient data for the purposes of risk stratification for case finding, this is direct care. Would the organisation be expected to carry out proportionality assessments similar to those we mentioned, and remove/not process those patients' data who would have a minimal chance of being selected?

Many thanks all
Vicky



Victoria Cetinkaya
Senior Policy Officer - Engagement (Public Services)
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