

## Data Sharing Between Public Bodies – Consultation Response

Question 1: Do you think that the current law on data sharing is sufficiently clear and certain? If not, please explain which parts of the law you find unclear or uncertain, and if possible please give examples of any problems that the lack of clarity or certainty causes.

No, the law on data sharing is not sufficiently clear. The Data Protection Act (DPA) and the Freedom of Information Act (FOI) are complex pieces of legislation that overlap and conflict in some areas. In addition, we have to balance the requirements of the Pharmacy Order, which directs the GPhC to share/publish information in some areas and not in others, against the DPA and FOI which is not clear in all cases.

Further uncertainty is caused by the introduction of guidance from public bodies, for example the Department of Health that states that, “whilst there are no clear legal obligations of confidentiality that apply to the deceased, there is an ethical basis for requiring that confidentiality obligations must continue to apply.”<sup>1</sup>

Question 2: Do those responsible for data sharing in your organisation have a good understanding of the law? If not, to what do you attribute this?

There is a good level of understanding of the law in relation to data sharing within specific teams at the GPhC, however, the level of complexity outlined above means that general understanding across all teams is difficult to achieve. In some cases external legal advice is still sought in relation to sharing information with other public bodies.

Question 4: If you think that there are inappropriate obstacles to data sharing between public bodies, please say what these are and where you have encountered them.

Yes, as described in the consultation document and reflected in the answers to later consultation questions.

Question 6: Do you think that the current law strikes the right balance between the ability of public bodies to share data and the need to protect privacy or other rights of data subjects? If not, please say why.

There needs to be greater clarity and understanding of the processes that already exist in order to facilitate the appropriate sharing of data between public bodies. There is, however, a concern that the significant financial penalties for inappropriate data sharing contribute to the reticence of some public sector organisations to share data and this leads to the situation described in the answer to question 10.

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<sup>1</sup> Confidentiality NHS Code of Practice, November 2003

Question 10: Do you think that others, who you think should disclose data to you, have sufficient powers to do so? If possible, please provide examples.

Yes. In the example of obtaining evidence from police cases relating to the determination of an individual's fitness to practise by a Regulatory Body, there is guidance available from the Information Commissioner, Ministry of Justice and Home Office which pertains to data sharing in these circumstances. It should be clear that information obtained by the police in interview under caution could be shared with a Regulatory Body where it is in the Public Interest in the proper functioning of a regulator. However, the GPhC's success in receiving information for this purpose is not consistently achieved and varies with each police service.

Other regulators have developed Memoranda of Understanding and Information Sharing Agreements for regulatory purposes and the GPhC also has these in place in specific areas. However, it is impractical to ensure that such agreements exist between all public bodies and regulators and their absence adds to the delays and confusion surrounding information sharing.

Question 11: Do you think that the adverse consequences of unauthorised disclosure, including reputational damage or formal sanctioning, have an adverse effect on data sharing? If so, what sorts of consequences are most significant? If possible, please provide examples of each.

Question 17: What role do you think security concerns play in public bodies' reluctance to share data? If possible, please provide examples.

Question 18: What role do you think quality concerns play in public bodies' ability to share data? If possible, please provide examples.

The answer to questions 11, 17 and 18 are interrelated. Clearly there has been a reticence to share information even appropriately in the past, particularly in healthcare as demonstrated by the need to add a 7<sup>th</sup> Caldicott Principal which clarified that "the duty to share information can be as important as the duty to protect patient confidentiality<sup>2</sup>."

The extent to which the adverse consequences of unauthorised disclosure and security and quality concerns have individually impacted on the sharing of data between public bodies is not clear.

Question 19: Do you, or your organisation, find it difficult to secure the data you want because the holder of the information is unwilling to divulge it for other reasons? If so, what are the reasons? If possible, please provide examples.

Yes, see the answer to question 10.

Question 20: Are you, or your organisation, unwilling to divulge information for other reasons? If so, what are the reasons? If possible, please provide examples.

The GPhC is prohibited by the Pharmacy Order from disclosing information relating to fitness to practise proceedings where there is a finding of no impairment. The organisation has previously faced challenges under FOI legislation to release this information. Achieving the balance of

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<sup>2</sup> The Information Governance Review, March 2013

protecting the public by being a transparent and open regulator against a person's right to privacy under Human Rights legislation is not always clear in law.

Question 21: Please describe the information you want or disclose, and the other public bodies concerned. For what purposes is the data required or disclosed?

What types of data are concerned by this sharing? Through what process is it shared?

See answer to question 10.

Question 22: Please describe the magnitude of any problem encountered in data sharing and the effects of such problems on data sharing

In the worst case the outcome of data not being shared as described in the answer to question 10 could prevent the GPhC from having all the information it requires to effectively assess an individual's fitness to practise in a timely manner, in line with its statutory function.