

Our Ref: ID 1958

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## Re: Freedom of Information Request - Wirral Care Record

Thank you for your request for information made under the Freedom of Information Act 2000, which was received into this office on 3<sup>rd</sup> August 2021.

### You Asked for:

I would like to make another request under the FOI Act.

For the purposes of the Act, please take the date of your receipt of this request as 2<sup>nd</sup> August 2021.

This request concerns your shared care record/PHM scheme, *The Wirral Care Record*, and specifically the *secondary uses* of personal, confidential and private medical information ostensibly extracted and uploaded to a data processor for *direct care purposes*.

Your [leaflet](#) refers to such secondary uses, for example population health management and “data analytics”.

I am interested in the governance around:

- the disclosure of personal confidential, private, information (clearly identifiable) by contributing data controllers such as GP surgeries
- to a third party outside of the care team (“outside the data controller’s own boundaries”, to quote the ICO), i.e. a data processor
- any onward disclosure to a sub-processor (if responsible for secondary uses processing)
- and the subsequent
  - access to the information
  - linkage
  - deidentification (anonymisation/pseudonymisation)
  - analysis/monitoring/audit of direct care
  - onward disclosure to “data recipients” (in clearly identifiable/pseudonymised/anonymised formats)

by the data processor/sub-processor for secondary purposes - **that is, purposes beyond direct medical care, such as planning, commissioning, “population health management”, “analytics”.**

The disclosure, and processing, of such data derived from contributing data controllers - such as GP surgeries, hospital trusts, mental health providers, community providers, local authorities - for secondary purposes requires a legal avenue to satisfy the common law of confidentiality (CLoC), unless the information is completely anonymised at source (e.g. by the surgery, "at the surgery").

The absence of such a legal avenue results in a breach of confidentiality, a breach of privacy, and a breach of Article 5(1)(a) of GDPR.

Processing in the absence of a CLoC legal avenue is therefore, manifestly unlawful.

Disclosure of such information, for such purposes, from contributing data controllers, is, as far as I can see:

- neither a legal obligation, nor
- authorised under COPI 3(4), nor
- authorised under Regulation 2 or 5 of COPI 2002, nor
- completely anonymised at source, by the data controllers (prior to disclosure)

Accordingly, I would be grateful for the following information:

- 1) Could you kindly provide me with the latest DPIA produced for, or which covers, such secondary uses processing?
- 2) What is the legal avenue under the common law of confidentiality for the disclosure of, and subsequent access to, linkage, de-identification, data analysis, and any onward disclosure of information for secondary uses processing by contributing data controllers such as GP surgeries?
  - Is the explicit permission of each individual obtained prior to disclosure?
  - Or has authority been specifically granted for all such processing under Regulation 5 of COPI 2002 (HRA/CAG approval)?If so, please could you provide:
  - The CAG approval reference
  - Which classes of support has your project been granted (<https://www.legislation.gov.uk/ukxi/2002/1438/schedule/made> )

**Please note that I am *not* interested in the GDPR "legal bases", as required for Articles 6 and 9.**

(As regards "risk stratification for case finding", I would point out the following to the Wirral Care Record:

- CAG 7-04 (a)/2013 does *not* authorise disclosure and processing of information for risk stratification *within a ShCR/ICR/LHCR*  
It only authorises disclosure of a defined dataset (data minimisation) to an "approved organisation"
- CAG [have made clear](#) that CAG 7-04 (a)/2013 approval under Regulation 5 was limited to *risk stratification for case finding only, and specifically excluded population health analytics* )

## **Our Response:**

NHS Wirral Clinical Commissioning Group (CCG) is neither a data controller nor a data processor for the Wirral Care Record and therefore NHS Wirral CCG has not been required to complete a Data Protection Impact Assessment (DPIA).

The data controllers for the Wirral Care Record are set out on page 8 of the leaflet referenced within your request.

We hope this information is useful, however if you require any further information please do not hesitate to contact a member of the Corporate Affairs Team (contact details at the top of this letter)

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