



NHS Streamlining Programme

Guidance note on GDPR and the rights of individuals who object to the transfer of data

We have been asked to provide guidance on the rights of data subjects under the General Data Protection Regulation (GDPR) and when they can object to information being transferred through the NHS Streamlining Programme.

GDPR Principles

All NHS organisations which use streamlining will, as data controllers, need to be aware of the principles set out in the GDPR for processing personal data, namely:

Lawfulness, fairness and transparency – data must be processed lawfully, fairly and in a transparent manner in relation to the data subject

Purpose limitation – data must be collected only for specified, explicit and legitimate purposes and not further used for incompatible purposes

Data minimisation – data must be adequate, relevant and limited to what is necessary

Accuracy – data must be accurate and, where necessary, kept up to date. Inaccurate data must be erased

Storage limitation – data must only be stored for as long as is necessary

Integrity and confidentiality – data must be processed in a secure manner

Accountability - the data controller is responsible for, and must be able to demonstrate, compliance with the other data protection principles.

Each data controller will be accountable for the information they upload onto ESR and thought must be given to the principles of purpose limitation and storage limitation in ESR in complying with the GDPR. We have produced a template Data Protection Impact Assessment for NHS Employers to assist with this process.

Transparency and informing data subjects about their rights

Under the transparency principle, data controllers are required to provide all information to data subjects 'in a concise, transparent, intelligible and easily accessible form, using clear and plain language'.

When an individual first joins the NHS, their personal data will be obtained from them directly and uploaded onto ESR. From that point on, when the individual transfers, their data will transfer to the new employer. In line with the principle of transparency, individuals should be informed about streamlining from the outset of their employment with the NHS. A separate privacy notice could be issued or the individual could be directed to each Trust's privacy notice which should

contain reference to streamlining, explaining the information which will be uploaded onto ESR for the streamlining process.

Individuals objecting to transfer of data

Individuals have a number of rights under the GDPR, including the right to access information, with which most data controllers will already be familiar. In respect of streamlining, where a data subject objects to information being transferred they are likely to exercise one of the following rights under the GDPR.

Erasure of personal data

This is also known as the 'right to be forgotten' and applies where one of the following conditions is met:

- The personal data is no longer necessary for the purpose the data controller collected it for;
- The data subject withdrew his/her consent to the data controller's processing activities and no other legal justification for processing applies – note that we will not be relying on consent as the legal basis for processing data for streamlining and so this will not apply;
- The data subject objects to processing that is either:
 - Necessary for the data controller to perform a task in the public interest or in the exercise of official authority vested in the data controller;
 - Necessary to pursue the data controller's or a third party's legitimate interests; and
 - No other compelling legitimate grounds to process personal data apply.
- Personal data has been processed unlawfully; or
- The data controller must erase the data to comply with a legal obligation.

Once a data subject requests erasure for one of the statutory reasons, the data controller must erase it without delay unless continued retention is necessary for:

- (1) Exercising the right of freedom expression and information.
- (2) Complying with a legal obligation under EU or member state law.
- (3) The performance of a task carried out in the public interest.
- (4) Exercising official authority vested in the data controller.
- (5) Public health reasons consistent with the exceptions for processing sensitive personal data such as health information, as outlined in GDPR Article 9(2)(h) and (i) and 9(3).
- (6) Archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes, under certain circumstances.
- (7) The establishment, exercise, or defence of legal claims.

Processing restrictions

The GDPR grants data subjects the right to restrict the processing of their personal data under certain circumstances. Data subjects may restrict the processing of their personal data when:

- The data subject contests the accuracy of the personal data. The data controller must restrict processing the contested data until it can verify its accuracy.
- The processing is unlawful. Instead of requesting erasure, the data subject can request that the data controller restrict use of the unlawfully processed personal data.
- The data controller no longer needs to process the personal data but the data subject needs the personal data for the establishment, exercise, or defence of legal claims.

- The data subject objects to processing that relies on the public interest or the data controller's or a third party's legitimate interests as the lawful processing grounds. The data controller must restrict the challenged processing activity pending verification of whether the data controller's or third party's legitimate interests override the data subject's interests.

Effectively, this means that data will be stored but cannot otherwise be (actively) processed. In many cases, the restriction or processing is only temporary, specifically when the restriction is on the grounds that:

- The individual has disputed the accuracy of the personal data and the Trust is investigating this; or
- The individual has objected to the processing of their data on the basis that it is necessary for the performance of a task carried out in the public interest or the purposes of your legitimate interests, and the Trust is considering whether its legitimate grounds override those of the individual.

Once the data controller has made a decision on the accuracy of the data, or whether the legitimate grounds override those of the individual, it may decide to lift the restriction.

In the context of streamlining, a request for erasure or restriction is most likely to be raised where an individual knows an employee who will have access to sensitive information at the recipient NHS organisation and does not want the data to be disclosed to that individual.

Each request will need to be assessed on a case by case basis but it is envisaged that the legitimate interests in transferring data in order to ensure an appropriate workforce is employed within the NHS will often tip the balance in favour of processing. Where, for example, an individual objects to their immunisation and vaccinations data being processed, Trusts should be able to rely on the public health exemption listed above to justify the processing of this data.

However, it will be important to investigate the request thoroughly and consider alternatives to the transfer of data through streamlining where a request not to transfer has been made by a data subject. One solution could be that the recipients of the information are limited to certain individuals and assurances are given that the information will be stored securely on transfer.

Summary

Fairness and transparency are two principles which must be adhered to when processing personal data and it is vital that data controllers are open with employees about how their data will be processed and transferred under streamlining. Current statements and policies on streamlining should be reviewed to ensure that they cover all the information which must be provided to data subjects under the GDPR.

To the extent that streamlining is not currently referred to in policies regarding data protection, we suggest that this is best dealt with via the general employee privacy notice where reference can be made to streamlining as on means of processing personal data.

Privacy notices must contain the following information:

- Identify and contact details of the data controller
- Contact details of the Data Protection Officer (DPO)
- The legal basis for processing the data
- The categories of personal data to be processed
- The recipients of the data
- Whether data will be transferred outside the EU
- Period of storage
- The rights of the data subject
- The existence of any automated decision making

Trusts should be aware that the privacy notice must contain information on the rights of data subjects and how they can raise issues within the organisation.

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