Mr John Edwards

UK Information Commissioner

Email: dpiaconsultation@ico.org.uk

Date:

Dear Mr Edwards,

I am writing to you in line with my obligations as a data controller for all patients registered with my practice (data subjects) following the completion of a Data Protection Impact Assessment (DPIA) that we have carried out in response to the contractual requirements placed upon us, as GPs, in our contract to provide general medical services, regarding prospective automatic access to GP-held patient records by 31October 2023.

It is our view that our DPIA has identified several significant risks which we are unable to mitigate without taking a different approach and as such, in line with the aforementioned obligations, we feel unable to begin processing in the manner required by our contract without further consultation with yourselves.

As GPs, we are bound by a number of distinct and, at times, conflicting legal and ethical obligations. First and foremost, we have a responsibility of care to our patients both in the professional and legal sense that must be upheld above all else. As you know, we are also in the unique position of acting as data controller for all medical information that we hold about our patients, and lastly our mandate to provide NHS care is derived from the GP contract. In terms of our role as data controller, we provide a direction to our IT system supplier EMIS/TPP (DELETE AS APPROPRIATE) to process data on our behalf.

As per our DPIA, the purposes and means of processing have been outlined below.

The purposes of the processing are twofold (a) to comply with GPs and practices’ contractual obligations and (b) to enable patients who would benefit from their prospective medical record being available online to be provided with the facility to access it online.

There will be very limited changes to the way in which the data that forms medical records is collated, used and stored, save where a GP or practice creates a new document by redacting an existing document. However, we do not consider this to be a significant change in the nature of the data processing.

The source of the data will remain the same, that being from primarily primary, secondary and community care providers within the health service.

The most significant change is that the data will be automatically made available for patients to view online through the NHS app or NHS website where the patient has the requisite NHS login set up. Such access is required to be provided automatically due to our contractual obligations, unless: (1) the patient has opted out; (2) the information contained in the medical record is “excepted information” i.e. if a GP would not be required to disclose such information pursuant to Article 15 of UK GDPR and (3) the serious harm test in Part 2 of Schedule 3 of the DPA 2018 applies (i.e. the GP has decided it will be potentially harmful for the patient to have access).

Given that the requirement to provide prospective access to all patients (except those covered by one or more of the three exceptions) is contractual, we are not able to identify any actionable safeguards that we could put in place that would not put us in breach of our NHS GP contract and the requirement to provision access by 31 October 2023.

We are consulting with you in accordance with our duty under Article 36(3). I have attached the DPIA and look forward to hearing back. Our named data protection officer is xxxxx and can be contacted here - xxxx

Please do let me know if you require any further information from us at this time.

Yours

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