



Information Commissioner's Office

The Information Commissioner's response to the Health and Social Care Information Centre's consultation on the draft Code of practice on confidential information

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000, the Environmental Information Regulations and the Privacy and Electronic Communications Regulations. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner's Office (ICO) welcomes the opportunity to comment on the HSCIC's draft Code of practice on confidential information. As a number of the specific consultation questions relate to areas outside the ICO's regulatory remit, this submission makes some general points only.

ICO comments on the context in which the Code of practice on confidential information will apply

The content of the Code of practice on confidential information is generally not something for the ICO to comment on as the regulator responsible for the DPA.

We do however have some comments about the context that this code will apply in. The legal regime which applies to confidential information operates in parallel with the DPA, and we are keen to ensure that the code acknowledges that organisations must take the requirements of the DPA into account as well as those of confidentiality, where the information processed is personal data or sensitive personal data.

The code does make some reference to the DPA, in its use of data protection language (for example, "data subject" at paragraph 27, page 10) and references to the ICO's Data sharing code of practice and

Anonymisation: Managing data protection risk code of practice (both at paragraph 34, page 12). In addition at paragraph 34(a), page 11 the draft code states that where information is shared “an assessment of the impact of the sharing of confidential information on privacy” should be undertaken. This is clearly an expectation that a privacy impact assessment should be carried out but without reference to the relevant ICO code of practice.¹

In spite of the above references we have identified a risk that, as currently drafted, some organisations might see the draft code as the complete approach to managing personal health information and could disregard the requirements of the DPA. We do however recognise that the draft code is not intended to cover the requirements of the DPA as its focus is confidentiality.

We would therefore suggest that the draft code makes a clear reference to the fact the organisations will also have to take into account the requirements of the DPA where the information processed is personal data or sensitive personal data. This could be done in the Introduction to the code, for example. We have noted that the first sentence of that section states that “Citizens should feel confident that health and social care bodies having regard to this code of practice handle confidential information appropriately.” We would suggest it is more accurate to add “and within the law” to this sentence, which would provide an opportunity to highlight the fact that other legislation, particularly the DPA, is of importance in this context.

Finally, if you have any questions about this submission or require any further information please contact us.

August 2014

¹ [ICO: Conducting privacy impact assessments code of practice](#)