

24 January 2023

IC-278022-H4H5

## Request

On 6 December 2023 you made the following request:

*FOI for NHSE GP online records access initiative. NHSE have stated that ICO have been supportive of this programme and their position. This actually shocks me when there huge data quality and patient safety concerns. I cannot find the ICO's public position in this regards. So I have been recommended by your colleagues to submit this form. I would like to know all the information that the ICO have given NHSE in this regards as I do not feel that they can have the accurate picture and would like to liaise with the relevant team.*

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

## Response

We hold information that falls within scope of your request. Our searches focused on information given to NHS England, by the ICO, in relation to this matter. This information has been withheld in entirety in accordance with Section 31 of the FOIA.

Section 31(2)(c) provides that:

*The purposes referred to in subsection (1)(g) to (i) are-*

*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,*

The ICO exercises a number of statutory functions for the purpose of ascertaining whether circumstances exist or may arise which would justify regulatory action in relation to relevant legislation.

A considerable proportion of the ICO's regulatory work is concerned with ascertaining whether data controllers and public authorities have complied with the statutory requirements placed upon them by both the data protection legislation and the FOIA.

In this case the requested information forms part of our ongoing work to promote the compliance of organisations with the legislation we regulate. It follows therefore, that the purposes referred to in subsection (c) above, apply in relation to this information. Disclosure of this information in relation to our regulatory work would, in our opinion, be likely to prejudice our regulatory functions in relation to our ongoing and future engagement and relationships with these organisations.

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

In this case the public interest factors in disclosing the information are:

- public interest in public services being accountable to the public;
- public interest in a public body displaying transparency in relation to issues of national significance/ impact; and
- public interest in ensuring that public bodies comply with applicable laws.

The factors in withholding the information are:

- public interest in maintaining NHS England's trust and confidence that information they have shared with the ICO will be afforded an appropriate level of confidentiality;
- public interest in other organisations having trust and confidence that information they share with the ICO will be afforded an appropriate level of confidentiality;
- the public interest in NHS being open and honest in their discussions with the ICO without fear that information they have contributed will be made public prematurely or, as appropriate, at all;
- public interest in other organisations being able to have free and frank discussions with the ICO without fear that their information will be made public prematurely or, as appropriate, at all; and
- public interest in the ICO being able to effectively advise organisations on matters of compliance, and to have a safe space in which to communicate with those we regulate.

We consider that disclosure of information would be likely to:

- impact on the candour of ongoing discussions and disclosure of information by NHS England, impacting the ability of the ICO to provide accurate and adequate advice;
- inhibit future disclosure of information by NHS England, impacting the ability of the ICO to receive complete and honest information to enable us to have full oversight of any issues;
- stifle free and frank discussions for the purposes of deliberation between NHS England and the ICO - if the ICO does not have accurate and complete information about a matter we cannot provide effective advice, which may negatively impact on NHS England's handling of the issue and any affected data subjects; and
- have a chilling effect on future disclosures by NHS England to the ICO.

More broadly, the ICO will not be able to effectively fulfil its functions if organisations become guarded about information sharing with the ICO, which is detrimental to society as a whole.

Having considered these factors, we are satisfied that those in favour of disclosure are outweighed by those against, and therefore the information has been withheld.

### **Advice and assistance**

Any news or announcements made by the ICO in relation to particular issues can be found [here](#) and you can also keep updated by following the ICO on social media. For example, on 17 January 2024 we published some information that may be of interest:

[Accelerated Access to GP Records \(AAGPR\) DPIA's response](#)

The NHS page for the programme can be found via the link below:

[Online access to GP health records - NHS Digital](#)

You can also contact NHS England directly about your queries or concerns by emailing [england.NHSEimplementation@nhs.net](mailto:england.NHSEimplementation@nhs.net).

If you want to make a complaint about NHS England, the ICO or any other organisation, please contact us via the link below:

[Make a complaint](#)

For any other matters please use the following details:

[Contact us](#)

This concludes our response to your request.

### **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint](#) through our website.

### **Your information**

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely,



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Strategic Planning and Transformation  
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[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)  
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