

The keys to sharing information legally



Key 1 – A legal requirement

A number of acts create a duty to disclose information. These include the Road Traffic Act (1988), the Children Act (1989) and the Terrorism Act (2000). Where there is a legal requirement, consent is not needed, but it is good practice to inform the patient unless this could cause harm. If you are unsure whether there is a legal requirement, seek support.



Key 2 – Consent

Any consent is only valid if the patient has been informed and understands what information is to be shared and the reason(s) why.



Explicit consent

Where the purpose is not directly related to their care and there is no legal requirement, substantial public interest or individual vital interest, then you must get explicit consent by informing them what is proposed and directly asking them to consent.



Implied consent

Where the purpose is directly related to their care, then provided they are informed and do not object, consent to share information is implied. If a patient does object, and there is no legal requirement, you will need to consider if it is in the public interest, or the vital interests of the patient (or anyone else affected) to disclose information.



Key 3 – Public or vital interest

The law does permit sharing of information where you do not have a legal requirement or consent, **but only** if it can be said to be in the interests of the public or the vital interests of an individual. If using this key, do consider informing the patient, provided no harm will arise from it. Always record and justify the reasons why.

There are two elements to 'measuring' a public interest. How many people are affected and to what degree are they affected? The more people affected, the greater the public interest, but it is also the case that if a small number of people are severely affected (either positively or negatively), that too can be considered a substantial public interest.

The vital interests of an individual are generally where sharing information is critical to preventing harm or distress or is literally a matter of life or death.

Summary and further support

This leaflet only gives a brief summary of what is involved in handling patient information. If you are unsure what to do or how best to do it in any situation, please seek advice or training. More detailed information can also be found in the Department of Health Code of Practice for Confidentiality.

Remember it is important to use your judgement to strike a balance between the harm that could be done to a patient's health if information is not used or shared and the risk of breaching confidentiality if information is shared. If you feel sharing information is necessary to avoid or reduce harm or distress to anyone then the legal framework will generally support it.

For further support speak to your line manager or contact any member of the information governance team:



NHS Bradford and Airedale Information Governance Team

Email: Infogov@bradford.nhs.uk
www.bradfordairedale-pct.nhs.uk



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Community Health Services

A leaflet for staff about handling patient information

Better information, better health



Guidance for staff,
volunteers and contractors
handling patient information

What is confidential information?

Any information provided by a patient, including photographs or audio, about their health is confidential. Any such information you have access to is subject to a legal 'duty of confidence'. The Data Protection Act (1998), the Common Law of Confidentiality, the Human Rights Act (1998) and the Caldicott principals set a framework for using information. If you are not using information appropriately it will affect patient care and may lead to disciplinary action. This leaflet sets out the basic requirements for you to follow.

Keeping patients informed

Patients must be made aware that the information they give will usually be recorded and may be shared to provide them with care and monitor quality. Consent to share should be recorded e.g. noted in the paper record or whenever possible staff should complete the Shared Care Consent Template in SystemOne when asking patients for their consent to share their information with other care providers. This demonstrates that a discussion has taken place to inform the patient who their information will be shared with. Information should only ever be shared with other care providers when there is a legitimate need to do so. They should also be told that they have a choice about uses of information for activities such as education and research. If you have direct contact with patients, you must make sure that:

- you have available leaflets, posters and other materials describing how patient information is used and that they are displayed and actively offered to patients. You should also ensure that they understand them
- it is made clear to patients to whom and why their information is going to be disclosed
- patients are made aware of the choices they have about the use of their information
- any query patients have is answered
- patients know their rights of access to their information, correction of inaccurate information and that their choices are respected where appropriate
- patients are made aware that information may be shared with appropriate staff in multi-agency teams.

keep it confidential!

Providing choice to patients

(including children and young people who are competent)

Informed patients will know that they can restrict the use of their information. If a patient makes a request to restrict the use of their information, they must be made aware of any impact this will have on their care. If, after this has been made clear, they continue with the request, seek further support from your manager or via the further support section in this leaflet.



Giving patients choice in relation to the direct provision of care

Provided you inform patients about the use of information throughout their care, and they do not raise objections at any time, consent to use information for their care is implied. Do not assume their views will remain the same. It is important to maintain communication.

Giving patients choice about using their information for other purposes

Anonymous data can be used without patient consent. However if you want to use information for research, education or another purpose and it in any way identifies patients **you must** inform patients and get their explicit consent. This can be written, oral or non-verbal. There are limited circumstances where identifiable information can be used for other purposes without patient consent, such as where there is legislation passed for audits, for disease registers or if there is a substantial public interest. If you require further details, please seek advice.

Protecting patient information

All patient information must be recorded accurately and consistently.

- Write or enter information on the computer as soon as possible. If writing, make sure it is readable. Check details with the patient.
- Make sure that alterations or additions on paper are dated, timed and signed.
- Record relevant and useful information. Do not use unnecessary abbreviations, or jargon and do not include irrelevant speculation or personal opinions.

Keep patient information secure and available for use by following procedures.

- Mark information private and confidential.
- When sending a fax, first check the number, then check that it has been received.
- Book out, track and return records efficiently.
- Lock doors and cabinets.

Personal Identifiable Information (PII) must not be stored on unencrypted devices, eg laptops and memory sticks that have not been encrypted

- Do not use someone else's smartcard, login or password and NEVER allow anyone else to use yours
- Always winzip and encrypt PII sent via email (unless sending via nhs.mail to another nhs.mail account)
- Envelopes containing PII must be securely sealed, labelled 'confidential', clearly addressed and with the senders details included.

Keep patient information private. It should only be disclosed with thought and care

- Confirm the identity of anyone asking for information (especially on the phone).
- Always ask the patient who they are prepared to share their information with (family or others).
- If a patient is with family/friends, check whether their information can be discussed openly.

In deciding whether to share information

- Establish the purpose of the request and decide if it is reasonable.
- Make sure, as far as possible, that it is in the patient's best interests and will not cause them harm or distress, especially if they are unable to consent or asking them will cause harm or distress.
- Make sure you have one of the keys to sharing information, detailed below.

When sharing information

- Share the minimum required to provide safe care or satisfy any reasonable request.
- Ensure the manner of sharing respects the sensitivity and dignity of the patient, eg: where possible have face-to-face discussion or telephone conversations in a private area.