

Chapter 4: Confidentiality and responsible information handling

One of us received the following email (no doubt you have received many similar emails).

<extract open>

Dear Jazz Friends,

You may have heard the news that the personal data laws are changing on 25 May 2018. As a result, we wanted to let you how we use your personal data, what your rights are with regards to your data, and to ensure that you are still happy for us to contact you in the future.

We hold your information within a secure email system called MailChimp. At any point you can contact us via email and we will remove all your data from this system.

Unless we hear from you, we will continue sending you occasional updates around the time of any Margate Jazz Festival activities. We won't ever pass on your data to anyone else, and you can choose to unsubscribe or manage your preferences at any time.

If you'd like to continue receiving news and updates from us, you don't need to do anything. If you'd like to be removed from our mailing list, please click the 'unsubscribe' button below.

As for the music . . . we hope to be making an announcement about this year's activities very soon.

Thank you!

<extract close>

Explain why the email was sent and why it contains the information it does.

The email is a response to the requirements of the GDPR. GDPR gives individuals whose data is held by an organization rights. This email in particular is a response to the right to be informed about how your personal data is held. The right to be informed means that you must be told about the collection and use of your personal data. This includes telling you why your personal data is being processed, how long your personal data will be retained and who it will be shared with. It also refers to your right to object, in particular your right to be removed from the mailing list.

2. Why is confidentiality important? When do you think confidentiality should be breached? Does your thinking accord with the legal position? The ethical position? Are there ever circumstances when your ethical obligation is to breach a confidence?

These questions are for discussion and you should refer to the relevant sections of the chapter in helping you reach an informed view.

You can approach the question from many angles:

- an uncritical approach, for example – we protect confidentiality when our Code of Practice tells us to; or

- a principled approach – we protect confidentiality because we cannot work effectively with other people if they do not believe we can be trusted not to abuse the information they provide us, but sometimes we have to breach confidentiality to protect vulnerable children or adults (in which case there never was a legitimate expectation of confidentiality)

Or you might take a middle course:

- the European Convention on Human Rights, as interpreted by the European Court of Human Rights and the English and Welsh courts, provides a right to respect for private life, and as an agent of the state I can only interfere with that right in circumstances which are both lawful and proportionate.

The last question is a trick question. You are never in a position to provide a guarantee of confidentiality, and therefore this ethical question does not arise. It is different for lawyers, who are entitled and obliged to guarantee confidentiality, which can only be breached in truly exceptional circumstances.

3. In the following circumstances what issues are raised about human rights, your professional responsibilities, and confidentiality? How would you suggest they should be resolved? Do not forget to consider the Human Rights Act 1998 and the Data Protection Act 1998 in preparing your response.

These questions are not easy. You would always use for guidance any information-sharing protocols which your department has developed, and look at the recommendations of the department's Caldicott guardian. Useful guidance is available on <https://www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice>

4. The Housing Department of a local authority asks the Social Services Department for any information it has about anti-social behaviour by a particular family.

Even if the request to share information is from a department within the same organization it should only be shared if the information was obtained following an explanation that it would be shared, or if it is lawful to share it, i.e. in accordance with data protection principles, human rights law and common law. Before it could be shared it would have to be in the public interest and be necessary and proportionate. If disclosure is legally justified it should be limited to the amount of information that the other department needs to know. Here you do not know enough about the purpose, but it seems unlikely that it is in the public interest, nor is it likely to be necessary and proportionate.

5. An anonymous caller rings social services because she has seen evidence of physical abuse of a child. The local authority asks the family's health visitor for information.

The health visitor can only share confidential information with the local authority where it is in the public interest to do so. If the child has been injured then it would probably be appropriate to share that information. In such an instance it would be necessary and proportionate. Sharing information simply on the basis of suspicions is likely to be unlawful. Don't forget that the health visitor should only share the information that the local authority needs to know.

6. You, a child care professional, tell the head teacher of a secondary school about your concerns for a particular child. The head teacher tells the child's form teacher.

Whilst you can share confidential information with the person in the school who has responsibility for safeguarding children (probably the head teacher), that information should not go further. You should only be sharing information on a need to know basis with the head teacher. It is arguable that the situation would be different if a parent disclosed confidential information to the head teacher who then discussed it with a teacher. That may be covered by implied consent, i.e. the parent would have understood that information would be shared within the school.

7. You suspect Mr X of sexual abuse of his grandchildren. Mr X has found himself accommodation with a housing association who are housing him in a block of flats which also accommodates families. You want to tell the housing association of your concerns.

If your information is only about suspicions of sexual abuse then you should not share them with the housing association. There is not sufficient public interest to justify infringement of Mr X's privacy. What you need to do is to investigate your concerns properly, and what action you take depends upon the outcome of your investigations.

8. When you were visiting a family you overheard a telephone conversation which indicated that one of the adult children of the family was involved in criminal activities. You want to tell the police but your team leader says that the issue is not serious enough.

You do not need the permission of your team leader. Section 115 of the Crime and Disorder Act 1998 enables any person to disclose information to a relevant authority for any purposes of the Act if they would not otherwise have the power to do so. Relevant authorities include local authorities, NHS bodies and police authorities. The purposes of the Act broadly cover the prevention and reduction of crime and the identification or apprehension of offenders.

9. You have serious concerns about Fred who you suspect of having physically and emotionally abused his two sons aged 12 and 14. You have recorded these concerns on both of the children's files. Fred has asked to see his file. He has signed consents from his sons. What are his rights to do so? What information will he be allowed to see?

An individual is only entitled to see his own files and any information recorded about him on his children's files as long as it was not information provided by the children or any

other person to whom disclosure would cause harm. This is because of an important exception to the Data Protection Act.

Information can be withheld if disclosure would be likely to cause serious harm to the service user or to any other person's physical or mental health. This includes the physical or mental health of a health or social care professional.

10. Why do you think there are specific provisions for information sharing within the Care Act 2014?

This is asking for your opinion – so there is no right or wrong answer. We suggest it could be because there is increasing concern about the need to safeguard vulnerable adults, and effective safeguarding requires sharing of information. It could be that social workers are still nervous about sharing confidential information, and this new duty will give them greater confidence in sharing practices. The briefing note on information under the Care Act 2014 gives some useful tips. See <http://www.hampshiresab.org.uk/wp-content/uploads/Care-Act-Briefing-Note-Information-Sharing.pdf>