



West Hampshire
Clinical Commissioning Group

POLICY STATEMENT ON DATA DEFINITIONS

July 2019

In order to ensure compliance with the new General Data Protection Regulation which came into effect on 25 May 2018 a thorough review and update of the CCG's Information Governance and IT Security Policies, Procedures and Guidance has been undertaken. During the review it was found that there were multiple definitions used to describe personal and sensitive data, with very few policies including business or commercially sensitive data. In order to ensure a consistent use of terminology across the suite of relevant documentation the following definitions and statement were proposed for use:

'Personal Data' as defined by GDPR

'Sensitive Data' to include:

- GDPR "Special Categories" of Personal Data
- Personal Confidential Data (National Data Guardian (NDG) Review)
- Business / Commercially Sensitive Data

The organisation is now clearer as to the terminology to be used in the GDPR and the Data Protection Act 2018, the following amendments are proposed

'Personal Data' as defined by GDPR

'Sensitive Data' to be replaced by **'Special Categories of Personal Data'** as defined by the GDPR

'Commercially Sensitive Data' to be replaced by **'Commercially Confidential Information'**

'Personal Confidential Data' to be retained but the definition enhanced to describe the considerations needed where 'data owed a duty of confidentiality (under the common law)' is involved and where implicit/explicit consent may be applicable.

The rationale behind this is due to the continued use of 'Sensitive' data within the Data Protection Act 2018 but not in relation to the processing of health data. Categories of data previously considered as 'sensitive' are included as 'Special Categories of Personal Data' with the addition of Genetic and Biometric data. It does not however include information that is processed for the purposes of law enforcement or for the intelligence services as it did previously. These are covered in part 3 and part 4 of the Data Protection Act 2018 as these are Member State derogations not derived from the GDPR.

Under Part 3 – Law enforcement processing, Chapter 2, section 35, subsection 8, the Data Protection Act 2018 refers to 'sensitive processing' and not 'sensitive data'.

The categories of data included in what is considered ‘sensitive processing’ are the same as those defined as ‘Special Categories of Personal Data’ but it is the act of processing that is defined as sensitive and not the category of data.

Under Part 4 – Intelligence services processing, Chapter 2, section 86, subsection 7, the Data Protection Act 2018 also refers to ‘sensitive processing’ and not ‘sensitive data’. In addition to those categories already recognised as ‘Special Categories of Personal Data’, it also includes (i) the commission or alleged commission of an offence or (ii) proceedings for an offence, disposal of proceedings or sentence.

Due to the continued use of ‘sensitive’ as a term but used contextually differently under the new legislation, it is proposed to discontinue use of it except in relation to the processing of data for law enforcement and intelligence services purposes. This is likely to be outside of the majority of processing activities undertaken by West Hampshire CCG and other health partners as they do not fulfil the criteria of a ‘competent authority’ as defined in the act.

Definitions to be included in Policies

Personal Data	Any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
‘Special Categories’ of Personal Data	<p>‘Special Categories’ of Personal Data is different from Personal Data and consists of information relating to:</p> <ul style="list-style-type: none"> (a) The racial or ethnic origin of the data subject (b) Their political opinions (c) Their religious beliefs or other beliefs of a similar nature (d) Whether a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1998 (e) Genetic data (f) Biometric data for the purpose of uniquely identifying a natural person

	<p>(g) Their physical or mental health or condition</p> <p>(h) Their sexual life</p>
Personal Confidential Data	<p>Personal and Special Categories of Personal Data owed a duty of confidentiality (under the common law). This term describes personal information about identified or identifiable individuals, which should be kept private or secret. The definition includes dead as well as living people and 'confidential' includes information 'given in confidence' and 'that which is owed a duty of confidence'. The term is used in the Caldicott 2 Review: Information: to share or not to share (published March 2013).</p>
Commercially Confidential Information	<p>Business/Commercial information, including that subject to statutory or regulatory obligations, which may be damaging to the CCG or a commercial partner if improperly accessed or shared. Also as defined in the Freedom of Information Act 2000 and the Environmental Information Regulations.</p>