

22 December 2023

Dear Sir or Madam,

Thank you for your submission of your Data Protection Impact Assessment (DPIA) regarding the Accelerated Access to GP Records ('AAGPR') programme.

It should be noted that this advice is without prejudice to any future intervention by the Commissioner in accordance with his tasks and powers, in line with his [Regulatory Action Policy](#).

The Information Commissioner's role is to ensure that organisations are aware of their obligations, and to provide as much regulatory certainty as possible, enabling any genuine risks to be identified and effectively mitigated.

In the case of a DPIA submission under Article 36(1) of the UK GDPR, the requirement on the Commissioner is to provide advice where they are of the opinion that the intended processing would infringe the data protection legislation, in particular where the controller has insufficiently identified or mitigated the risk.

#### Your DPIA submission

Your DPIA identifies several risks, some of which relate to misfiling of information, inappropriate disclosure, and vulnerable individuals. There is one residual high risk identified, concerning 'risk to resources'.

You have outlined that the risk to resources constitute three associated inherent risks:

1. Difficulty in patients understanding terminology, placing an additional requirement on GP time to explain terms.
2. A requirement on GPs to carefully review each piece of correspondence received from secondary care.
3. Currently, redactions are done when requests for data are made. The associated changes for AAGPR would mean that GPs must now ensure all redactions on all correspondence are done prior to entries being filed, in order to comply with their obligations under Data Protection Act ('DPA') 2018.

In terms of mitigations, the DPIA argues that, due to the direction to implement the AAGPR programme being contractual, you have not been able to identify sufficient safeguards which would not put you in breach of the requirement to provide access, as the only mitigation available to you would be to not enable the function to allow online access.

### Application of Article 36 UK GDPR

We do not find that the conditions for entering into prior consultation have been met by your DPIA submission. As per our statutory duties, the ICO must provide advice where we are of the opinion that the intended processing would infringe the data protection legislation, in particular where the controller has insufficiently identified or mitigated the risk.

It is the ICO's opinion that the high risks identified would constitute operational risks concerning the allocation of resources, rather than data privacy risks which would infringe the data protection legislation. While we appreciate these changes may mean more work for GP surgeries at a time when they are stretched, it is not within the remit of the ICO to advise on risks that are not posed to individuals, based on the nature, type, extent and frequency of the processing involved.

We acknowledge that there are also data protection risks posed by the AAGPR programme and detailed within your DPIA, however, we disagree that you are unable to sufficiently mitigate these without breaching your NHS GP contract. We note that NHSE guidance states that GP practices "still retain full data controllership and can locally disable the functionality of their clinical IT system to prevent the provision of online access to prospective information and/or deny patient access to their prospective GP record – should they deem such action necessary to ensure compliance with the Data Protection Legislation".

As long as GP practices remain in control of deciding which records are made available and retain the ability to prevent a patient record being accessed through the AAGPR system, we consider that they remain able to mitigate any risks to the rights and freedoms of individuals from the rollout of the programme. We are satisfied that the potential data

protection risks have been identified, and that sufficient mitigations are in place which still enable GP practices to meet their contractual requirements.

The easy access to prospective records for individuals supports their right of access, empowers patients to be informed and have more control over their data, and facilitates transparency, fairness and accuracy.

Our focus has always been on ensuring that patients are able to exercise their information rights and that the data protection risks have been effectively identified and mitigated.

Whilst we are satisfied that this has occurred, our ongoing role is to aid data protection compliance. We will continue to monitor the programme and may take further interest should there be developments which would require regulatory intervention by the ICO.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'A. White', written in a cursive style.

Andrew White  
Group Manager