

Archive Sector News Update by Kevin Mulley (National Archives)

GDPR

Our minister has confirmed that GDPR will be implemented in the UK in 2018, regardless of Brexit.

It is still too early to give much detail on the specifically archival aspects of GDPR, as the precise scope of the exemptions for 'archiving in the public interest' and historical research contained in Article 89, as well as other issues like fine levels for public authorities, will be determined by the national derogations permitted to the UK and other EU states. No formal statement has been made to this effect, but I would expect the UK to make maximum use of the scope for national derogations.

It is currently most likely that derogations and related issues will be dealt with by new primary legislation, with DPA being repealed. The Information Commissioner has responded to the DCMS call for views on derogations, with the view that the Article 89 derogation should be broadly drawn to retain the status quo for archival provisions.

TNA, along with other Whitehall departments with research-related remits is liaising with DCMS data protection policy colleagues responsible for implementing the derogations, and the latter are well aware of archival issues. We will be looking carefully at how far the scope of 'archiving in the public interest' extends, as we are mindful that some archival institutions in the voluntary or private sectors, including those holding health-related material, are potentially affected by the scope of this exemption. It will also be necessary for the sector to develop a new Data Protection Code of Practice for archives to take account of the GDPR changes to replace the existing s.51(4) Code and we are taking a preliminary look at what the content of that might be, so that we can take this forward with sector colleagues promptly once there is greater clarity on the derogations that it will relate to.

Our overall view remains that organisations already meeting best practice for DPA should not experience huge problems with GDPR, but it would be sensible to keep an eye on guidance on the ICO website as it emerges, and schedule some time to review policies and procedures to check that they will be compliant with the new Regulation. It would also be sensible to flag the existence of the Art 89 derogations with DP Officers of parent bodies and establish that the implementation process for archives may be slightly different from that of the rest of the organisation, as this will help prevent archives being adversely affected by blanket corporate policies.

We also as usual had a stand at the annual ICO Data Protection Conference, and continue to meet with ICO colleagues on this and other issues: the new Commissioner is of course a former archivist! It is worth drawing attention to the fact that ICO recently took enforcement action against a local history organisation for a leak of personal data of donors to their collections – now would be a good time for smaller organisations in particular to check their DP compliance.

20-Year Rule

We have just been through the first full year of transition to the new Rule for local organisations covered by the Act including coroners, NHS Trusts, Local Boards (in Wales) and CCG's.

We undertook two rounds of regional training for NHS IG and records staff, which reached about half of the 400 or so NHS bodies affected by the change, and I continue to talk to the existing

regional IG groups, including the London IG Forum, which has met three times now at TNA (Laura no doubt can give details). As it would be difficult to sustain that level of regional training activity to cope with high levels of NHS staff turnover, we have just completed development of an online e-learning package, which will be available via a link on our website soon. It is aimed at staff who do not necessarily have full time records duties, and takes about an hour to complete. The Information Governance Alliance (the alliance of Department of Health and the central health bodies for England) has agreed to assist with dissemination of the module We will probably continue to do a couple of face to face training sessions a year, but the e-learning will be the main route to ensure that training is topped up.

We also secured a ministerial instrument giving NHS organisations an exemption to the new 20-Year transfer rule in relation to individual patient and staff records, where this is need to support ongoing staff administration or patient care, otherwise there was the risk that the NHS might run into DPA compliance problems due to interaction between the two Acts. Our advice to NHS organisations is that where possible, patient-identifiable material (where selected for permanent preservation) should remain within the NHS (which continues to have a duty to house it securely until the point of transfer under s.3(1)) until the point where it is more likely than not that patients are deceased. This is to avoid PoDs holding large quantities of sensitive personal data which cannot actually be made available to the public for DP reasons, and to ensure that records remain accessible to the NHS for patient care if needed.

We are undertaking final processing of 2016 accessions data for 20YR monitoring purposes. I do not have final figures at the moment, but it looks like about 130-150 linear metres of NHS material has transferred to PoDs during the past calendar year, of which about half was eligible for New Burdens funding. This is less than the increase in transfers on the courts side, but we are aware from casework that the 20YR process does seem to be slowly unlocking some long outstanding transfers, e.g. at Hull.

We have also run a second round of the survey of transferring organisations. On the NHS front, this has been disappointing, with only a 20% response rate. I suspect that apart from the obvious pressures on the NHS, this has in part been due to the fact that the survey has had to be carried out independently of the annual Information Governance Toolkit process, due to ongoing uncertainties about the direction of the latter, which is likely to be replaced by a process confined to information security rather than wider information matters. While not so useful in terms of a global view of quantities of material potentially affected by 20YR, the comments (which we do not publish) give useful soft data on the state of records management in the NHS, which we will use to identify issues which need follow up with NHS and DH nationally. We are considering expanding the process to collect some very basic information on digital material.

Hosprec

I am meeting with ASD colleagues to discuss how we can update the information in Hosprec, and make it available on our current Discovery platform in a way which surfaces the valuable organisational history data contained in the current database. I have suggested that we look at using the publicly available NHS Organisational Data Service information to bring the latter up to date, and perhaps consider widening scope beyond hospitals, as these are now operational sites rather than distinct organisations.

Coroners

Possibly the opposite of health, but we are working with the Chief Coroners Office to produce updated guidance for coroners on Public Records Act compliance and related issues. Hopefully this will resolve various long-standing niggles on various issues relating to selection, applicable statutory regime etc.