

## The Information Commissioners' response to Healthy Lives, Healthy People: Consultation on the funding and commissioning routes for public health

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner's Office (ICO) welcomes the opportunity to respond to this consultation. In the response we shall focus on issues that have transparency, data protection and privacy implications.

### **General comments**

The new service to be set up, Public Health England should be defined as a Public Authority under the auspices of the FOIA and hence be established as a transparent and open organisation. We also consider that where data controllers will be sharing personal and sensitive personal data for the purposes of public health then clear data sharing agreements should be put in place. These should be reviewed for relevance and adherence on a regular basis. Where personal data is being processed by a data processor on behalf of a data controller there needs to be a contract in place which meets the requirements of the seventh data protection principle.

Otherwise our general comments about these proposals are the same as those we made in response to the White Paper "Healthy Lives, Healthy People: Our strategy for public health in England".

## **Consultation Questions**

Q2 – What mechanisms would best enable local authorities to utilise voluntary and independent sector capacity to support health improvement plans? What can be done to ensure the widest possible range of providers are supported to play a full part in providing health and wellbeing services and minimise barriers to such involvement?

We consider that making as much information available as possible about the proposed health improvement plans would help the voluntary and independent sectors to play a full part in providing health and wellbeing services. This could be done by publishing such information through a local authority's Publication Scheme. All public authorities (which includes local authorities) are mandated to operate such a scheme by section 19 of the FOIA.

## **Specific document comments**

Ch2, p9, para 2.8 – We welcome the commitment that it will be expected that local people will have access to information about commissioning decisions, how public health money has been spent and the outcomes that have been achieved. We think the most effective way to achieve this would be to have such information made available via the relevant organisation's publication scheme.

Ch3, p18, Table A – One of the activities which is intended to be funded through the public health budget is health intelligence and information. We consider that where such monitoring involves individuals' sensitive personal data care must be taken with the use of such information. It would not be acceptable for a lax approach to this issue to result in the publishing of information which could be easily linked to an identifiable individual.

A second point is that where the information is truly anonymised we consider that as much of this type of information as possible should be made available pro-actively.

Ch3, p21, para 3.16 – The proposal for local authorities to take responsibility for commissioning the testing and treatment of sexually transmitted infections, partner notification and the commissioning fully integrated termination of pregnancy services will see these bodies handling large amounts of sensitive personal data. We regard it as vital that such information is handled to the highest standards. We consider that it would be appropriate for this type of information to be handled to the same standard as the NHS

with an obligation to report any security breaches to the Information Commissioner.

One way of establishing the privacy risks that this proposal possibly entails would be for relevant local authorities to carry out a Privacy Impact Assessment. Such an exercise will identify the areas of greatest risk to the protection of personal data and allow work to be undertaken to reduce or eliminate the risk.

Ch3, p24, para 3.25 – With the proposal that Public Health England takes on the responsibility for information and intelligence (including surveillance) for public health we consider it vital for Public Health England to undertake a Privacy Impact Assessment where this proposed responsibility will see the organisation processing large amounts of sensitive personal data. As in our comments about 3.16, such an exercise would identify the risk involved and enable a reduction, or even the elimination, of the risk.

We also consider that where possible as much non-personal information should be made publically available through Public Health England's FOIA publication scheme. This can only help the organisation to fulfil its role to support local authorities in determining which public health outcomes are the most cost-effective and offer the best way to improve health outcomes.

We have no further comments to make in respect of this consultation.

March 2011