

9 December 2010

Ms Ineke Durville  
President  
Irish Association of Social Workers  
114-116 Pearse St  
Dublin 2

Dear Ms Durville,

I refer to your letter dated 29 November in relation to confidentiality of social work files. I have reviewed your letter and enclosures and can offer the following observations.

One of the principles of data protection requires organisations at the time they are collecting personal data to outline the uses which will be made of their information and that it should only be disclosed in ways compatible with the purpose for which it was originally sought. We advise that data controllers should ask themselves whether a data subject would be surprised to learn that a particular use of or disclosure is taking place. A key test of compatibility is whether the data is used in ways consistent with the purpose(s) for which they were obtained.

The consent form which you enclosed appears to seek to deal with the need for sharing relevant data with external agencies in line with the need for the provision of services in a particular case and it is acceptable for a person to be asked to consent to the use of their information for this type of purpose albeit in this case we would not consider it explicit enough as to the organisations that would receive the data to make the consent informed. The consent form does not however provide details as to how the organisation in question processes the data within its own organisation other than to state it does so in compliance with the Data Protection Acts. We would not be able to conclude from the content of this form that all data is kept on computer and is accessible by all staff of the service provider, for instance, if that is indeed the case in practice.

The Data Protection Acts permits the processing of sensitive information i.e. health information, when the processing is necessary for medical purposes and is undertaken by a health professional. However, the Acts also require that such information is kept safe and secure. In the case of health and social work data in particular, one of the minimum standards of security in relation to electronic filing systems would require restricted access by relevant staff to the information based on a "need-to-know" basis in accordance with a defined policy. Relevant staff refers to those involved in the direct treatment/care team of the patient, which the patient should be aware of. This access arrangement should be advised to individuals when their information is being collected as access to the computer system should mirror what is stated in an information leaflet.

In the context of social work files, this could mean that only case-workers assigned to a particular file should be able to access the file. Obviously, in practice from an efficient service-delivery perspective, we would not raise an issue with an access policy which allows for certain designated senior persons to access files for oversight purposes or to reassign files to different case-workers, as required. However, it would not, therefore, be appropriate to seek consent for open access to files as location based access or discipline based access in this context would not, in our view, meet the need to know access principle.

We have previously suggested that a referrals-type module which allows access to be assigned to a user who needs to gain access to a particular file for treatment-related purposes would be an

approach in keeping with data protection requirements in relation to access control. Such an approach where access to patient medical information is assigned to specific persons involved in the immediate care team and assigned to others as required in conjunction with the flow of treatment, on a need-to-know basis would be a model approach from our perspective. If patient information is moving outside of the direct treatment team, explicit, informed consent would be required for each occasion this occurs e.g. research purposes. Where a patient is being referred to a hospital consultant for specialist care, for example, we would assume that a patient is informed of this referral in advance and this would be in line with the flow of care which is addressed in the enclosed consent leaflet.

I hope that this addresses the queries you have raised.

Yours sincerely,

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Gary Davis  
Deputy Commissioner