

Group: **Personal Identity**
Drafted by: Dave Wright
Date prepared: 30/07/04
Date finalised: 06/08/04
Circulation: Group Members

THE EUROPEAN
INFORMATION
SOCIETY GROUP

EURIM



**Report of the meeting of the Personal Identity Group meeting on Data Sharing and Guidance
8th September 2004, 1400-1600, Room 'O', Portcullis House, Westminster**

Chair: John Baker (IPF);
Rapporteur: Dave Wright (EURIM)

NB – This report should be read in association with the draft and revised versions of the status report 'Data Sharing and Matching - the Law in Practice'.

SUMMARY OF MAIN POINTS

1. The purpose of the meeting was:
 - to review the final draft of the Status Report 'Data Sharing and Matching - the Law in Practice';
 - to assess the value of a follow up exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance.
2. It was agreed that the preamble to the paper should be expanded.
3. It was agreed that the name of the Information Commissioner be removed, and that the data protection principles be reproduced in full and in order (page 1, last paragraph).
4. It was agreed that the revised status report include a cross-referenced example from the EURIM status report on Medical Records ('Right Data, Right Place, Right Time – Joined-Up Medical Records').
5. It was agreed that the last section (Actions for EURIM) be retitled 'Proposals for Further Activities'. It was also agreed that the amendments in total are not substantial, and that the edited status report therefore need not be circulated again to the group. The meeting confirmed that the revised paper would meet the necessary criteria regarding quality, accuracy, timeliness and appropriateness.
6. The meeting was presented with a draft process map for data sharing practitioners, drawn up in consultation with the Office of the Information Commissioner. It was agreed that this process map, which is reproduced in Appendix 1 of this report, offers a workable scheme that appears to succeed where many others have failed.
7. It was agreed that the EURIM Personal Identity Group should begin an exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance.

1. Introduction and Objectives

1.1 This meeting was convened with the following aims:

- to review the final draft of the Status Report 'Data Sharing and Matching - the Law in Practice';
- to assess the value of a follow up exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance.

1.2 The Chair informed members present that the status report had been updated and circulated to the membership, and was now presented for final review.

1.3 Personal Identity and data sharing issues are expected to rise in political priority over the year ahead, in order to help achieve the savings targeted by Government and Opposition, to help in the fight against identity theft and fraud and to help ensure better service with more effective safeguards against abuse for consumers and citizens. There is a growing view that the current situation, with fragmented data collection and updating often outsourced, and with sharing forbidden except when it is mandatory under legacy powers, gives the worst of all worlds: duplication, waste, error and confusion without credible protection against fraud or abuse. In the light of this, the group will also consider the value of a follow up exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance.

1.4 The generation of a data-sharing process map for practitioners had presented difficulties to many organisations and individuals, reflecting the severe problems encountered with data sharing at the practitioner level. It had nevertheless been agreed that the process map idea should be pursued, however difficult, as it should be able to help decision-making where circumstances can be predicted. A practical solution is presented in the appendix to the revised report.

1.5 It is intended that the paper be presented as a EURIM status report of current law, with no recommendations other than for a follow-up programme.

2. Review of the staus report 'Data Sharing and Matching: the Law in Practice'

2.1 It was suggested and agreed that the preamble to the paper should be expanded.

2.2 It was suggested and agreed that we remove the name of the Information Commissioner (page 2 paragraph 4), as this would may change in the future, and that the data protection principles be reproduced in full and in order (page 1, last paragraph).

2.3 It was noted that while the examples listed in the 'scenarios' appeared to be exclusively from the public sector, there appeared to be less public concern about data being held by private companies, perhaps because of 'opt-in' or 'opt-out' choices citizens can make. However, information data held because citizens had given consent implied compliance with the data protection principles. It was agreed that the paper should be limited in its scope to public sector data sharing, especially in view of the expected impact of the Gershon efficiency review.

2.4 It was suggested and agreed that the present revised status report should include an example of data sharing of medical records, taken from and cross-referenced with the EURIM status report 'Right Data, Right Place, Right Time – Joined-Up Medical Records'.

2.5 It was agreed that the last section (Actions for EURIM) be retitled 'Proposals for Further Activities'. It was also agreed that the amendments in total are not substantial, and so the edited status report need not be circulated again to the group. The meeting confirmed that the paper as edited would meet the necessary criteria regarding quality, accuracy, timeliness and appropriateness to the target audience, which is primarily parliamentarians. The status report would be despatched digitally and to MPs also as a hard copy. The report should be launched with a press release preferably through Computing and Computer Weekly. The objective is to ensure that the need for coherent data sharing is written into the agendas and manifestoes of the major political parties, so that they can say how they intend to deliver the savings and efficiency targets identified under the Gershon review.

3. Development of a data-sharing process map

3.1 Discussions in earlier EURIM meetings had concluded that problems of sharing information between agencies were not due to the DPA, but to the way in which it was interpreted. However, there is a strong and unfulfilled demand from many organisations for practical guidance on data sharing at the practitioner level. The idea of a process map or flowchart is to break down the decision-making process into a number of steps and action-routes ('flows') based on relevant questions and answers that differed significantly from the DCA flowcharts.

3.2 Certain reactive and proactive processes intrinsic to data sharing from the standpoint of the data controller had been identified, and an attempt made to focus on this aspect of mapping the processes with the aim of determining whether or not it was a feasible approach.

3.3 The answers to a sequence of sector-independent questions in the map led at each level to a series of vertical process flows which provide more detail utilising existing references and providing examples for specific sectors. These 'flows' would allow practitioners to drill down for more detail in sector-specific sources using web links and the interactive capability of a dedicated website – it is yet to be decided who would own and maintain this.

3.4 Close working relations with the Office of the Information Commissioner had been exploited in the development of the proposed process map. A presentation was given with example requests for data, then following the routes through the process map according to the answers given.

3.5 The process map could be expanded through the development of sector-specific vertical flows, including local authorities and health practitioners. Exceptions could be referred to appropriate websites giving specific advice. There was some concern that the wording of the questions in the process map was very precise, and had to be so to avoid ambiguity and wrongful use. However, the map would be extremely useful for those with a working knowledge of the issues, and would also be a helpful resource for others as a reference guide.

3.6 The meeting agreed that the process map flyer showed a workable scheme where many others had failed, and encouraged continuation of the work, with results to be reported in due course.

3.7 It was also remarked that the process map appeared to be designed essentially for data sharing practitioners – those who had to make a decision on whether or not to share data. As such, it may be of value to the Public Sector Benchmarking Service, which specializes in developing practical ways in which step changes in performance can be achieved by learning from others and whose aim is to build up a knowledge bank of good practice. CIPFA would also be interested in trialling the process map, and circulating to members for comment. It was agreed that the current flyer would be added as an appendix to the status report with appropriate caveats (e.g. 'for discussion only') and distributed to EURIM members and selected others for comment. In due course, OIC would be invited to comment further on and endorse the process map.

4. Consideration of an exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance

4.1 In view of the practical difficulties associated with sharing information, this might be the time to consider calling for primary legislation to remove blocks to effective data sharing that could jeopardize implementation of the Gershon efficiency review.

4.2 The Home Office had indicated that it may be time to take another look at how RIPA was working, not just in relation to communications data, but in the broader application of powers to sequester data, and the governance of statutory (involuntary) data sharing. The current confusion with electoral registers and the ability of citizens to register just once for Government services were also aspects of the problem.

4.3 Primary legislation is necessary because of the situation in the public sector where data sharing is either compulsory or forbidden, under various powers, regardless of the question of consent. An individual cannot give consent for departments to share their information. However, where departments and/or functions have merged, a civil servant may have combined powers but is prohibited from sharing information under the regulations! The Kable survey of civil service responses

showed that the greatest obstacles to the implementation of the Gershon report were legal inhibitors to data sharing, marginally ahead of financial and organisational obstacles.

4.4 It was suggested that data sharing capabilities might enhance the attraction of ID cards in the eyes of citizens, through the addition of an entitlement facility. This would also open up governance opportunities as it would be applicable across all public sector databases.

4.5 There was some concern about where the primary legislation would be initiated - a major cause of confusion is the multiplicity of databases. DCA was the lead department for data protection and information sharing across Government, and was responsible for overriding much of the legacy legislation. However, a barrier to removing existing powers is the fear of chaos if the fall-back legislation is removed.

4.6 The call for primary legislation should be a high-level exercise for EURIM. Standards of governance should apply to Government, its partners and contractors.

4.7 It was agreed that the EURIM Personal Identity Group should begin an exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance. The group should await political feedback following the party conferences, and be aware of the agenda of Ian Watmore as the new Head of e-Government.

5. Actions agreed

5.1 The meeting agreed the following actions:

- to approve the status report with minor amendments as discussed above;
- to add to the status report an appendix of the draft process map for data sharing;
- to plan an exercise calling for primary legislation to enable consent driven data sharing under democratically accountable governance.

5.2 The date of the next meeting is planned for the morning of 26 October 2004.

Appendix 1

Data Sharing Process Map

Background - at a previous EURIM meeting, the issues regarding the sharing of data in relation to Soham and the Gas episodes prompted the attendees to discuss whether the Data Protection Act itself was exacerbating the problems. The conclusion was that the Act itself was not the problem but it was the interpretation of the Act and its subsequent application to real life circumstances. It was considered that this is caused by ignorance, anxiousness or using the Act as a reason not to do something or not to make a decision.

It was therefore considered a worthwhile exercise to firstly look at the advice available to individuals working with the Act and secondly, if it proved that there was too much / too little advice, to produce a process flow that led the individual through the appropriate steps and considerations they would have to undertake. The level of advice available transpired to be overwhelming.

At this point, when it was decided to create the process flow, it was not clear whether it would be feasible.

Data Sharing Process Flow - the model below is an initial draft and is intended to demonstrate that it is feasible to create the process flow. This is not the finished article.

The term Data Sharing is used widely in the context of the 'moving' of personal data between organisations. There are many facets of data sharing and include: -

- Reactive data sharing
- Proactive data sharing – individual subject
- Proactive data sharing – en masse

Reactive data sharing is where an individual / organisation acting as a data controller is requested by another organisation to provide personal data relating to a specific subject.

Proactive data sharing – individual subject – is where an organisation acting as the data controller decides to provide personal data relating to a specific subject to another organisation for a specific reason.

Proactive data sharing – en masse – is where an organisation provides to another organisation a regular feed of personal data relating to a number of subjects.

The model below attempts to only reflect one of the vertical process flows i.e. the reactive data sharing flow. It is intended to identify and create the other relevant vertical process flows. There are also further process flows indicated by the boxes annotated A, B, C & D. These will need to be completed. There will be additional links to relevant parts of the Data Protection Act, to further relevant information and details of exceptions. Where appropriate (in particular the exceptions), the additional detail will be organised by industry sector e.g. health, in order to allow the individual to focus on the most relevant information.

Ideally the complete process model should be made available as an interactive tool with URLs to create the appropriate links and 'pdfs' to access the appropriate documents, extracts of the DPA and details of real life exceptions.

The views of the Information Commissioners Office will be sought in due course.

It has been suggested that the Data Sharing Benchmark Service could provide an appropriate testing ground and that CIPFA could host an interactive web site to support the process flows.

