

STATES OF JERSEY

Corporate Services Data Protection Review Sub-Panel

FRIDAY, 19th FEBRUARY 2010

Panel:

Deputy T.A. Vallois of St. Saviour (Chairman)
Senator S.C. Ferguson
Deputy D.J. De Sousa of St. Helier
Mrs. H. Ruelle (Panel Adviser)

Witnesses:

Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services)
Ms. M. Cabot (Information Governance Manager, Health and Social Services)

In attendance:

Ms. K. Boydens (Scrutiny Officer)

[10:34]

Deputy T.A. Vallois of St. Saviour (Chairman):

Good morning and welcome to the Corporate Services Scrutiny Panel for Data Protection. First of all, I would like to ask if you could just provide your names and your titles and then we will do the same in return.

The Minister for Health and Social Services:

I am Deputy Anne Pryke, Deputy of Trinity and Minister for Health and Social Services.

Information Governance Manager, Health and Social Services:

I am Michelle Cameron, Information Governance Manager for Health and Social Services.

Senator S.C. Ferguson:

Senator Sarah Ferguson.

Deputy T.A. Vallois:

Deputy Tracey Vallois of St. Saviour, Chairman of the panel.

Mrs. H. Ruelle (Panel Adviser):

Helen Ruelle, Mourant du Feu & Jeune.

Deputy D.J. De Sousa of St. Helier:

Deputy Debbie De Sousa.

Ms. K. Boydens (Scrutiny Officer):
Kellie Boydens, Scrutiny Officer.

Deputy T.A. Vallois:

Thank you for coming to the panel today. We are basically reviewing the amendments being proposed for data protection and have asked you specifically to come along mainly in relation to the fact of the charges that are being proposed but also we would like to have your views on the other amendments as well, just to see how you feel about them and how you think they will affect your everyday working practices. So I will just start off and ask you exactly what your views are on the proposed amendments to the Data Protection (Jersey) Law.

The Minister for Health and Social Services:

Thank you. It has been very interesting doing a bit of background research because data protection I think we just live with it and it just happens, so this has been quite a useful bit of research and I must say Michelle, who as you know is our Information Governance Manager, is very on the ball and very professional. From my point of view, it is something that we support and, as you know, within Health and Social Services we deal a lot with private information, patient and client information, so that is why this law is extremely important. As I said, we just live with it but it is when you stop and think about how it came to be and the repercussions if we do not do it and how you can have policy and procedures in place to make sure that we do do it. I would like to say that all the staff sign confidentiality clauses anyhow about data protection, and the releasing of information or not releasing of information is something that is across all of Health and Social Services and I see that as very important. Also from the point too of within each professional body that we are bound by confidentiality and I would like to think that is part of living and breathing, that confidentiality is high on that list.

Deputy T.A. Vallois:

It is interesting that you brought up the confidentiality clauses in your contracts. For example, as part of amendment 1 it mentions about being able to serve a notice on any other person. This affects individuals more than it would affect a business as such. However, say one of your staff has released information and they have left Health and Social Services and you as data controller are served a notice, you need to identify obviously where that breach has come from. How would you go about that? Would you interact with that individual that has now left? How would that be dealt with?

Information Governance Manager, Health and Social Services:

Generally whenever the Data Protection Office would serve an information notice - and they have only served, I believe, one on us in the time of the law - it would be directed to myself or the Chief Executive who would pass it to myself. Generally we would be able to supply the information, hopefully from all our policies and procedures and all the information, and all of our departments are very open and willing to provide me with any assistance I need to be able to answer any of those information notices. If there was someone who had left the organisation I would generally probably liaise with the Data Protection Office to see to what extent they would want me to go and discuss that with those people but if it was necessary then, yes, we would go and ask them information but on those situations then we would run

into difficulty because whereas our staff are required to give us information, because of their contractual status, those former staff members would not be under any obligation to provide us with the information to assist the Information Commissioner. So, therefore, that part of the law we do fully support in the Information Commissioner then being able to serve those notices on individuals.

Deputy T.A. Vallois:

So the actual confidentiality section of the contract does not extend beyond termination?

Information Governance Manager, Health and Social Services:

Yes, it extends beyond termination of contract in any information they have become aware of during the course of their employment remains confidential and cannot be disclosed for ever but within those confidentiality clauses and within the law, under obligation of the law you can disclose information. So the Information Commissioner would be working under an enactment of law so that would still maintain confidentiality as such because it would still be under the law.

Mrs. H. Ruelle:

Could I just ask you, have you had any particular circumstances where you have wanted to approach an ex-employee for information? I appreciate that that could cause difficulties. Have you experienced that directly?

Information Governance Manager, Health and Social Services:

Not directly, no.

Senator S.C. Ferguson:

You have only had one requirement by the Data Protection Commissioner?

Information Governance Manager, Health and Social Services:

As an official information notice, yes.

Senator S.C. Ferguson:

I am not asking for the details, just the general what had happened?

Information Governance Manager, Health and Social Services:

It was relating to a very complex subject access request that had not been fulfilled completely and in it the Data Protection Commissioner wanted to know all the details and the process about how we had gone about completing that specific subject access request and also any policies and procedures we had around it. So it did not require us going to any external organisation; it could all be done with the H.R. (human resources) department and myself to provide that information.

Senator S.C. Ferguson:

Was all the information supplied?

Information Governance Manager, Health and Social Services:

Yes.

Deputy T.A. Vallois:

Just on amendment 1 to ask whether there are any concerns about the culpability of the actual amendment?

Information Governance Manager, Health and Social Services:

No, no concerns at all. In general we support the amendment. We can see it as being of use to the Data Protection Commissioner.

Deputy T.A. Vallois:

The next amendment that we felt may have been a requirement for yourselves was for the power of seizure to include the equipment found on premises. Do you envisage any problems as a result of this amendment?

Information Governance Manager, Health and Social Services:

I can fully see the need for this amendment because, as more and more information is held on computers, just seizing documents is rarely sufficient to provide all the information needed. I probably cannot tell you all the details about this but we assisted the Data Protection Commissioner recently in a warrant to obtain information and that information has now been passed to the department for safekeeping. In that warrant they are only allowed to seize the documentation relating to health records that are now in our possession. What is needed was the computer systems as well and it is a convoluted process to now obtain those records which are part of the benefit of what we needed to achieve. So I fully see why it is necessary to take documentation and equipment. Regarding any problems I can foresee, if they were not accompanied by the safeguards that are in that amendment there would potentially be problems for businesses that are totally reliant on their equipment systems. Using the hospital as an example, all our patient administration system is run off a computer system. If the Data Protection Office were to come in to seize under a warrant or whatever to take all that equipment away we would not effectively be able to manage the hospital, but realistically with the safeguards built into that law and any reasonable data controller we would have supplied the information required to the Data Protection Commissioner at a much earlier stage in a much more amenable manner. My experience of working with the Data Protection Office is they have been very reasonable in meeting demands on both sides of an organisation. So I cannot foresee it practically becoming a problem but I do in the broader sense foresee that as a potential ... if I am looking for problems that may cause that potentially would be a problem but, like I said, in reality I cannot see it becoming an issue.

Deputy T.A. Vallois:

At the moment with regard to obtaining information from computerised data they are unable to get that from yourselves, or there is a way but it is just very complex?

Information Governance Manager, Health and Social Services:

This would be if they had a power of seizure, a warrant, to go and get the information. The law only says they can seize documentation rather than information. The information notices they would serve on us they ask for data, so whether that data is on computer systems or on paper I supply it, but a warrant is the next stage when someone is being obtrusive really and then the law as it stands does not currently give them the ability to get all the information they may require. Again, I cannot see any major problems with it as it is worded with the safeguards in it as well.

Deputy T.A. Vallois:

I will just move on to amendment 5 which was basically the one we wanted you in to discuss. They are looking to increase the maximum fee chargeable for subject access requests to £50. Just out of curiosity, is there are large amount of subject access requests made each year to Health and Social Services?

[10:45]

Information Governance Manager, Health and Social Services:

Yes. I looked up the figures for 2009 and this is from our figures: 399 requests in total were made to Health and Social Services. I could split those down into 3 areas as well out of interest: 212 of those related to third party litigation. So, for example, people requesting records relating to road traffic accidents, so nothing related to Health and Social Services' obligations to provide them for those purposes. Sixty-five were from individuals considering or taking legal action against the Health and Social Services Department. Many of those are in the early stage when people have suggested they may want to take legal action and we provide the records and then those cases are dropped on the records. But for whatever reason there are 65 connected with people potentially taking action against Health and Social Services, and 122 requests were received directly from patients or clients themselves. That could be for a number of reasons. Some of those are people are moving out of the Island and we offer people 2 opportunities to get their records for that purpose: once they have left the Island their new medical professionals can write to us and we will send the relevant information or, under the law of course, people are entitled to a copy of their own records and some people choose to take their entire records with them. So they fall into that category. They do fall into people who are just interested and want mementoes of their records. For example, we do get some people who want maternity records which are, I have to say, very large, just for mementoes for their child as they grow up, and we do get records for people who are unhappy with the service they have received and are making a complaint or potentially considering litigation again but are requesting records themselves rather than through any other body. So that is 122. They are sometimes more difficult ones because they involve liaison with the patient or client themselves. So, 399 in total.

Deputy D.J. De Sousa:

In terms of retrieving this information for individuals or third party litigation, how much time and how many staff are used up in the retrieving of this information that would justify a £50 charge?

Information Governance Manager, Health and Social Services:

I will answer the staff and then I will give you some of the reasons why it is so difficult for us to do this as well. Regarding staff, we employ a grade 5 staff member for 20 hours a week purely to do the third party litigation requests and she does support our legal administration officer in the 65 other requests. I manage the 122 requests and I do have an admin assistant, but she is only on a year's contract, who copies all those records and sends out all the administration letters and vice versa around those letters for me. I could not give you accurate figures of how much of her time is spent on that, but 20 hours a week at least plus, I would guess, 10 hours a week of my admin assistant as well, and that is not involving the more senior time of my and my legal administration officer's time dealing with the more complex

elements. That is purely the simplistic copying, sending out standard letters relating to those. To give you some more information about why it takes us so long. Firstly, our records are pretty large. I have only got figures relating to third party litigation claims because we have got a very nice database set up for that. Sixty per cent, roughly, of the records are about 200 pages large. Then 11 per cent are between 200 and 300 pages in size and then they move up, so the rest of them are over about 500 pages in size. Some of them, for example our largest request was 1,626 pages; our next largest was 1,280; the next largest was 930 pages. So some of these records are pretty substantial. They are not also easy to copy in that medical records are not just a nice folder that is created that you can slip through a photocopier. They do have sheets that are A2-sized sheets sometimes for the C.C.U. (Coronary Care Unit) charts, they have sheets that are 3 pages of A4 all joined together that are folded together. They have got to be somehow separated and copied. The blood test, for example, is one page with 10 blood tests all stuck on it. They have got to get taken off to go through and be copied, to be reproduced. So the actual process of copying them is also very time consuming and difficult. Also our records are not all held in one location because of the size of our department. The mental health department hold their records in their area; the hospital will hold their records; social services will hold their records; then, depending on other areas, depending on business need really, they will hold records. So physiotherapy will hold their own records, occupational therapy will hold their records. So all those records have to be collated all together first before they can all then be copied and disseminated. They are at the moment all primarily paper records as well. Ten years in the future we will hopefully have an electronic system where we can press a button and we can produce someone a record but that it is not the situation and will not be for a good while yet. The other requirement is a part of the law that is unique to Health and Social Services records is we can withhold records if they are going to cause serious harm to the physical and mental health of an individual or serious harm to social work being carried out. That is not something that could be decided by a lay person so in those situations, whenever we have got a record that is being directly released to a patient, we have to write to the relevant consultant or relevant professional, ask them to review the notes to check that there is nothing in there that is going to cause serious harm before we can release those records. So that takes up a very senior member's time to look for those records and make that assessment. With some of the records that could be quite a difficult decision to make, especially when it comes to the mental health records and social services records. Also the law requires third party information to be considered before it is released and consent to be obtained where appropriate, et cetera. Not so much with the hospital records but with the mental health and social services records by their nature there is quite a significant amount of third party information contained within those records and that decision process needs to be taken and that could be quite a difficult and time consuming process to undertake as well. So those are just some of the aspects why we have difficulties complying with these requests easily, and it is costly to our department and we would like to be able to recoup at least some of that cost.

Deputy D.J. De Sousa:

How did you arrive at £50? Is that sufficient, bearing in mind what you have revealed to us?

Information Governance Manager, Health and Social Services:

No, not really.

Mrs. H. Ruelle:

There seems to be not a lot of difference between £10 and £50, just describing the process you have outlined.

The Minister for Health and Social Services:

As I said at the beginning, just not knowing that much about it and having the information and seeing the size of records and the amount of records, especially the third party litigation which we do not get involved in, it is other requests, of how much time is taken because of all the steps that Michelle has spoken about, and finding that we have been charging ... well, the law says £10 and to be up to £50, it is still not meeting the costs, especially of third party. The other 2 we can argue about but when you are looking at third party litigation, which Health just provides the information and that is it, £50 is not enough.

Information Governance Manager, Health and Social Services:

Where the £50 comes from is the £50 we were originally unable to charge until the transitional period of the law ended very recently and that figure matched the U.K. (United Kingdom) figure from the 1998 law. Come the transitional period, that figure went down to £10. So at that point I wrote to the Data Protection Commissioner and said we are going to have difficulty complying with these requests. We can still comply with them but it is going to have a knock-on effect to everything else we are able to do and I asked if she would consider at least putting it back up to £50 or enabling us to charge a cost. The amendment she decided to put forward was the £50, which we are very pleased that she has agreed with us to at least make part of the amendment. The £50 does match the figure that is still charged in the U.K. I can understand the logic that you do not want to make it too expensive because it becomes prohibitive for people to gain their information, which is not the point of the law, but if it will help I have some figures here. Pre the Data Protection Law we had a sort of understanding with the Law Society regarding charges for records supplied. Again, I have these only for medical legal requests and this was around the year 2000 we had this agreement, so these figures are 10 years out of date. You can imagine we would need to put some inflation and everything into this and our records have got bigger in 10 years as well as we are better at recording information about patients. We used to charge a £10 administration fee and then a 20 pence per sheet copy, and for requests over the years from 2005 to 2009 if we had used that figure we would have generated income of around £7,928 to £10,065. Again, you can see that is not covering our costs. If you consider we are employing an admin person, a grade 5 for 20 hours a week, that is nowhere covering our costs of even doing that. As the law stands, at £10 we would have generated income of around £2,012, which is even less covering our costs of the admin person. If the law was to allow us to charge up to £50 we would be able to generate around £10,600, so we would be roughly matching our figure from 10 years ago but we would argue we would really like to be able to charge a reasonable figure. Again, what we used to do, we would charge the £10 and then 20 pence which seemed to work well both ways because if people only had smaller records they got charged a lesser fee, if they had larger records they got charged a greater fee, and it was an encouragement for the third party litigation for people only to request what they required. It is commonplace, and this is their right, that if someone has an accident and breaks their leg in a car accident or whatever, we would like to supply

the records from that point onwards because we would argue that is what is relevant to that case rather than the entire records, which people will often request, and that is an awful lot of extra work then for, my view would be, much less benefit. The charging on a sort of incremental rate was an encouragement to do that whereas there is no encouragement really. If the fee is so low for our department to recoup the maximum we would be charging the £50 or we would consider charging the £50 for all of the claims, which does not seem to meet the fairness we were trying to achieve in the original costing. So, in summary, the £50 would go significantly to achieving our aims but would not enable us to cover our costs.

Mrs. H. Ruelle:

Could I ask 2 questions, please? My understanding is obviously that in relation to any charges it is up to, is it not?

Information Governance Manager, Health and Social Services:

Yes, it is.

Mrs. H. Ruelle:

Do you generally charge the fixed £50 or would you exercise some discretion in deciding?

Information Governance Manager, Health and Social Services:

We would generally exercise discretion. There are a number of cases when I would not charge anything, for example for people who want records of deceased family members (I know they are not officially coming under the Data Protection Law because they are deceased) or when there is a very sensitive case then we would not generally charge any fee at all and if they just want A. and E. (accident and emergency) records, just maternity records or something, one particular period in their time, we would charge a lesser fee than if they wanted their entire records, and it would also depend on the size of the records. I would not generally charge someone the entire £50 if they have only got a very small record.

The Minister for Health and Social Services:

Figures that we are talking about here is about third party litigation. It was not about the other areas.

Mrs. H. Ruelle:

Yes. Just one other thing, my understanding in the U.K. - and it may be that I am not understanding it correctly - is that they do have a 2-tier system where they would charge in relation to health records only up to £10 for certain records and then up to £50 for others. Is that your understanding as well?

Information Governance Manager, Health and Social Services:

It is common practice in hospitals to charge a smaller amount if they only want limited records, yes.

Mrs. H. Ruelle:

But that is done on a discretionary basis rather than any sort of legal footing for that?

Information Governance Manager, Health and Social Services:

My understanding of the U.K. law is it allows up to a matter of £50 and then hospitals or health services exercise discretion on how they apply that.

Deputy T.A. Vallois:

You were talking about the cost recovery, so how much it costs the department to do this work. I do not think I heard how much it actually costs. We heard figures for how much income could be generated in 2005 to 2009 but I do not think I heard how much it costs the department to provide all this information.

Information Governance Manager, Health and Social Services:

I am afraid I do not have any accurate figures on exactly how much. We employ a grade 5 at 20 hours a week and then estimate we use another 10 hours of grade 5 work, but I do not have any accurate figures of how much consultant time is spent checking through these records or figures of how much of my time is spent checking third party information. So I am afraid I do not have that sort of figure for you.

Deputy T.A. Vallois:

That is fine. I just thought I had missed it.

[11:00]

Deputy D.J. De Sousa:

Bearing that in mind, would the department not look at trying to collate roughly how much it does cost the department? It must be quite a large amount of the health budget.

Information Governance Manager, Health and Social Services:

Yes, we need to do that.

The Minister for Health and Social Services:

As I said to you, I have done a very useful exercise because I did have a bit of shock thinking of how much it does and I think that is why, as Michelle said, the information we have here is on third party litigation. The other 2 areas with people taking legal action or requesting information, that is fine, we can carry on at the same pace, but where people are just requesting information on a road traffic accident or something and we have no input after that or whatever, at least it should be nearly cost recovery.

Deputy D.J. De Sousa:

Do you feel that you have sufficient resources within the department to cope with it?

Information Governance Manager, Health and Social Services:

We have resources. We struggle to meet the requirements of the law with those resources. For example, my admin assistant is only on a year's contract. Once she goes I will struggle significantly to meet those requirements, and we all have a lot of work and this does divert us away from being able to do more proactive work to make changes for the better.

Deputy D.J. De Sousa:

So would you say that is a no?

Information Governance Manager, Health and Social Services:

It is a no, yes.

Senator S.C. Ferguson:

But you have got this new patient record system coming online in tranches, starting fairly quickly I understood.

Information Governance Manager, Health and Social Services:

We do. It starts in October. Hopefully we go live with the first phase of it in October. The first phase is really only the patient administration system. Phase 2 is when we start writing patient notes on the computer as such, and my view from experience would be ... well, the paper notes are not going to be transferred to a computer system, the existing ones. We have 160,000 roughly; it would just be absolutely a mammoth task to try to scan all of those on to a computer as it is, so they will be remain in paper so people will still be able to request that part. In my view, 5 years it would be until really people's records are fully held on computer at the minimum. So that is not a solution to our problem in the meantime.

Deputy T.A. Vallois:

Going forward, all the records that you hold will they be going on to the system or will only some of what is held on paper go on to the system?

Information Governance Manager, Health and Social Services:

In the future, hopefully we will become completely paperless, as much as anyone does become paperless. You can hear the slight laugh in my voice. Yes, as much as anyone does become completely paperless. For example, we would scan letters in and stuff. We do not want to really be holding paper files in conjunction with electronic files. But I cannot envisage and it would not be my view that we would take the steps to convert all our current paper files into computer files. We would just stop writing paper files and start writing electronic files. The benefit is not there to us to do that because scanned documents are not necessarily as easy to look at as the paper files.

Deputy T.A. Vallois:

Thank you. Has anyone got any other questions?

Mrs. H. Ruelle:

I have just got one more. You touched upon the complexity of the notes and things that you have to copy, and I can completely understand that. I am just thinking about are there other areas? You have focused very much on patient notes. Are there other things that you are required to supply under a data subject access request? Are you looking at telephone calls, are they recorded, or is it very much focused on notes?

Information Governance Manager, Health and Social Services:

We are very much focused on patient and client notes. We do not record telephone conversations. We do not do that. H.R. records are our other major one but that affects every single organisation and that would not be covered in the £50.

Deputy T.A. Vallois:

Is there anything else that you would like to add with regard to the amendments that are being proposed?

The Minister for Health and Social Services:

No, I do not think so. I support what is there and I think my Assistant Minister and I will be looking at the charges.

Deputy T.A. Vallois:

Thank you very much for your time. It is very much appreciated.

[11:04]