



THE SCOTTISH OFFICE

**National Health Service in Scotland
Management Executive**

**NHS:
MEL(1994)100**

St. Andrew's House
Edinburgh EH1 3DG

Dear Colleague

**PROTECTING THE CONFIDENTIALITY OF
PERSONAL HEALTH INFORMATION CONTAINED IN
SERVICES BEING CONTRACTED OUT OR MARKET
TESTED**

Summary

1. This letter sets out guidance on the principles of confidentiality which should be adhered to when awarding contracts to any outside body, for facilities management or service provision, which would handle or have access to personal health information as a result of that contract.

Action

2. Recipients are asked to ensure that all appropriate staff are aware of and follow the guidance attached and that it is drawn to the attention of those responsible for market testing.

3. The guidance should also be brought to the attention of those preparing tender specifications for services which may involve the handling of or access to personal health information so that prospective tenderers can be made aware of their responsibilities and duties with regard to maintaining the confidentiality of that information.

Background

4. The need to maintain confidentiality is of prime importance within the NHS. It is therefore important that where services, which involve access to or the handling of personal health information, are contracted to outside bodies the contractors concerned are made aware of their duties and obligations to maintain confidentiality.

5. Annex A sets out the key confidentiality principles that contractors or prospective contractors should be made aware of. These key principles impose the same obligations on contractors and their staff, agents and

26 October 1994

Addressees:

For action:
General Managers,
Health Boards

General Manager,
State Hospital

Chief Executives, NHS
Trusts

General Manager,
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For Information:

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COMMON SERVICES AGENCY	
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representatives as apply to the NHS under the "Code of Practice on Confidentiality of Personal Health Information" and the existing related guidance.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'C B Knox', with a long, sweeping flourish extending to the right.

C B KNOX
Head of Computing and IT Strategy

ANNEX A

PROTECTING THE CONFIDENTIALITY OF PERSONAL HEALTH INFORMATION CONTAINED IN SERVICES BEING CONTRACTED OUT OR MARKET TESTED-CONFIDENTIALITY PRINCIPLES

Introduction

The principles of confidentiality applied in the NHS in Scotland are set out in a code of practice: "Confidentiality of Personal Health Information, Code of Practice", issued by the Scottish Office Home and Health Department with NHS Circular 1990 (GEN)22. The Code governs the handling of personal information by everyone working within the NHS or contracted to work on behalf of the NHS. All contractors should therefore be made aware of the provisions of this Code and of the principles set out in the "Guidance for Handling of Confidential Personal Health Information in the Contracting Environment", attached to MEL(1992)42.

The Key Principles

1. Contractors must at all times adhere to the above-named Code of Practice and Guidance and to other relevant extant guidance on confidentiality issued by the Management Executive of the NHS in Scotland.
2. Personal health information is all information about the health and welfare of a patient and includes such matters as personal, family or social circumstances. It is imperative, whether such information is held manually or on a computer, that the information is stored securely to prevent any unauthorised access to that information. Every contractor must have a security policy for ensuring the safe storage of information and the prevention of unauthorised access or disclosure which should parallel and complement the security policies of the Board or Trust. Appropriate steps should also be taken by the Board or Trust to ensure that the contractor's policy is properly implemented.
3. Personal health information must be kept confidential and should only be disclosed to those providing that patient with health care or directly concerned with the social welfare and after care of that patient and who would be unable to provide effective treatment and care without that information: the "need to know" principle. Contractors must not disclose in whole or in part or use personal information other than for the sole purpose of providing the services or facilities management in accordance with the terms of the contract.
4. Contractors should ensure that all employees, with access to, or who handle, personal information sign a statement in which they undertake to keep all personal health information confidential. Contractors must inform their employees, in writing, of the importance of the confidentiality of personal health information; of the principles of protecting confidentiality; and that any breach of confidentiality is a serious disciplinary matter. Employees, agents and representatives of the contractors must give written acknowledgement of this.
5. The contractors must keep a record concerning the storage and handling of personal health information. This should include the name of

ANNEX A (Cont)

those employees who have access, the date they signed a confidentiality undertaking and any changes to those personnel as well as details of checks on the handling of this information. This record must be available at all times for inspection and be sent to the Chief Administrative Medical Officer (CAMO) or Medical Director, as appropriate, for security.

6. The contractor should be obliged to provide prompt written notification of any breaches of confidentiality by any of the contractor's employees, agents or representatives and to give all reasonable assistance in connection with any legal or other proceedings which the Board or Trust or any other person may bring against the contractor's employees, or any other person, for breach of confidence. This notification should be to the relevant CAMO or Medical Director, as appropriate, or nominated deputy.

7. Contractors should be required to provide prompt written notification of any unauthorised access or attempted access to the Board's or Trust's programs or data and should be required, at the Board's or Trust's request to change forthwith the security passwords.

8. The CAMO or Medical Director, as appropriate, or nominated deputy, has responsibility for confidentiality, security and access to personal health information in the Health Board area or Trust, respectively. Contractors must seek and obtain their written advice on any matters arising on any aspects of confidentiality or the handling of such information. Contractors must inform the nominated officer of the Board or Trust of any problems and should have agreed monitoring arrangements with the Board or Trust.

9. The requirement to maintain confidentiality should remain in full force and effect even although the contract may have ended or been terminated by either party to the contract.