

DATA PROTECTION AND THE GDPR: TOP TIPS FOR MANAGING EMAIL LISTS

SUMMARY

- Personal work email addresses (e.g. Jane.Smith@StElsewhere.nhs.uk) are personal data.
- Decide whether your list is one that people consent to be on, or are added to because they fulfil certain criteria.
- Make sure that you have GDPR-compliant consent for consent-based lists, and that you have a record of each person's consent.
- *Do not ask for consent* for email lists that people are added to automatically (e.g. based on job role), because people do not have a genuine choice.
- Inform members of both types of lists of what information you hold, and what their rights are.

BACKGROUND

Medicines Information Centres often keep email lists to send out information to groups of people for various purposes. For example:

- Lists of all Medicines Information pharmacists in a Region, to allow the Regional MI Service to communicate with all MI pharmacists in their region.
- Lists of persons interested in a particular topic (e.g. porphyria).

The General Data Protection Regulation (GDPR) gives people the right to know who holds their personal data, and why. Depending on the reason the data controller is processing the data (the 'Ground' in GDPR terms), the data subject may have additional rights.

It is therefore important that Medicines Information Centres know how to manage email lists so that they comply with the GDPR.

ARE WORK EMAIL ADDRESSES PERSONAL DATA?

Work email addresses such as Jane.Smith@StElsewhere.nhs.uk are personal data as they identify both the person's name (Jane Smith) and place of work (St Elsewhere Hospital). However, a generic departmental email address such as medinfo@StElsewhere.nhs.uk is not personal data unless it is linked with an individual (rather than a department).

GROUNDS FOR PROCESSING PERSONAL DATA FOR EMAIL LISTS

The ground for processing personal data for email lists will depend on the purpose of the list. Lists controlled by NHS Medicines Information Centres can be divided into two basic groups:

- **Personal.** These are lists that a person can elect to join because the list provides something of value to them. The list may be open to everyone who is interested, or may only be open to a restricted group of people who fulfil certain criteria (e.g. MI pharmacists). The key is that a person decides for themselves whether or not they want to be a member of the list. The GDPR Ground is therefore: *Article (6)(1)(a) Consent.*
- **Job role.** These are lists to which a person is added because they fulfil certain criteria, e.g. MI pharmacists. They do not choose to be on the list; they are on it because their job means that they need the information provided via the list, and it is part of the MI service's role to provide that information. The GDPR ground is therefore likely to be (for NHS MI Centres) *6(1)(e) '...for the performance of a task carried out in the public interest or in the exercise of official authority...'*

Note: Public authorities (such as the NHS) cannot use GDPR Ground *6(1)(f) '...legitimate interests...except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject...'* for data processing as part of their core role. However, they may be able to use it for ancillary functions. For NHS Trusts, this might include car parking databases. If an MI Centre is doing work providing non-NHS services, this Ground might apply.

GDPR OBLIGATIONS

Email Lists Operating Under Article (6)(1)(a): Consent

Putting People on the List

Consent to be on the list must be:

- **Given by a statement or clear affirmative action (not an opt-out).** A double opt-in system, or any system where the person has to take an action themselves in order to be put on the list will work.
- **Freely given, specific, informed, and unambiguous.**
 - In order to be freely given, a person must have a genuine choice about whether or not to consent to be added to the list. If not being on the list has significant adverse consequences, then reconsider whether this is a list operating under consent or whether using a different Ground would be more appropriate.
 - In order to be specific, the consent must apply to one thing. For instance, if you have two lists, you will need separate consent for each.
 - In order to be informed, the person must know what the list is for, what they can expect, who will be processing their data, and what that data will be used for *before* they sign up for the list.
 - In order to be unambiguous, consent must be given by an affirmative action, e.g. ticking a box or sending an email, or deliberately inputting data.

Further Considerations

- It must be easy for the person to withdraw consent.
- The organisation must be able to demonstrate that consent satisfying the GDPR has been obtained.
- The person has the right to erasure (if consent is withdrawn and there is no overriding legitimate ground for continuing to process the data).
- The person has the right to data portability.

Existing Lists

If your current arrangements for obtaining consent **do not** satisfy GDPR requirements, it would be wise to contact every member of the list to inform them that you are holding their data, and ask them to opt in if they wish to continue to be a member of the list.

If your existing arrangements do satisfy GDPR requirements, you do not need to repeat them.

Potential text for requesting consent from people on an email list to continue processing their data:

The [Medicines Information Service] operates an email list for [people] interested in [topic]. We send out [X] emails per [time period] containing information on [subject matter].

The General Data Protection Regulation (GDPR) will come into effect on 25th May this year; this makes changes to how people's personal data should be handled. This includes:

- *Making sure that people have consented to being on email lists like this*
- *Making sure that people know what the list is for and what information they can expect to receive*
- *Informing people about what data the list owners hold about them*
- *Informing people about how they can be removed from the list if they do not wish to continue to be a member.*

As a member of [email list] the [Medicines Information Service] holds a certain amount of your personal data; this is:

- *Your name*
- *Your work address*
- *Your work email*
- *Your work telephone number*
- *[Insert any other details]*

We use the data you have provided only for operating this list and not for any other reason.

Please indicate your consent for continued membership of this list by replying to this email with OPT IN in the subject line.

If we do not hear from you before [date] we will assume that you have withdrawn your consent and we will remove you from the list and [erase your data/keep some of your data –specify – for X amount of time].

Please do not hesitate to contact us if:

- *If your contact details have changed or are likely to change in future*
- *You want to review the data we hold about you.*

If your current arrangements for obtaining consent **do** satisfy GDPR requirements, it would be wise to contact every member of the list to inform them that you are holding their data because they have

consented to be a member of the list, and remind them what the list is for and how they can withdraw consent.

Potential text for informing people that they have consented to be on an email list:

You are a member of the email list operated by [Medicines Information Service] for [people] interested in [topic]. We send out [X] emails per [time period] containing information on [subject matter].

The General Data Protection Regulation (GDPR) will come into effect on 25th May this year; this makes changes to how people's personal data should be handled.

As a member of [email list] the [Medicines Information Service] holds a certain amount of your personal data; this is:

- *Your name*
- *Your work address*
- *Your work email*
- *Your work telephone number*
- *[Insert any other details]*

We use the data you have provided only for operating this list and not for any other reason.

If you would like to withdraw your consent for continued membership of this list, you can:

- *Reply to this email with OPT OUT in the subject line, or*
- *[Whatever the usual method of withdrawing from the list is].*

If you withdraw your consent we will remove you from the list and [erase your data/keep some of your data –specify– for X amount of time].

Please do not hesitate to contact us if:

- *If your contact details or job role have changed or are likely to change in future*
- *You want to review the data we hold about you.*

Practice Points:

- **It would be wise to have an SOP for list management.**
- **If you collect consent by email, keep a copy of the consent email for each person.**
- **Ensure that withdrawal of consent triggers prompt removal and deletion of data. Consider sending a confirmatory email stating what data have been deleted and what, if any, have been retained, and for how long.**

Email Lists Operating Under Article 6(1)(e) ‘...for the performance of a task carried out in the public interest or in the exercise of official authority...’

Putting People on the List

These lists are those to which people will be added automatically if they meet certain criteria – e.g. MI pharmacists, or Chief Pharmacists.

For email lists people are automatically added to because they fulfil certain criteria (e.g. job role), it is important that you **do not ask for consent** because people do not have a genuine choice about being a member.

However, it is wise to contact the list members (a 'welcome email') to ensure that they know that they are on the list, why they are on the list, what they can expect, and what data you hold about them.

Potential text for informing people that they have been added to a list (welcome email):

As part of our function as a [Regional] Medicines Information Service, the [Medicines Information Service] sends out emails containing information that we believe that particular groups of healthcare professionals in our catchment area will find relevant to their job roles. As [member of X professional group] your name has been added to our [list].

You will generally not receive an email from us more often than [weekly/monthly] unless we have something particularly important to say.

Emails will generally contain:

- *XXX information.*

In order to administer the list, [Medicines Information Service] holds a certain amount of your personal data; usually, this is:

- *Your name*
- *Your work address*
- *Your work email*
- *Your work telephone number*
- *[Insert any other details]*

We hope you find our communications useful.

If your contact details or job role have changed or are likely to change in future, please do remember to let us have your new details. Also, if you want to review the data we hold about you, please contact us.

Further Considerations

- If a person's data is being processed under Article 6(1)(e), they have the right to object to the data processing on the grounds that processing 'is likely to cause substantial damage or distress and it is unwarranted.'
- The data controller must respect the objection unless they can demonstrate compelling legitimate grounds for processing which override the individual's rights or for establishing, exercising or defending legal rights.

Existing Lists

It is wise to contact every member of the list to inform them that you are holding their data, how it is used, and what their rights are.

Potential text for informing people on an email list that you are holding their data:

The [Medicines Information Service] sends out emails containing information that we believe that particular groups of healthcare professionals in our catchment area will find relevant to their job roles.

The General Data Protection Regulation (GDPR) will come into effect on 25th May this year; this makes changes to how people's personal data should be handled, including that people have the right to know when their data are being processed.

As [member of X professional group] the [Medicines Information Service] holds a certain amount of

your personal data; usually, this is:

- *Your name*
- *Your work address*
- *Your work email*
- *Your work telephone number*
- *[Insert any other details]*

We keep and use your data because communicating with you about medicines matters relevant to [job role] is part of our function as a Regional Medicines Information Service. We hope you find our communications useful.

If your contact details or job role have changed or are likely to change in future, please do remember to let us have your new details. Also, if you want to review the data we hold about you, please contact us.

Practice Points:

- **It would be wise to have an SOP for list management.**
- **DO NOT ask for consent to put people on this type of list.**
- **It would be wise to send a ‘welcome email’ when you add someone to the list to inform them that they have been added, what data you hold and what you will do with it, what they can expect from the list, and who they should contact if they have any problems or questions.**

ADDITIONAL POINTS

- It’s a good idea to review what you’re sending out every now and then, to make sure that you’re keeping it relevant. This is particularly true for ‘job role’ lists, as it is important not to allow lists based on ‘public duty’ to creep into ‘consent’ territory.
- Do not mix Grounds for data processing on the same list. Keep one list for ‘public duty’ and a different list for ‘consent’. If a person who does not fulfil the criteria for a ‘public duty’ list asks to be added, it is best to refuse. However, you may wish to consider whether starting up another list, under ‘consent’ rules, might be appropriate.

FURTHER INFORMATION

See:

- Data Protection and the GDPR: Top Tips for Medicines Information Centres. Available via www.sps.nhs.uk
- GDPR guidance from NHS Digital: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidance>

LIMITATIONS

- This is a short-form document providing only basic information. It is not intended to be an exhaustive guide to data handling.
- Information that is unlikely to apply to MI services has not been included in the interests of brevity.
- This document is based on information and guidance available at the time of writing. Content may change as further guidance becomes available.

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