

NHS Information Governance

Guidance for the Classification Marking of NHS Information

This NHS Information Governance (IG) guidance is provided as good practice for NHS organisations of all types to consider in marking the records for which they are responsible. It is applicable to both information recorded on paper and that processed electronically including printouts, reports etc. Through the application of this guidance, NHS organisations should be able to further demonstrate the effectiveness of their local IG practices.

This guidance should be considered alongside other published NHS IG Codes of Practice and guidance for Confidentiality, Records Management, Information Security Management, Legal and Professional obligations. These are currently available for download through the Department of Health website at www.dh.gov.uk.

Further NHS IG guidance is also available through the www.igt.connectingforhealth.nhs.uk website.

Introduction:

There has previously been no single or consistent system of classification marking of information within the NHS. Many NHS bodies have adopted their own classification schemes and this can cause confusion when organisations merge or where information is shared between organisations. This is particularly marked where, as in the case of, for example, NHS and Social Care organisations, there may be a need for common assurances in information partnerships. There is also danger of a lack of consistency in data handling and retention practice when information is shared with non-NHS bodies that relate to several NHS organisations. The lack of a single coherent system also hampers the development of appropriate IT system protocols for the NHS.

Background and classification scheme outline:

This guidance paper sets out a proposed simple scheme of classification relevant to the needs of NHS organisations and for the common benefit of all. It is similar to that used in central Government and other public sector organisations but takes account of important differences in the nature of NHS business activity and the kind of information used between the NHS and other public sector environments. Equally, the NHS does not have a requirement for the full range of protective markings used in Government. For example, central Government uses six categories of information classification, two of which - Secret and Top Secret - are, usually, only relevant to a very limited number of very serious situations involving national security and economic stability). The others are Confidential, Restricted, Protect and Unclassified. These are more relevant within an NHS context and are terms that were considered in developing this classification guidance. Categories proposed for use are prefixed "**NHS**" to indicate their relevance to a particular environment. NHS information that has no classification requirement should be considered **Unclassified** and may optionally be marked as such.

NHS Confidential:

In Government, the marking "Confidential" would, for example, denote information that could undermine the viability of national organisations, damage security operations or national finances or economic and commercial interests. These considerations are unlikely to apply in an NHS context. But within the NHS it is generally recognised, and there is a substantial

body of case law that requires, that person-identifiable clinical information should always be held confidentially (*Confidentiality*: NHS Code of Practice). Therefore, the marking **NHS CONFIDENTIAL** should be used for that kind of information (e.g. patients' clinical records, patient identifiable clinical information, and information about NHS staff that passes between NHS staff, and between NHS staff and staff of other appropriate agencies). This will include patient demographic details that might identify people who have had a GP contact/hospital appointment within a particular timeframe or who may have a particular condition. (**NOTE**: In order to safeguard confidentiality, the term "NHS Confidential" should **never** be used on correspondence to a patient.)

The endorsement **NHS CONFIDENTIAL** should be included at the top centre of every page of the document. Documents so marked should be held securely at all times. That is, they should be stored in a locked room or equivalently within secured electronic systems to which only authorised persons have access. They should not be unattended at any time in any place where unauthorised persons might gain access to them. They should be transported securely in sealed containers and not unattended at any stage. Documents marked NHS CONFIDENTIAL not in a safe store or transport should be kept out of sight of visitors or others not authorised to view them. Please also see the related NHS Information Governance 'Controls guidance for NHS information' and other guidance relating to the handling and protection of NHS patient information contained on the IG website.

Other uses of NHS Confidential:

The endorsement **NHS CONFIDENTIAL** should also be used to mark all other sensitive information. That is, material the disclosure of which is likely to:

- adversely affect the reputation of the organisation or its officers or cause substantial distress to individuals;
- make it more difficult to maintain the operational effectiveness of the organisation;
- cause financial loss or loss of earning potential, or facilitate improper gain or disadvantage for individuals or organisations;
- prejudice the investigation, or facilitate the commission of crime or other illegal activity;
- breach proper undertakings to maintain the confidence of information provided by third parties or impede the effective development or operation of policies;
- breach statutory restrictions on disclosure of information;
- disadvantage the organisation in commercial or policy negotiations with others or undermine the proper management of the organisation and its operations.

A paper, printout or report etc marked **NHS CONFIDENTIAL** may also be endorsed with a suitable descriptor indicating the reason for the classification eg. 'NHS CONFIDENTIAL – PATIENT INFORMATION' or 'NHS CONFIDENTIAL – COMMERCIAL'. A list of the relevant descriptors is included in Table 1 (ANNEX). The endorsement should be included at the top centre on every page of the document. **NHS CONFIDENTIAL** documents should be stored in lockable cabinets or equivalently secured electronic systems. Please also see the related NHS Information Governance 'Controls guidance for NHS information'.

Information may be classified **NHS CONFIDENTIAL** in the light of the circumstances at a particular time. The classification should be kept under review and the information de-classified when the need for this protection no longer applies. NHS use of an equivalent classification for "Restricted" is unnecessary when **NHS CONFIDENTIAL** is used.

NHS Protect

In Government a new marking of “PROTECT” was recently introduced. This discretionary marking may be used in order to avoid unauthorised access to information. It establishes basic principles to handle with care, take relevant precautions and dispose of properly. In the NHS context, it is therefore possible for NHS organisations to adopt and use an equivalent **NHS PROTECT** marking, with or without descriptors, for information that requires protection below that of **NHS CONFIDENTIAL** and where care in handling is still necessary. NHS organisations that choose to adopt **NHS PROTECT** must therefore ensure their staff and business partners are aware of the different expectations and arrangements that apply for the protection and assurance of **NHS CONFIDENTIAL** and **NHS PROTECT** marked information.

Freedom of Information:

When classifying NHS documents regard should be paid to the requirements of the Freedom of Information Act 2000. Careful consideration should be given before marking documents that would normally be published or disclosed on request. Over-classification might lead to an inappropriate decision not to disclose information that would later be embarrassing to the organisation (for example, where there was an appeal against non-disclosure or the Information Commissioner became involved). Protective markings should wherever possible be restricted to information that would be exempt from disclosure, including temporary exemption, such as that for drafts of documents that are intended for publication.

A note of the exemptions that might be relevant to the protective markings is included in Table 2 (ANNEX). However, nothing in this guidance should be taken as authoritative advice on the operation of the Freedom of Information Act. Further information about the Act and its exemptions (including the application of the “public interest” test) is available on the website of the Information Commissioner (www.informationcommissioner.gov.uk.)]

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Department of Health
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ANNEX

Classification of NHS Information - Marking Guidance for NHS Organisations

NHS CONFIDENTIAL - appropriate to paper and electronic documents and files containing person-identifiable **clinical** or NHS **staff** information and **other sensitive** information.

NHS PROTECT – Discretionary marking that may be used for information classified below NHS Confidential but requiring care in handling. Descriptors may also be used as required..

Table 1 – Descriptors that may be used with “NHS CONFIDENTIAL” or “NHS PROTECT” marking

Category	Definition
Appointments	Concerning actual or potential appointments not yet announced.
Barred	Where <ul style="list-style-type: none"> • there is a statutory (Act of Parliament or European Law) prohibition on disclosure, or • disclosure would constitute a contempt of Court (information the subject of a court order).
Board	Documents for consideration by an organisation’s Board of Directors, initially, in private. (Note: This category is not appropriate to a document that could be categorised in some other way.)
Commercial	Where disclosure would be likely to damage a (third party) commercial undertaking's processes or affairs.
Contracts	Concerning tenders under consideration and the terms of tenders accepted.
For Publication	Where it is planned that the information in the completed document will be published at a future (even if not yet determined) date.
Management	Concerning policy and planning affecting the interests of groups of staff. (Note: Likely to be exempt only in respect of some health and safety issues.)
Patient Information	Concerning identifiable information about patients
Personal	Concerning matters personal to the sender and/or recipient.
Policy	Issues of approach or direction on which the organisation needs to take a decision (often information that will later be published).
Proceedings	The information is (or may become) the subject of, or concerned in a legal action or investigation.
Staff	Concerning identifiable information about staff

Table 2 - Freedom of Information Act Exemptions

Category	Possible Exemption [section(s) of the FOI Act]
Appointments	S 40 Personal information (may be subject to a public interest test)
Barred	S 44 Legal prohibitions on disclosure
Board	
Commercial	S 43 Commercial interests (subject to a public interest test)
Contracts	S 43 Commercial interests (public interest test)
For Publication	S 22 For future publication (public interest test)
Management	S 38 Endanger health and safety (public interest test)
Personal	S 40 Personal Information (may be subject to public interest test)
Policy	S 22 For future publication (public interest test)
Proceedings	S 30 Investigations and proceedings S 31 Law enforcement