

Editorial

Bridget Treacy revisits data sharing for Volume 10, Issue 7, of Privacy & Data Protection

In this new era of economic austerity and cost cutting, we can expect renewed attention on data sharing in the public sector. Such activities are generally driven by the promise of greater efficiency and cost reduction. However, in the private sector the incentive to share data is based on other considerations. The ability to enhance the value of data, or to increase revenues, are more likely drivers. So, what are the criteria for responsible data sharing, and do they differ between the public and private sector?

Data sharing arrangements follow many forms. The sharing may be between different parts of the same entity, or between different entities. It may occur in a systematic, recurring manner, or the sharing may be a one off event where the 'sharing' is tantamount to a disposal or transfer of data from one entity to another. Perhaps it is a generalisation, but in the private sector there appears to be an eagerness to share data. By contrast, in the public sector, there is a discernable reluctance to share data, and often uncertainty as to whether sharing is permitted.

The parameters of permissible data sharing vary depending on the context, but too often the focus in both the public and private sectors is on the mechanics of data sharing, rather than whether the sharing should take place at all. This was a theme identified in the Data Sharing Review undertaken by Richard Thomas and Mark Walport in 2008, and it remains a feature of current data sharing activity.

There appears to be a need for pragmatic guidance on how to determine whether data sharing is appropriate in specific circumstances. This is particularly the case in the public sector, where the Human Rights Act 1998, issues of legal capacity, other statutory requirements and confidentiality undertakings, may restrict data sharing activities, as well as data protection issues. Organisations require guidance to ensure that they set up appropriate procedures for identifying and managing data sharing activities in accordance with legal requirements.

Strict legal compliance is not the only test of good data sharing practices. Good data sharing should be proportionate, transparent and consistent with the expectations of the individual too. Where data are shared inappropriately, an organisation risks reputational harm. Whether in the public or private sector, this leads to a loss of trust and confidence in that organisation. From a private sector perspective, the loss of trust can be both ex-

tremely damaging and expensive. Legal sanctions may also follow.

For those too timid to share data, it is not an option simply to refrain. Refusing to share data may have consequences that are at least as serious as inappropriate data sharing.

The Information Commissioner's Office ('ICO') has proposed to issue a public consultation on a framework code of practice on data sharing in the autumn of 2010, with a final draft to be published by the end of the year. Inevitably, this process will renew attention on data sharing. The framework code of practice will provide guidance to both the public and private sectors on the issue of whether data sharing is appropriate, as well as on the issue of how to facilitate the sharing.

Data sharing is a key activity for all organisations, and likely to become more of a focus. We need creative and thoughtful solutions to some of the challenges, particularly in relation to the issue of 'how' sharing is facilitated. The ICO's consultation, therefore, deserves the attention and involvement of all of us. Watch this space...

Bridget Treacy

Editor and
Partner at Hunton & Williams
btreacy@hunton.com
