

EE EHR



CHANCELLOR OF JUSTICE

✓ Estonia
Chancellor of
Justice

02.04.2007 Your ref. nr

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02.05.2007 Our ref. nr 16-4/070635/00702929

Dear Mrs. Amanda Joyce-Vennard,

Thank you for the chance to express my opinion about the Working Document on the processing of personal data relating to health in electronic health records.

Chancellor of Justice of the Republic of Estonia is an independent official who shall review the legislation of the legislative and executive powers and of local governments for conformity with the Constitution and the laws. The Chancellor of Justice is also occupied with the office of ombudsman. Everyone may file a petition to the Chancellor of Justice against a state agency or local government body, a legal person in public law, or a natural person or legal person in private law who are exercising public functions if his or her rights have been violated or he or she has been treated contrary to the principles of good administration.

Therefore one of the main tasks of the Chancellor of Justice is to guarantee the fundamental rights. The issues related to informational self-determination of Estonian citizens belong to one the main areas of focus of my office. During the past decade Estonia has shown remarkable results in integrating information and communication technology (ICT) to different areas of life, and founding different public e-services. At the same time we are facing the problem of informational technology development being faster than the development of law familiar to most countries introducing new ICT solutions.

In Estonia preparations for introducing electronic health records began a couple of years ago with the intent to start the first ICT solutions in 2009. Of course, different ICT solutions have been used by our health service providers for more than 10 years. Therefore, the very aim of the project is to promote the use of ICT in the health care sector and to adapt different technical solutions in use for the purpose of increasing the quality of treatment.

Although the relevant legal framework has not been fully drafted yet, the thorough analysis and discussions have been conducted regarding the topic. The Ministry of Social Affairs of the Republic of Estonia has prepared the drafts of legal acts to be presented to the Parliament this year. When drafting the legislation, the experience of other EU-member states such as Germany, Austria, Netherlands, Norway, UK and Czech Republic was studied.

Chancellor of Justice / Õiguskantsler

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When researching the Working Party's Document No. 00323/07/EN, it was positively surprising to see that the main conclusions made by Estonian working group on the key topics of the draft legislation coincide with the guidelines of the Working Party.

As there is no major difference of views, I would hereby simply raise some further questions for discussion and further reflection in the working papers:

1. According to the Directive 95/46/EC, no clear difference is made on how to implement the data subject's right of withdrawal – shall it mean the complete deletion of data from database? Although there are practical solutions to this question, I would recommend commenting on this situation and maybe clarifying on how the data subject's right to withdrawal relates to other (possibly) viable interests.
2. In the Working Paper you have proposed regular internal and external data protection auditing. I personally consider audits a very valuable tool to guarantee compliance with data protection rules. I would therefore recommend commenting on whether a general obligation of data protection auditing can be concluded from directive 95/46/EC.
3. Are there additional mechanisms to overcome specific problems related to personal data protection in the health care sector that could be used as so called best practices by the Member States? Often the supervisory authorities, in order to decide in a case, have to assess the practical grounds of personal data processing. Sometimes it is difficult even for another doctor to verify the reasons of his or her colleague for processing certain data for specific treatment purposes and the autonomy of a medical doctor is essential for treatment processes. The concept of the Ethical Committee comprising of medical, ethics etc. experts was introduced in the Estonian draft legislation to help the supervisory authority.

Thank you once again for the chance to express my opinion.

Sincerely,

Allar Jõks