



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

10 March 2015

Miss Carrie Wong
Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council

Dear Miss Wong,

Bills Committee on Electronic Health Record Sharing System (eHRSS) Bill

Thank you for your letter dated 3 March 2015. Our response to your enquiry is set out below.

2. As we have previously mentioned, we consider that for cases where emergency access of the electronic health record (eHR) of a healthcare recipient (HCR) in the eHRSS is necessary in tandem with the carrying out of emergency treatments on the HCR, the concerned healthcare provider (HCP) could access the eHR without the HCR's consent. The term "emergency treatments" is regarded as covering generally actions in those situations where non-disclosure of the eHR of the concerned HCR would be likely to cause serious harm to his physical or mental health and/or would be likely to prejudice the carrying out of medical relief services to him during emergency.

3. Data Protection Principle 3 (DPP3) of the Personal Data (Privacy) Ordinance, Cap.486 (PDPO) provides that personal data shall not, without the prescribed consent of the data subject, be used for a new purpose¹. Section 63C(1)(c) of the PDPO provides an exemption from DPP3 if the application of DPP3 would be likely to prejudice the provision of emergency relief services. The term "emergency relief services" ("緊急救助服務") is not specifically

¹ New purpose (新目的), in relation to the use of personal data, means any purpose other than -
(a) the purpose for which the data was to be used at the time of the collection of the data; or
(b) a purpose directly related to the purpose referred to in paragraph (a).

defined in the PDPO. According to the dictionary², “relief” may denote the removal or reducing of something that is painful or unpleasant. It is therefore our interpretation that section 63C(1)(c) can be invoked as an exemption to allow a healthcare professional to gain access to the HCR’s health record without his consent in order to provide medical treatment to him to reduce his pain or suffering during emergency.

4. On the other hand, as you have pointed out, apart from section 63C of the PDPO, section 59(1) also provides an exemption from DPP3 according to which personal data relating to physical or mental health may be released to a healthcare professional if the non-disclosure of such data “would be likely to cause serious harm to the physical or mental health of the data subject”. Notwithstanding our interpretation of the applicability of section 63C, we agree with you that section 59 of the PDPO would also be an applicable provision for exemption.

5. In brief, depending on the facts and circumstances of the individual case, the concerned HCP could access the concerned eHR without the HCR’s consent by invoking the exemption from DPP3 under section 63C and/or section 59 of the PDPO. Since exemptions under section 59 and section 63C of PDPO are already sufficient for the purpose of allowing access to eHR by healthcare professionals under emergency situations, we do not see the need to add another exemption clause in the eHRSS Bill.

Yours sincerely,



(Ms Ida Lee)

for Secretary for Food and Health

c.c. Clerk to Bills Committee
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(Ms Maisie Lam)
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Ms Carmen Chan
Mr Patrick Yeung)

² <http://www.merriam-webster.com/dictionary/relief>