



Opinion of the European Data Protection Supervisor on conservation periods for medical documents

Principle of limited conservation

Medical documents constitute personal data within the meaning of Regulation (EC) No 45/2001 ("any information relating to an identified or identifiable natural person") and are thus covered by the rules and principles set out in that Regulation.

The conservation principle set out in Regulation (EC) No 45/2001 (Article 4(1)(e)) is that personal data must be kept in a form which permits identification of the data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Article 4 also specifies that the Community institution or body shall lay down that personal data which are to be stored for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data must not be used for any purpose other than for historical, statistical or scientific purposes.

The principle is, therefore, that data should be kept only for the period necessary for the purposes for which they were collected. If they are kept for historical, statistical or scientific purposes they must be kept in anonymous form or encrypted.

It has to be said straight away that the Commission's current conservation period is not in accordance with the principle of limited conservation, since the situation described in the note on which it has requested an opinion is that the Commission has destroyed none of the medical files on its officials or other staff held by the Medical Service.

General rule (point 2 of the note submitted)

According to the general rule set out in point 2 of the note submitted, the institutions have decided to keep medical documents for at least 30 years after deposit of the last document in the file. Although specific rules are described for certain types of document (point 3 of the note), the EDPS would nevertheless like to make certain comments on this general rule for the conservation of medical data.

The general rule is that all medical documents should be kept for at least 30 years. The EDPS considers that this 30 year period should not constitute the minimum data conservation period. On the contrary, with some limited exceptions, it should be regarded as the maximum data conservation period. Furthermore, the EDPS considers that application of the rule in Article 4 of Regulation No 45/2001 means that the nature of the medical documents should be examined in the light of the rules applicable in order to determine what conservation periods would be suitable to each type of document. It is necessary to examine to what extent and for what purposes it is necessary to keep various medical documents during and after a staff member's

period of employment. Although point 3 of the note contains specific rules for certain types of document, this specific approach is not applied to all types of medical document.

The medical documents processed and kept by the institutions are many and varied. To give only a few examples, we could cite the documents resulting from the pre-recruitment medical examination (Article 28(e) of the Staff Regulations); the results of the annual medical check-up (Article 59(6) of the Staff Regulations); the certificates provided to back up applications for family leave on the grounds of serious illness or disability of a spouse, relative in the ascending line, relative in the descending line, brother or sister (Article 42b of the Staff Regulations); the medical documents establishing that a child is suffering from a handicap for the purposes of claiming a special family allowance (Article 67(3) of the Staff Regulations); the documents produced by the Invalidity Committee (see in particular Article 59(4) of the Staff Regulations); the documents resulting from medical examinations arranged by the institution (Article 59 of the Staff Regulations) and the medical documents submitted in connection with claims for reimbursement from the Joint Sickness Insurance Scheme (JSIS).

Similarly, in addition to the rules mentioned in the note, for example as regards the exposure of staff to hazardous substances, there are various rules deriving from mandatory instruments which may justify keeping medical documents for certain length of time.

Specific rules applicable

The specific rules for keeping certain types of document, as described in point 3 of the note, do comply with the principle of keeping data only for the period relevant to their purpose.

Keeping of data for more than 30 years:

Under this heading, leaving aside the applicability of national rules within Community institutions and bodies, the data conservation periods in the case of exposure to radiation or harmful substances stipulated in point 3(a), (b) and (c) of the note are regarded as justified. The same applies to the conservation of medical documents acquired under Article 73 of the Staff Regulations concerning accidents and occupational disease (point 3(f)). Keeping of data for less than 30 years:

The rule described in point 3(g) of the note, concerning applications for reimbursement, is regarded as justified. The document conservation rules in the provisions for implementing the Financial Regulation, which provide for a conservation period of up to 7 years for original supporting documents for budget expenditure, justify keeping certain documents relating to the reimbursement of medical expenses for up to 7 years. Keeping them for any longer, however, would not necessarily be justified.

On the other hand, the EDPS does not see any justification for keeping the medical files of people not recruited following a negative opinion at the pre-recruitment medical examination for 30 years. Such data should be kept only for the period of time during which it is possible to challenge the data or the decision taken on the basis of the data.

The EDPS considers that certain other rules should be added to the specific ones set out in the note submitted, on the basis of the rules which exist within the institutions. The following are cited as examples.

Article 59(4) of the Staff Regulations could justify keeping data on sick leave for 3 years. The only justification for keeping them any longer would be if a dispute or appeal were under way.

Article 90 and the succeeding Articles lay down deadlines for appealing against decisions of the appointing authority. These deadlines could be used as a guide for the minimum data conservation period. Furthermore, if such an appeal were made, the rule should be that the data may be kept until the case is settled or until the time limit for any further appeal has expired. The same applies to the deadlines for bringing actions for damages arising out of non-contractual liability.

The EDPS does not intend in this opinion to deal with the rules on the archiving of data. However, under Article 4 of Regulation No 45/2001, the rules laid down by the institutions for historical archiving should in principle stipulate that the data must be rendered anonymous.

General remarks

Apart from questioning this general rule of keeping data for 30 years, the EDPS would like to raise certain points for consideration by the Board of Heads of Administration:

- The general rule described in point 2 stipulates that the institutions must keep medical documents for at least 30 years after deposit of the last document in the file. This means that the oldest documents are kept for more than 30 years. Would it be possible to have a "clear out" of medical documents from time to time?
- Another question which arises is what happens to the data when the institutions have finished with them; are they communicated to the data subjects? To the heirs and successors in the event of death?
- There is also the question of medical documents kept in various parallel files (medical file/personal file/electronic file, for example). It is necessary to ensure that the conservation rules are consistent and that documents remain in the file only for as long as is necessary for the relevant purpose. In addition, although medical documents are currently kept largely in paper form, the EDPS would point out that this practice might well change in future. It is therefore necessary to look into the specific problems of keeping documents in electronic form.
- Appropriate guarantees need to be attached to the keeping of data long-term. Medical documents are sensitive. They are a special category under Article 10 of Regulation (EC) No 45/2001. That is why, as for all sensitive data, appropriate arrangements need to be made for their transmission and conservation.
- As for the need to keep documents in order to comply with Belgian law, the Community institutions and bodies should check the applicability of national laws within Community institutions and bodies before claiming national law as a justification for keeping documents.
- Furthermore, in order to regard national law as a justification for keeping data, simply referring to Belgian law on hazardous substances and agents is not sufficient, given that Community institutions and bodies are located in a number of different Member States.

Conclusions

The EDPS considers that keeping medical documents for 30 years cannot be regarded as the general rule. He invites the Board of Heads of Administration to examine the various types of

medical documents in the light of the principle of limited conservation as defined in Article 4 of Regulation (EC) No 45/2001 and to draw up specific rules according to the type of document and the purpose for which it is kept.

Done at Brussels, 26 February 2007.

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