

Note No. #1

2(10)/2020-CLES
Ministry of Electronics & Information Technology
(Cyber Law and e-Security Group)

Subject: Guidelines for the data process protocol for Covid19 related data

This is with reference to the Ministry of Home Affairs order dated 29.03.2020 regarding the constitution of Empowered Groups under the Disaster Management Act, 2005.

1. An urgent need was felt to augment and synchronise efforts for containing the pandemic across various Ministries/ Departments. The empowered groups are empowered to

- i. identify problem areas and provide effective solutions therefor;
- ii. delineate policy;
- iii. formulate plans and strategize operations
- iv. take all necessary steps for effective and time bound implementation of these plans/policies/strategies/decisions in their respective areas

2. One such committee has been established under Secretary, MeitY to look into issues pertaining to **Technology and Data Management**.

3. Due to the outbreak of Covid-19 epidemic, a large number of health related data set of subjects is being collected through various regulatory measures of ICMR and NCDC. Government has also launched Aarogyasetu App which will be collecting lot of information regarding citizens of India. The App will be collecting health data with consent of the users. Presently all the data is being supervised by ICMR. As the quantum of data is getting exponentially high, it was felt that MeitY through NIC will become the Data Source. Also, there are several Govt. and private players who are interested to provide solutions analyzing the same data. The solutions are basically analytical outcomes for suitable quarantine measures and proposed self-care solutions.

4. The empowered committee with the vested powers from the Disaster Management Act, 2005 has developed a guideline document for entire lifecycle of data governance related to Covid19 pandemic. The main features of such a data process protocol are as follows:

- i. Identify the data types, their source of collection and establishing the need for personal data parameters to be included. Further identify organizations for doing relevant data analytics essential for the

purpose of preparing for, mitigating, managing and efficiently addressing a disaster.

- ii. To oversee the functioning of the various state agencies, and where necessary, seek inputs from the State Executive Committees on the disaster-related data in their possession
 - iii. To lay out guidance/ SOP for various state agencies to oversee all activities of the District Authorities, and where necessary, seek inputs from the District Authorities on the disaster-related data in their possession
 - iv. To lay out guidance /SOP for the collection ,storage , processing and restrictions of the identified disaster-related data
 - v. To lay out guidance /SOP for cessation, handling of data breaches and security of the disaster related data
5. The empowered committee will issue relevant notifications /orders in accordance with the requirements as stated in point 4.

6. To effectively develop the relevant guidance and SOP for the effective data process and control MeitY approached three different law firms (PLR Chambers, Vidhi Legal and Adv. Vakul Sharma) to develop such rules/guidance/SOP under relevant powers of NDMA act. Consultations were carried out with them to arrive at the legally sustainable way forward. Initially it was proposed that such rules may be notified under a relevant section of the Information Technology (IT) Act, but further detailed discussion led to the conclusion that IT Act does not give powers for collection of data from any agency. Further Section 43A only gives powers to make rules for secure data processing by body corporate only. In view of the above, it was concluded that such rules/guidance need to draw powers from NDMA Act. The same was agreed with all the three law firms and further discussion was held with them.

7. Based on the discussion and analysis of the new set of documents provided by these law firms, it was felt that draft rules proposed by Adv. Vakul Sharma is much simpler. The rules is proposed to be notified in exercise of the powers conferred by sub-section (1) of section 75 of the Disaster Management Act, 2005 read with clause (d) of sub-section (2) of section 35 of the Disaster Management Act 2005 (53 of 2005). The brief features of the above rule are as follows:

- i. Collection of public health emergency data by the National Authority
- ii. Obligations of the designated ministry or department or government agency collecting, processing and retaining public health emergency data
- iii. Role of the designated ministry or department in providing public health emergency data, or personal information

- iv. Obligations of entities accessing anonymised and aggregated public health emergency data
 - v. Public access of health emergency data by designated ministry or department or agency of Government
8. The above prima facie meets the requirements and expectations as specified during our initial discussions. The Rules and corresponding notification designating NIC as the Govt. Agency for processing of data for the above rule is placed opposite.

Kind approval is solicited for notifying the said rules under NDMA Act and corresponding notification thereof.

Dr.S.Sathyanarayanan
Scientist D, CLES

📎 **Draft_Collection and Processing of Health Data Rules_v1_MeitY.pdf**
📎 **Notification of MeitY as the designated ministry.pdf**

08/04/2020 2:55 PM

S.Sathyanarayanan
(SCIC(SS)-CL&ES)

Note No. #2

08/04/2020 7:10 PM

RAKESH MAHESWARI
(SCIENTIST G)

Note No. #3

The draft NDM(EDP) Rules 2020 as proposed can be recommended to MHA. The key feature is that responsibility for regulating data handling is being delegate to the National Executive Committee chaired by the Home Secretary that has also constituted Empowered Groups to look at specific areas in relation to handling Covid 19 response. The rules are Generic and can be used in any case any such disaster response.

08/04/2020 7:55 PM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)

Note No. #4

113671/2020/CL&ES

08/04/2020 8:35 PM

Ajay Sawhney
(Secretary)**Note No. #5**

08/04/2020 9:36 PM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)**Note No. #6**

SD(PK) has not been able to use the remote e-Office facility. Hence the file is returned to JD(Sathya). The approval has been conveyed to SD(PK) as well verbally for further necessary action. May be brought to his attention.

08/04/2020 10:05 PM

RAKESH MAHESWARI
(SCIENTIST G)**Note No. #7**

Subject: Guidelines for the data process protocol for Covid19 related data

Reference Pre-page notings:

Secretary on 9.4.2020 had written to Union Home Secretary forwarding therewith draft Disaster Management (Processing of the Public Health Emergency Data) Rules, 2020 and Notification to designate NIC as the government agency to process health related data. The proposed Rules and Notification are to be issued by Ministry of Home Affairs (MHA) under the National Disaster Management Act.

2. Now vide Order No. 17(4)/2020-Pers.I dated 15.04.2020, MeitY has constituted a Committee with JS(JM) and Sc-F(KB) to provide support to the Empowered Group on Technology and Data Management chaired by Secretary.

3. Accordingly the file is forwarded to JS(JM) for taking up the matter

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with MHA for notification of the said Rules and notifying NIC as the designated agency. Shri Sanjeev Kumar Jindal, JS(DM), MHA (Ph : 23092722) is concerned officer in MHA dealing with the subject.

Submitted please.

Dr.S.Sathyannarayanan
Scientist D, Cyberlaw Group
16-04-2020

SD(PK)

GC(RM)

AS

JS(JM)

 **1586944733_Covid_Committee_support.pdf**

16/04/2020 12:39 PM

S.Sathyannarayanan
(SCIC(SS)-CL&ES)

Note No. #8

In view of Support Group with JS(JM) and Sc-F(KB) created by MeitY, the subject matter alongwith relevent documents may be sent to this Group for futher follow-up.
(Prafulla Kumar)

16/04/2020 12:47 PM

PRAFULLA KUMAR
(SCIENTIST G)

Note No. #9

16/04/2020 3:19 PM

RAKESH MAHESWARI
(SCIENTIST G)

Note No. #10

This will not be in their purview.. This is purely IT Act stuff related to data governance and for such time can be continued to be handled in CLES division.

113671/2020/CL&ES

17/04/2020 2:06 PM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)

Note No. #11

17/04/2020 3:02 PM

Ajay Sawhney
(Secretary)

Note No. #12

17/04/2020 3:17 PM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)

Note No. #13

20/04/2020 5:57 PM

RAKESH MAHESWARI
(SCIENTIST G)

Note No. #14

I have talked to JS(Disaster Management), MHA. They have further sought input from Secretary, MohFW and Secretary,NDMA on the draft Rules.

21/04/2020 11:23 AM

PRAFULLA KUMAR
(SCIENTIST G)

Note No. #15

24/04/2020 11:10 AM

S.Sathyanarayanan
(SCIC(SS)-CL&ES)

113671/2020/CL&ES

Note No. #16

As a follow-up, I had sent a mail to JS(Disaster Management), MHA on 20.04.2020 requesting for latest status of the notification of the Rules. (Attached)

Again on 23.04.2020, spoke to Shri Manoj Kasana, Director(Disaster management),MHA [Mob-8447138689, Tel-23428122], regarding status of notification of the proposed Rules for processing of COVID-19 related data. He informed that MHA has sought comments from MoHFW on the proposed Rules and comments are still awaited. (Attached)

The matter was also discussed in the Empowered Group-9 meeting held on 18.04.2020, where the status update was provided.

To expedite the matter, it is requested that AS may like to write to AS(DM), MHA. A draft letter is attached for kind approval.

Prafulla Kumar
Scientist-G
24.04.2020

GC(RM)

AS

 **email-JS(DM)-MHA-20April2020.pdf** **mail-MHA-23April2020.pdf**

24/04/2020 1:17 PM

PRAFULLA KUMAR
(SCIENTIST G)

Note No. #17

24/04/2020 2:18 PM

RAKESH MAHESWARI
(SCIENTIST G)

Note No. #18

Yes . Draft modified & it can be sent to AS MHA.

24/04/2020 3:01 PM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)

Note No. #19

24/04/2020 3:47 PM

RAKESH MAHESWARI
(SCIENTIST G)**Note No. #20**

I think email has been sent to AS MHA

25/04/2020 9:51 AM

GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)**Note No. #21**

27/04/2020 12:53 PM

RAKESH MAHESWARI
(SCIENTIST G)**Note No. #22**

We had been following up with MHA for notification of the Rules. I had sent emails to JS(DM), MHA Subsequently AS also had written to AS(UT), MHA to expedite notification of the Rules.

Ministry of Home Affairs has sought the views of Ministry of Health and Family Welfare (MoHFW) and National Disaster Management Authority (NDMA) on the draft of Rules proposed by us. Instead of waiting for a formal response, considering the present requirements, it is proposed that a meeting could be held chaired by Union Home Secretary with participation of MeitY, MoHFW and NDMA in order to resolve and address any concerns about the proposed draft. There have already been many court cases in the High Court of Kerala regarding handling of health data and sharing with companies for analytics etc. Also, there have been concerns in the media about the need for a data protection framework with respect to various apps that have been rolled out by the Central Government and the states in their efforts to tackle Covid-19.

It is important that MHA notifies the proposed Rules so that necessary framework is

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in place regarding processing of sensitive data during disasters.

Accordingly a draft letter from Secretary to Home Secretary is attached for kind approval, please.

01/05/2020 12:19 PM

**PRAFULLA KUMAR
(SCIENTIST G)**

Note No. #23

A meeting was held on 2nd may,2020 in the office of Secretary Home. Secretary MeitY, AS(GS) and the undersigned attended from MeitY side. Reps of NDMA sivation, MHA and MOhFW were also there.

The need for issue of such a rule was discussed in detail.

However, Secretary Home decided that issue of any rule on data collection, processing and storage may not be warranted under NDMA. A guideline document/ order may be issued by MeitY under the existing IT Act or through the empowered committee constituted under NDMA on the data Management.

Accordingly, the present rule in its existing form is being dropped. Further, AS is having interaction with Vidhi Legal to come with a suitable document based on these rules. We will initiate action as and when necessary.

03/05/2020 3:07 PM

**RAKESH MAHESWARI
(SCIENTIST G)**

Note No. #24

113671/2020/CL&ES

06/05/2020 6:23 PM

**PRAFULLA KUMAR
(SCIENTIST G)****Note No. #25**

It has been decided to issue the an order for "Notification of the Aarogya Setu Emergency data Access and Knowledge sharing Protocol,2020" by Secretary, MeitY as Chairperson, Empowered Group 9 constituted by national Excecutive Committee of the national Disaster Management Authority.

A draft notification is attached.

06/05/2020 6:35 PM

**RAKESH MAHESWARI
(SCIENTIST G)****Note No. #26**

06/05/2020 6:37 PM

**GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)****Note No. #27**

Please process with amended draft.

08/05/2020 7:21 PM

**Ajay Sawhney
(Secretary)****Note No. #28**

08/05/2020 8:38 PM

**GOPALAKRISHNAN S
(ADDITIONAL SECRETARY)**

113671/2020/CL&ES

Note No. #29

09/05/2020 8:28 PM

**RAKESH MAHESWARI
(SCIENTIST G)**

Note No. #30

File may be retained in section.

06/07/2020 10:58 AM

**PRAFULLA KUMAR
(SCIENTIST G)**

Note No. #31

Shri Vinod Chouhan, Sci "D" has requested to send the subject file for replying to RTI Application. Accordingly, the file is forwarding to him. The matter has been brought into the knowledge of SD(PK).

Submitted please.

06/07/2020 4:23 PM

**Sh. Mahesh Kumar Jain
(SO(MKJ)-G2)**

Note No. #32

06/07/2020 4:58 PM

**Vinod Kumar Chouhan
(SCIC(VKS)-CL&ES)**

ORDER

Subject: Notification of the Aarogya Setu Emergency Data Access and Knowledge Sharing Protocol, 2020 in light of the COVID-19 pandemic

WHEREAS, the Aarogya Setu App is a useful technological solution developed to facilitate contact tracing of persons infected with COVID-19, inform persons at-risk of such infected persons and precautions to be taken, and allow health departments to take effective actions to mitigate the spread of the pandemic and enhance their preparedness;

WHEREAS, vide Orders No. 40-3/2020-DM-1(A) dated 29.03.2020 and 01.05.2020, the Central Government has constituted Empowered Groups under the Disaster Management Act, 2005 to identify problem areas and provide effective solutions therefor, delineate policy, formulate plans, strategise operations and take all necessary steps for effective and time-bound implementation of these plans/policies/ strategies/ decisions in relation to the Covid-19 pandemic;

WHEREAS, under these Orders, the National Executive Committee of the National Disaster Management Authority has created the Empowered Group 9 on Technology and Data Management (“Empowered Group”).

WHEREAS, the functioning of the Aarogya Setu mobile application relates to technology and data management and certain necessary steps require to be taken to ensure its effective operation to detect and mitigate the spread of the COVID-19 pandemic and enhance government preparedness at all levels;

NOW THEREFORE, in order to ensure secure collection of data by the Aarogya Setu mobile application, protection of personal data of individuals, and the efficient use and sharing of personal or non-personal data for mitigation and redressal of the COVID-19 pandemic, the undersigned, in his capacity as Chairperson, Empowered Group on Technology and Data Management, hereby issues the Aarogya Setu Emergency Data Access and Knowledge Sharing Protocol, 2020 (enclosed) for necessary compliance.

Ajay Sawhney,
Chairperson, Empowered Group 9 on Technology and Data Management

Aarogya Setu Emergency Data Access and Knowledge Sharing Protocol 2020

Rationale for this protocol:

1. Owing to the COVID-19 pandemic, guidelines have been issued by the Ministry of Home Affairs (vide Orders dated 24.03.2020, 25.03.2020, 28.03.2020, 1.04.2020, 2.04.2020, 14.04.2020, 16.04.2020, 1.05.2020) on the measures to be taken by the Central Government as well as the State/Union Territory Governments. Various advisories and statements have been issued by the Ministry of Health and Family Welfare, and other Ministries of the Government of India and State/ Union Territory Governments on precautionary measures such as social distancing and treatment of individuals who are affected or are at-risk. In order to ensure their effective implementation, there is a need to ensure efficient data and information sharing among the different Departments and Ministries of the Government of India as well as those in the State/Union Territory Governments.
2. At present, the Government of India and State/Union Territory Governments are tasked with formulating critical health responses to not only contain the epidemic but also protect the health and safety of the community at large. Here, **critical health responses** include prevention and management of the COVID-19 pandemic, syndromic mapping, contact tracing, communication to an affected or at-risk individual's family and acquaintances, performance of statistical analysis, medical research, formulation of treatment plans or other medical and public health responses related to the redressal and management of the COVID-19 pandemic.
3. In order to formulate critical health responses for addressing the COVID-19 pandemic, data pertaining to individuals is urgently required. Here **individuals** means persons who are infected, at high risk of being infected or who have come in contact with infected individuals. This data includes demographic data, contact data, self assessment data and location data (**collectively called 'response data' in this document**). Here, **demographic data** means the name, mobile number, age, gender, profession and travel history of an individual. **Contact data** means data about any other individual that a given individual has come in close proximity with including the duration of the contact, the proximate distance between the individuals and the geographical location at which the contact occurred. **Self assessment data** means the responses provided by that individual to the self assessment test administered within the Aarogya Setu mobile application. **Location data** means data about the geographical position of an individual in latitude and longitude.

4. Implementation of the Protocol:

Keeping in view the above, the Ministry of Electronics and Information Technology, Government of India ("MeitY") is designated as the agency responsible for the implementation of this Protocol and its developer, the National Informatics Centre shall, under this Protocol be responsible for collection, processing and managing

response data collected by the Aarogya Setu mobile application,. Any reference to MeitY under this Protocol is a reference to its supervisory role in relation to the Aarogya Setu mobile application and its developer, the National Informatics Centre and not in any other capacity. For the purpose of this Protocol, MeitY shall act under the overall direction of the Empowered Group on Technology and Data Management (“Empowered Group”) created by the National Executive Committee of the National Disaster Management Authority.

5. Principles for collection and processing of response data:

- a. Any response data and the purpose for which it is collected by NIC shall be clearly specified in the Privacy Policy of the Aarogya Setu mobile application.
- b. NIC shall collect only such response data as is necessary and proportionate to formulate appropriate critical health response. Further, such data shall be used strictly for the purpose of formulating and implementing appropriate critical health response.
- c. NIC shall process any data collected by it in a fair, transparent and non-discriminatory manner.
- d. Contact and location data shall by default, remain on the device on which the Aarogya Setu mobile application has been installed after such data has been collected. It may be uploaded to the server only for the purpose of formulating and implementing the appropriate critical health response.
- e. Contact, location and self assessment data of an individual that has been collected by NIC shall not be retained beyond the period necessary to meet the purpose for which it is obtained which, unless a specific recommendation to this effect is made in the review under Para 10 of this Protocol, shall not ordinarily extend beyond 180 days from the date on which it is collected, after which such data shall be permanently deleted. Demographic data of an individual that has been collected by NIC shall be retained for as long as this Protocol remains in force.
- f. The response data shall be securely stored by NIC and shall only be shared in accordance with this Protocol.

6. Principles for sharing of response data:

The response data may be shared by NIC in the following manner:

- a. Response data in de-identified form may be shared with Ministries or Departments of the Government of India or the State/Union Territory Governments, local governments and other public health institutions of the Government of India or State Governments or local governments where such sharing is necessary to formulate or implement a critical health response. Here,

de-identified form means data which has been stripped of personally identifiable data to prevent the individual from being personally identified through such data and assigned a randomly generated ID.

- b. Response data containing personal data may be shared with the Ministry of Health and Family Welfare, Government of India, Departments of Health of the State/Union Territory Governments/ local governments and other public health institutions of the Government of India, State Governments and local governments where such sharing is strictly necessary to formulate or implement a critical health response.
- c. Response data, whether as de-identified response data or containing personal data, shall only be shared with private entities if it is strictly necessary to formulate or implement a critical health response and any such private entity shall be subject to the obligations laid out in clause 7(b) of this Protocol.
- d. NIC shall, to the extent reasonable, document the sharing of any data under Para 6 and maintain a list of the agencies with whom such data has been shared. Such documentation shall include the time at which such data sharing was initiated, the persons or agencies who are being provided access to such data, the categories of data that are being shared and the purpose for which such data is being shared.

7. Obligations of entities with whom response data is shared:

An entity with whom response data is shared under this Protocol shall have the following obligations:

- a. Any Ministry or Department of the Government of India or State/ Union Territory Government/ local government with whom response data has been shared under this Protocol shall use such data strictly for the purpose for which it is shared. Such Ministry or Department, State/Union Territory shall process response data in a fair, transparent and non-discriminatory manner, and to the extent reasonable, shall document the use of such data, specifying the time at which such data was accessed, the persons who have accessed such data, the categories of data accessed and the purpose for which such data has been accessed. The data accessed and used by such entities should not be retained beyond the period necessary to satisfy the purpose for which it is shared. In any circumstance, such data shall not ordinarily be retained beyond 180 days from the date on which it was accessed, after which such data shall be permanently deleted. Any Ministry or Department shall also implement reasonable security practices and procedures as prescribed under any law for the time being in force.

- b. Any private entity with whom response data has been shared under this Protocol by any Ministry or Department of the Government of India or State/ Union Territory Government/ local government or public health institution in the Government of India, State Governments and local governments shall only use and process such data for the purpose for which it is shared which shall only be for a purpose related to prevention and management of the COVID-19 pandemic. Every such private entity shall identify a nodal person who shall be in a leadership role and who shall be responsible for ensuring compliance with this Protocol. Any private entity which obtains access to response data under this Para shall implement reasonable security practices and procedures as prescribed under any law for the time being in force. It shall process response data in a fair, transparent and non-discriminatory manner, and to the extent reasonable, shall document the use of such data, in a manner that facilitates audits and reviews by the Central Government, specifying the time at which such data was accessed, the persons who have accessed such data, the categories of data accessed and the purpose for which such data has been accessed. Any private entity provided access to response data under this Para shall not re-use such data, disclose it to any other third-party, or retain it for longer period than is required in order to serve the purpose for which access was provided which shall, in no event, exceed 180 days from the date on which access was provided, after which it shall be permanently deleted.
- c. Any response data accessed under clause 7(a) shall ordinarily not be onward shared with any third party, including any private entity. However, response data may be shared with such third parties only if it is strictly necessary to formulate or implement a critical health response. The Ministry or Department of the Government of India or State/ Union Territory Government/ local government or public health institution of the Government of India/ State Governments/ local governments that is sharing such information shall remain responsible for adherence to this Protocol by any other entity with which it shares information. In this context, any private entity with whom such data is shared shall be subject to the same obligations as under clause 7 (b).

8. Principles for sharing of response data for research purposes:

Response data may be made available for research purposes by NIC in the following manner:

- a. Response data which has undergone hard anonymisation, as under clause 8(c), may be made available on a non-discriminatory basis to Indian universities and research institutions registered in India, whether public or private.
- b. Any university or research institution seeking to access response data under clause 8(a) shall make a request for such data to the Empowered Group, who may approve of such request and provide access to this data only if it is of the

view that such access is sought for the purposes of statistical, epidemiological, scientific or any other form of academic research, on such terms as may be stipulated by the Empowered Group in this behalf.

- c. In this Para, **hard anonymisation** refers to a series of technical processes which ensure that any individual is incapable of being identified from the response data through any means reasonably likely to be used to identify such individual. This anonymisation shall be done in accordance with anonymisation protocols as may be specified by the Empowered Group. These anonymisation protocols shall be reviewed and updated by the Empowered Group on a periodic basis, based on an analysis and recommendations of an academic committee of global stature appointed by the Principal Scientific Advisor to the Government of India. Such review shall have regard to the nature and sensitivity of the data being processed, the robustness of the anonymisation protocol and advances in technology.
- d. Any university or research institution which accesses anonymised response data under this Para shall not onward share such response data with any third party, or reverse anonymise such data or re-identify individuals in any manner. If any person knowingly or unknowingly, takes any action which has the effect of such data no longer remaining anonymised, any rights granted to them under this Protocol shall stand terminated, and they shall be liable for penalties under all applicable laws for the time being in force.

9. Violation of this Protocol:

Any violation of this Protocol shall lead to applicable penalties as per the Disaster Management Act, 2005.

10. Sunset Clause:

The Empowered Group shall review this Protocol after a period of 6 months from the date of this notification or may do so, at such earlier time as it deems fit. Unless specifically extended by the Empowered Group on account of the continuation of the COVID-19 pandemic in India, this Protocol shall be in force for 6 months from the date on which it is issued.