
Director General for Regulation

Neil McIvor
Chief Data Officer and Chief Statistician
Department for Education
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21 March 2018

Dear Neil

NATIONAL PUPIL DATABASE DATA ACCESS

We have received a set of complaints about the Department for Education's (DfE) handling of the National Pupil Census and National Pupil Database (NPD). The concerns relate to communication and transparency; data safeguarding, including compliance with data protection legislation; and engagement with pupils, parents and schools. We were also asked to review the accuracy of DfE's responses to parliamentary questions (PQs) about data identifiability, and about progress on previous OSR recommendations to DfE about the NPD.

The *Code of Practice for Statistics*¹ requires statistics producers to look after people's information securely and manage data in ways that are consistent with relevant legislation and serve the public good. We examined the concerns from this perspective. The concerns raised about Data Protection Act compliance are for the Information Commissioner's Office (ICO) to determine. However, we have consulted the ICO and will work more closely with them about NPD issues in future. Our overall judgements about the concerns raised with us are set out below. My response to the complainant contains more details about our investigation and judgement.² The key points are:

- **Public value:** We are confident that DfE recognises the importance of safeguarding children's privacy and the need to maintain public confidence in the NPD – one of the UK's most important data assets. We welcome the work you are undertaking to modernise data access procedures. This includes increasing transparency in response to our previous recommendations,³ the harmonisation of data governance procedures, and modernising how users can access data. We also welcome your commitment to involving users as this work develops.
- **Communication and transparency:** DfE's communication around its data access modernisation plans could be better, and clearer language around data identifiability is also needed.
- **Data safeguarding and legal compliance:** DfE needs to do more to demonstrate how NPD data are safeguarded and how processes comply with data protection legislation. Greater clarity about how data are safeguarded, privacy is protected and how your processes comply with data protection legislation would all help DfE demonstrate its compliance with the *Code of Practice's* data governance principles.

¹ Code of Practice for Statistics

² <https://www.statisticsauthority.gov.uk/correspondence/response-on-nati...-database-access/>

³ Letter from Ed Humpherson to Jen Persson April 2016

- Engagement: Engagement with pupils and parents would be valuable. It will contribute insights and perspectives about DfE's practices and ongoing proposals for NPD developments.

The actions we would like DfE to take in response are set out in an annex to this letter, based around communication and transparency; data safeguarding and legal compliance; and engagement with pupils and parents. We welcome the work already underway in response to the recommendations about clearer language and user testing the privacy notice.

We also reviewed DfE's response to Parliamentary Question (PQ) 109065⁴ about NPD data sharing. The PQ response was correct to state that no "personal confidential identifying data" was shared. However, the response also contained an inaccurate statement about the risks of identification. We are satisfied that this inaccuracy was inadvertent. Our recommendation on data identifiability, which you have started to address with external experts, is intended to help DfE develop clearer language on this subject.

I am meeting you and Jonathan Slater, Permanent Secretary, to discuss these recommendations and will monitor progress through our regular meetings with Mike Jones, Deputy Head of Profession for Statistics. We will publish an update to this letter to report on progress in September 2018. In future, OSR, DfE and ICO will meet regularly – we envisage at least three times a year – to discuss the NPD, starting in April 2018.

I have copied this letter to Mike Jones, Deputy Head of Profession for Statistics; Iain Bradley, Deputy Director, Data Modernisation Division; and Jonathan Slater, Permanent Secretary.

Yours sincerely



Ed Humpherson

Director General for Regulation

⁴ PQ 109065 response to Darren Jones MP from the Rt Hon Nick Gibb MP

Recommendations

Communication and transparency

- Publish a statement outlining progress on all the modernising data access work currently being conducted, with details of the expected next steps and timeframes for key milestones. Aligning this work with the Five Safes⁵ framework would be useful. The statement should be prominent, easily accessible, and its availability publicised widely.
- Ensure that information about all onward data sharing is made public.
- Incorporate the concept of the identifiability spectrum, and the suggested terms for different levels of data, into materials about NPD, and other relevant materials about data.
- Publish a “public guide to data identifiability and the NPD” drawing on the identifiability spectrum framework developed by the Wellcome Trust’s Understanding Patient Data programme.⁶

Data safeguarding and legal compliance

- Align all relevant NPD outputs (e.g. NPD: data flows and data sharing⁷; NPD user guide⁸) with the Five Safes framework, and include details of any plans to develop DfE’s practices in any of the five areas. Update these at regular intervals to underline the fact that safeguarding data privacy is a continually evolving process.
- Provide details outlining how the National Pupil Census and NPD will be GDPR compliant, highlighting any aspects that ICO has been consulted on or provided assistance with. This approach aligns with the new GDPR accountability principle.
- Consider conducting a Data Protection Impact Assessment⁹ of the NPD.
- Proactively involve the ICO in all major decisions covered by their remit for data processing and privacy safeguarding related to the pupil census and NPD.

Engagement with pupils and parents

- Explore options for setting up parent and pupil panels, similar to the public panels that the Administrative Data Research Network has established in Scotland and Wales,¹⁰ and the ALPHA young people’s advisory group established by DECIPHer in Wales.¹¹
- Conduct user-testing with both parents and children (with a range of abilities and ages) of the pupil census privacy notice and any associated information materials for parents and children, as part of all future reviews of these materials where substantive changes are planned.

⁵ See information here about the Five Safes

⁶ Understanding Patient Data guide to identifiability

⁷ NPD data flow and sharing document

⁸ NPD User Guide

⁹ ICO guide to data protection impact assessments

¹⁰ Administrative Data Research Network public panels

¹¹ ALPHA young people advisory group