

## Use of National Pupil Database records for Border Force intervention and the School Census Expansion 2016: nationality and country-of-birth

Two years after the Home Office began to secretly access national children's confidential data at the Department for Education for immigration enforcement, there is:

- no transparent [oversight of the use of pupil data](#).
- no public accountability for the wellbeing of [children affected](#).
- children have been removed from school and home settings by the Border Force
- children have been removed by worried relatives, and are now "off the radar" missing education

The law was changed in 2016 under false assurances to both the House of Commons and House of Lords, to the public and teachers. DfE expanded the school census from September 2016 to start to collect country-of-birth and nationality data from the 8 million children in England's schools.

When Liberal Democrat Lords led a [motion-of-regret](#) on October 31, no one yet had the full facts.

The original purposes of the collection of school pupils' nationality data were expressly to give "(once collected) nationality" to the Border Force Removals Casework Team, along with children's names, school and home address from up to the last 5 years of their school record. This was set out in paragraph [15.2.6 of the agreement](#) MOU between the Home Office Border Force and the Department for Education, effective July 2015 and October 2016, and revised October 14, 2016.

[Cabinet letters](#) leaked in December 2016 revealed this agreement was a compromise between the Departments and Cabinet Office Immigration Taskforce in 2015, rather than collect passports data from every child during the admissions process, and 'deprioritise' migrant children's school places.<sup>1</sup> The Memorandum of Understanding (MOU) was only obtained via delayed FOI in December 2016.

### Ministers have misled Parliament

In July 2016 Nick Gibb MP, Schools Minister (responsible for school standards and data), denied that the new data will be shared with other Government departments in [a written parliamentary question 42942](#):

*"The data will be collected solely for the Department's internal use for the analytical, statistical and research purposes described above. There are currently no plans to share the data with other government departments."*

In [another written parliamentary question 42842](#), he repeated, *"The data will be collected solely for internal Departmental use for the analytical, statistical and research purposes described above. There are currently no plans to share the data with other government Departments."*

On September 26 the Department for Education also [claimed in BBC report](#) that *'these data will not be passed to the Home Office.'*<sup>2</sup>

On October 10 2016, the Secretary-of-State Justine Greening insists in Education Questions insisted that the collection was: *.."about making sure we have the right data and evidence to develop strong policy."*<sup>3</sup>

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<sup>1</sup> <http://www.bbc.co.uk/news/uk-politics-38165395> Theresa May had plan to demand every child's passport in schools

<sup>2</sup> <http://www.bbc.co.uk/news/education-37474705>

<sup>3</sup> <https://hansard.parliament.uk/Commons/2016-10-10/debates/4B7349AD-337E-4FAC-BA3E-C8C9877ADA5A/TopicalQuestions#contribution-DBFF2B4F-0BAD-4B57-BC9A-A4F7711E3397> Hansard October 10, 2016 Education Qs

And in the October 12, 2016 House of Lords debate questions on the census expansion. The Lords government spokesman, Viscount Younger of Leckie said, *"I reassure the House that the information is kept within the Department for Education and is not passed on to the Home Office."*<sup>4</sup>

**Yet on the dates when each of these statements were made in 2016, the agreement had already been in place since July 2015 and DfE was already actively sending the Home office children's confidential personal data from national school records, in secret, every month for up to 1,500 pupils without the knowledge of schools, or Parliament.**

The intent was to include "(once collected) nationality". (see: para 15.2.6 MOU v1.0)

Ministers told schools and public, House of Commons and House of Lords that the purposes of the census expansion were not for the purposes of the Home Office. That was patently a lie.

The harm to pupils is real. It has harmed public and professional trust in the school census purpose, and there has been widespread criticism in the press<sup>5</sup>. Some children have been removed by parents from school, mis their universal right to education, and are now "off the radar".

There is no transparent public oversight of any children removed by the Border Force from school or home addresses provided by the DfE data transfers, and no one accountable for their wellbeing.

In April 2017, the NUT conference<sup>6</sup> supported motions opposing nationality and country of birth collection and calling for more information to be given to schools and parents.

[Parents and teachers are right to ask](#), *"Did ministers even consider what the consequences of their actions would be? Or have they decided that the threat to children's safety is a price worth paying so they can look tough on immigration?"*

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<sup>4</sup> <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality> House of Lords questions tabled by Earl of Clancarty

<sup>5</sup> <http://defenddigitalme.com/press-coverage/>

<sup>6</sup> <https://www.theguardian.com/education/2017/apr/17/nut-to-tell-parents-not-to-give-details-of-childrens-nationality-and-birthplace>

## Memorandum of Understanding (MOU) between the DfE and Home Office

After Ministers and Department civil servants and press officers had been saying to the public, in the press and to Parliament, that, “these data will not be passed to the Home Office,” for six months, we eventually found the truth through MOUs obtained via Freedom of Information.

The DfE had already been passing children’s personal confidential data in secret to the Home Office from pupil records on a monthly basis since July 2015, without parliamentary or public consultation, transparency, accountability for process or wellbeing of children, or telling schools.

The data sharing MOU v2.1 was published only in December 2016 a few days before Christmas by the Department, and three months after the first census collection of pupil nationality data on October 6, 2016.

We pressed via FOI for the publication of the original version v1.0. This revealed that nationality data had been included in the agreement.

The DfE had amended the new version 2.1 which had been signed off a week later, October 14, 2016. Paragraph 15.2.6 had been retrospectively backdated to October 7, 2016 to remove the line, (“Once collected) Nationality”.

Schools have never been informed about these agreements by the Department for Education. The first had been amended to remove nationality data. It states “nationality data (once collected)” was to be passed to the Border Force under MOU v.1.0 and six months after the FOI which is the subject of this case.

- version 1.0 Memorandum of Understanding (MOU) between the DfE and Home Office, effective between between 05/06/15 and 07/10/2016 [[download .pdf 538 kB](#)]
- Note: 27/11/2015 “amended draft version including updated purpose”
- version 2.1 Memorandum of Understanding (MOU) between the DfE and Home Office, effective between since 07/10/2016 [[download .pdf 539kB](#)]

### 11.2 Version History

Version	Date	Summary of changes	Changes marked
0.1, 0.2, 0.3	11/12/14	Draft version	Y
0.4	12/01/15	Draft version	Y
0.5	05/03/15	Draft version	Y
0.6	12/03/15	Draft version	Y
0.7	18/05/15	Draft version	Y
0.8	01/06/15	Draft version	Y
0.9	04/06/15	Draft version	Y
1.0	05/06/15	Final version	N
1.1	27/11/15	New draft version including updated purpose	Y
1.2	16/12/15	Responding to previous comments	N
Final V 1.0	18/12/15	Final Version	N

## **The Law was changed via Statutory Instrument 808/2016 to collect nationality and country of birth data in 2016 and we believe the Lords were given false assurance**

The law was introduced via a Statutory Instrument, and came into effect without any parliamentary or public scrutiny in only six weeks during the 2016 Parliamentary and school summer holidays.

When we challenged the change in legislation at the first available opportunity on 3 September 2016, the government gave the assurance in writing to the House of Lords Secondary Legislation Scrutiny Committee, that the SCSB scrutiny had found no concerns.

Did the SCSB know in the meeting of November 2015, that there was already an agreement in place to transfer “(once collected) nationality” to the Border Force Removals Team? Did they ask? Would the board have approved the expansion of the school census to collect nationality data, if they had known? Would the law SI 808/2016 have been changed had they objected?

The government claimed to both Houses of Parliament, to parents and teachers in the public, and to us in writing, that the Star Chamber Scrutiny Board (SCSB) scrutinised and ‘approved’ the school census expansion of nationality and country of birth, in November 2015:

*"Should there have been concerns regarding these changes, SCSB would have raised these for discussion requesting clarification or amendment before providing their formal decision to accept or reject the changes."*

This claim of ‘no concerns’ was relied on by the Department for Education (DfE) to give assurances to the Lords about scrutiny of the change in the law, ahead of a House of Lords motion of regret 31/10/2016 regards Statutory Instrument 808/2016<sup>7</sup>.

We seek public assurance that the committee members were given the full facts about the intended purposes of the census expansion and additional data collection, and had “no concerns”. On this basis the law was changed. If they were not told what its purpose was, we believe the change in law should be scrutinised further and SI 808/2016 annulled, since we do not believe it should have passed unless the Star Chamber Scrutiny Board and the House of Lords Secondary Legislation Committee were in full possession of the facts about the intention behind the new data collection from 8 million children in England.

Based on conversations, we believe **the SCSB did not know that the DfE already had a written agreement (MOU) in place to share nationality pupil data with the Home Office (HO) Border Force Casework Removals Team, “once collected”**. We believe they did not know that the DfE had put the MOU in place to pass up to 1,500 named pupils’ data every month to the HO four months earlier<sup>8</sup>. We believe members of the SCSB would have objected, had they known.

**The foundation for changing the law to expand the school census is therefore undermined, and with it, public and professional trust in the school census, policy, and political process.**

The DfE refused the FOI on the basis of 35(1)(a). The SCSB does not formulate policy, according to a DfE public advert for current SCSB vacancies. Posted on the NAHT website, and link DfE tweeted, it stated, *“The SCSB does not have a remit to consider the Department’s policy intent”*.<sup>9</sup>

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<sup>7</sup> [https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education\(PupilInformation\)\(England\)\(MiscellaneousAmendments\)Regulations2016 Lords Motion of Regret 31/10/2016](https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education(PupilInformation)(England)(MiscellaneousAmendments)Regulations2016%20Lords%20Motion%20of%20Regret%2031/10/2016)

<sup>8</sup> <https://www.theguardian.com/uk-news/2016/dec/15/pupil-data-shared-with-home-office-to-identify-illegal-migrants>

<sup>9</sup> Source <http://www.naht.org.uk/welcome/news-and-media/key-topics/leadership/dfes-star-chamber-scrutiny-board-vacancies/> downloaded on June 27, 2017 and copy stored at: <http://defenddigitalme.com/wp-content/uploads/2017/06/SCSB-Membership-School-Vacancies-2017.pdf>

The Freedom of Information Request was made on 4 July 2016, and requested: “The meeting minutes from January 2015 until and including July 2016 of the Star Chamber Scrutiny Board (SCSB). Either in their original format or copies of that, such as pdf. We also requested the correspondence to third parties, resulting from the outcome of their decision to include 'country of birth' decision taken in November 2015.” The request was later narrowed at the request of the DfE.

The Information Commissioner ruled in favour in DN FS50654175<sup>10</sup> of publication of the materials.

The Department for Education has appealed at the [First Tier Tribunal Information Rights](#).

## **Links to references on legislation and decision process on School census expansion to incl. nationality data collection**

- Letter to the Lords Secondary Legislation Scrutiny Committee – SI 808/2016; school census expansion [[letter .pdf 143kb](#)]
- Government response to the SI 808/2016 letter [[response .pdf 707kB](#)]
- Items 11-13 in the 8th Report [[8th Committee Report of session 2016/17](#)]
- Our letters to the Star Chamber Scrutiny Board [[September 2016](#)] [[November 2016](#)] [[February 2017](#)]
- ICO Decision Notice 18/5/2017 Reference: FS50654175 on FOI made on July 4, 2016 DfE refused to publish SCSB November 2015 meeting minutes and the ICO ruled in favour of release. [[DN .pdf download 135 KB](#)]
- The FOI request as originally made and adapted at DfE FOI Dept request, for the meeting minutes of the Star Chamber Scrutiny Board (SCSB), and the departmental correspondence to third parties, resulting from the outcome of their expansion of data collection to include 'country of birth' decision taken in November 2015. And request for [the business case](#) made in favour of the expansion. [[link to FOI request](#)]

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<sup>10</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014137/fs50654175.pdf> ICO Decision Notice

## Appendix: Full Timeline of Events with links to original references

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Available online : <http://defenddigitalme.com/timeline-school-census/>

### 2015

**August 2015:** Nicky Morgan announces a review of the impact of immigration on education or 'education tourism'<sup>11</sup>. Concerns in some quarters that this is a reworking of 2013 plans to 'crackdown' on migrant families.

**November 2015:** The Star Chamber Scrutiny Board signs off the change for country-of-birth and nationality. The purpose and reason given is: "*Whilst the department collects limited information on children who have moved into the English education system from abroad, the collected information is insufficient to ascertain the impact that such entrants have on the education system. The introduction of these data items will assist in the identification of such pupils and may facilitate the targeting of support to such pupils.*"<sup>12</sup>

**December 2015:** An amended Memorandum of Understanding v1.0 is updated on December 18, 2015, to share the individual pupils' confidential data including nationality "(once collected)" of up to 1,500 children a month from school census with the Home Office. It has been in place since July 2015. This does not become public knowledge until December 2016, and published on whatdotheyknow in February 2017<sup>13</sup>. All references to Home Office (HO) in the document refer to the work of UK Visas & Immigration, Immigration Enforcement and UK Border Agency / Border Force Removals Casework Team.

### 2016

**February 29:** A later technical change notice<sup>14</sup> includes language data expansion for all children.

**May 4:** The announcement was published "after a delay obtaining clearance". The Department instructs schools to collect the data for the 2016-17 school year census, and many schools begin before the school summer term ends, even before the Statutory Instrument is laid on July 21st.

**June 23:** Schools Week first reports the change and teacher concerns about the expansion to collect country-of-birth and nationality "immigration data" from every child age 2-19.<sup>15</sup>

**July 4:** FOI request for Meeting Minutes of the Star Chamber Scrutiny Board where decision on census expansion was taken. The Secondary Legislation Scrutiny Committee is told in September by the DfE by letter, that the board would have raised concerns before signing off had they had any. Release refused by the DfE (2017 still in appeal).

**July 6:** defenddigitalme wrote to the Department raising concerns of forms failing fair processing, demanding data as required for funding, confusion, duties under the Equality Act, and that this is

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<sup>11</sup> <http://schoolsweek.co.uk/morgan-reveals-details-of-mass-migration-probe-days-after-officials-refused-to-release-information/>

<sup>12</sup> [http://defenddigitalme.com/wp-content/uploads/2016/07/RFC\\_856\\_new\\_data\\_items\\_country\\_of\\_birth\\_and\\_nationality.pdf](http://defenddigitalme.com/wp-content/uploads/2016/07/RFC_856_new_data_items_country_of_birth_and_nationality.pdf)

<sup>13</sup> <https://www.whatdotheyknow.com/request/377285/response/941438/attach/4/20151218%20DfE%20HO%20Final%20V0%201%20REDACTED.PDF.pdf>

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509299/RFC\\_875\\_-\\_new\\_data\\_item\\_for\\_proficiency\\_in\\_English.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509299/RFC_875_-_new_data_item_for_proficiency_in_English.pdf)

<sup>15</sup> <http://schoolsweek.co.uk/schools-must-collect-data-on-immigrant-children-from-autumn/>

not in the best interests of children, but “to assess the education system” and concern it may be used in immigration purposes.

**July 9:** Schools Week reports that English as an Additional Language (EAL) professionals feel its implementation is rushed and poorly thought out “it was wrong to just “grab the [scales] from Wales, without consultation”.

**July 21:** defenddigitalme wrote to the Secretary of State, and the Minister for School Standards.

**July 25:** Nick Gibb MP, Schools Minister (responsible for school standards and data), denies that the new data will be shared with other Government departments in a written parliamentary question 42942. Nick Gibb replies. *“The data will be collected solely for the Department’s internal use for the analytical, statistical and research purposes described above. There are currently no plans to share the data with other government departments. The Department have not consulted directly with parents regarding the changes to the school census.”*

**July 26:** Nick Gibb says in another written parliamentary question 42842, *“The data will be collected solely for internal Departmental use for the analytical, statistical and research purposes described above. There are currently no plans to share the data with other government Departments”* when asked what limitations will be placed on disclosure of such information to (a) other government departments and (b) private third parties. And for the first time publicly states:

***“All Departmental proposals for new, or revised, data collections are reviewed by the Star Chamber Scrutiny Board. The SCSB is an external panel of representatives [...] who approved the collection of country of birth data via the school census in November 2015.”***

**July 26:** defenddigitalme wrote to the Minister for School Standards to ask how data would not be passed to other government departments following the claim made in the answer to Written Question PQ 42842.

**July 27:** Statutory Instrument 808/2016 laid before Parliament<sup>16</sup> to expand the School Census collection via amendments to the Education (Information about Individual Pupils) (England) Regulations 2013 and the Education (Pupil Information) (England) Regulations 2005.

**August 1st:** In FOI request Ref: 2016-0032573<sup>17</sup> DfE reveals for the first time data sharing from the National Pupil Database data with the Home Office and Police. Since April 2012, the Police have submitted 31 requests for information to the National Pupil Database. All were granted, only 21 resulted in information being supplied. Since April 2012, the Home Office submitted 20 requests to the National Pupil Database. Of these 18 were granted. 2 were refused as the NPD did not contain it. **(Note: The volume of Home Office requests, for over 2,500 individuals in these 20 requests, will only be revealed on October 27, 2016).**

**September 3:** defenddigitalme raises concerns on the Statutory Instrument by letter<sup>18</sup> to the Lords secondary legislation scrutiny committee. The Government responds to the Committee’s follow up including the comment:

***“The collection of data required by SI 2016/808 was considered, and approved, by the SCSB on behalf of the sector. Should there have been concerns regarding these changes, SCSB***

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<sup>16</sup> <http://legislation.data.gov.uk/ukxi/2016/808/made/data.html> Laid 27th July 2016, came into force 1st September 2016

<sup>17</sup> [https://www.whatdotheyknow.com/request/pupil\\_data\\_sharing\\_with\\_the\\_poli#incoming-846569](https://www.whatdotheyknow.com/request/pupil_data_sharing_with_the_poli#incoming-846569)

<sup>18</sup> <http://www.parliament.uk/documents/lords-committees/Secondary-Legislation-Scrutiny-Committee/Defenddigitalme-submission-SI2016-808.pdf>

***would have raised these for discussion requesting clarification or amendment before providing their formal decision to accept or reject the changes.”***

**Sept-Oct:** Schools scrambled to collect data in September before the on-roll census day on October 6th. Parents shared dismay and confusion on social media. Grassroots campaign Against Borders for Children (ABC) launched by teaching staff, parents, civil society and -- children's, migrants', and privacy -- human rights' supporters.

**September 23:** defenddigitalme writes to the Star Chamber Scrutiny Board<sup>19</sup> for the first time, to ask what they knew of the existing Home Office access when they approved country-of-birth and nationality data collection. There is no reply until a second letter in November the day before a DfE / DDM meeting when an anonymous reply is received, which addresses none of the questions.

**September 23:** Schools Week reports: Pupils who were not white British told to send in birthplace data: “confusion could increase fears among ethnic minority families about how the data might be used, although education leaders say they have received assurances it will not be passed to the Home Office.” First reports of harm and upset caused to pupils received by campaign groups.

**September 26:** over 20 rights' organisations under the ABC campaign umbrella write to the Secretary of State to call for the census expansion to be scrapped and urge a boycott by parents and schools of the optional collection.

**September 26:** Department claims in BBC report that ‘these data will not be passed to the Home Office.’<sup>20</sup>

**September 29:** defenddigitalme and Department meeting. defenddigitalme was told about an agreement “in progress” but not about the original agreement, already sharing data monthly.

**October 6:** School Census on roll day. Funded schools for children 5-19 start submitting 2016-17 census data including country-of-birth and nationality for the first time, among calls from parents for “this racist policy to be scrapped.”

**October 6:** late afternoon, FOI Ref: 2016-0042333 confirms Home Office access to previously collected school census pupil data includes name, home and school address from up to last 5 years. Purposes of cases within Home Office requests “are a) dependant(s) of a parent/guardian who is suspected of an offence under section 24 or 24A of the Immigration Act 1971, or section 35 of the Asylum and Immigration (Treatment of Claimants) Act 2004 has been, or is being committed (or b) the child in question is an unaccompanied minor.)” “Each Home Office request includes details of the individuals concerned as held to enable to us to search for them in the NPD.”

**October 10:** The Secretary-of-State Justine Greening insists in Education Questions insists that the collection is: ..“about making sure we have the right data and evidence to develop strong policy.”<sup>21</sup>

**October 12:** House of Lords debate questions on the census expansion. The Lords government spokesman, Viscount Younger of Leckie said, “I reassure the House that the information is kept within the Department for Education and is not passed on to the Home Office.” The government

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<sup>19</sup> <https://www.gov.uk/government/groups/star-chamber-scrutiny-board> The Star Chamber Scrutiny Board

<sup>20</sup> <http://www.bbc.co.uk/news/education-37474705>

<sup>21</sup> <https://hansard.parliament.uk/Commons/2016-10-10/debates/4B7349AD-337E-4FAC-BA3E-C8C9877ADA5A/TopicalQuestions#contribution-DBFF2B4F-0BAD-4B57-BC9A-A4F7711E3397> Hansard October 10, 2016 Education Qs

spokesperson confirms that there is no sanction for parents or schools who choose not to provide country of birth and nationality data in the census.<sup>22</sup>

**October 12:** The Guardian<sup>23</sup> reports new data sharing agreement is “in place” with the Home Office

**October 14:** defenddigitalme writes to the Secretary of State, Minister for School Standards and Department to object to the use of pupils’ home address and school address divulged for deportation enforcement and absconder tracking of parents and adults through children’s data and asks to see a copy of the new datasharing agreement by end of data that will restrict Home Office use of new census data items. It is not forthcoming. Press told to use FOI.

**October 14:** Still in secret, version 2.1 of the original Memorandum of Understanding in place since December 18, 2015 to share the individual confidential data including nationality "(once collected)" of up to 1,500 children a month from school census with the Home Office is signed off<sup>24</sup>, backdated with amendment from October 7, to remove reference to 'nationality' data. This does not become public knowledge until December, and published on whatdotheyknow in February 2017.

**October 24:** The Independent reports that Brighton and Hove City Council tell parents they can override parents and pupils' refusal of consent to provide optional ethnicity data, and that Heads can ascribe ethnicity. (Newly expanded to all under 5s in this census.)<sup>25</sup>

**October 27:** Very first government public admission at all outside of our FOIs and questions asked of the volume and extent of Home Office access to pupil’s home address published in PQ 48635 answered by Nick Gibb.. *“Between July 2015 and September 2016 [...] requests relating to a total of 2,462 individuals have been made by the Home Office to DfE and 520 records have been identified within DfE data and returned to the Home Office.”*<sup>26</sup>

**October 27:** The National Union of Teachers calls for this use of pupil data by the HO to end, emphasising that “schools are not part of policing immigration”.<sup>27</sup>

**October 28:** Lord Nash reported in Schools Week wrote new data will be kept separately due to its 'sensitivity'.<sup>28</sup>

**October 31:** Home Office FOI 41221<sup>29</sup> confirms monthly access for immigration purposes. It appears that in addition to one request made in 2013 for 341 pupils, monthly access began in 2016. (see also PQ 48635 October 27)

**October 31:** The House of Lords agree a motion of regret. Lords’ comments include, “this proposal has all the hallmarks of racism”, *“Parents are upset, not just about how this information*

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<sup>22</sup> <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality> House of Lords questions tabled by Earl of Clancarty

<sup>23</sup> <https://www.theguardian.com/uk-news/2016/oct/12/individual-childrens-details-passed-to-home-office-for-immigration-purposes>

<sup>24</sup> [http://defenddigitalme.com/wp-content/uploads/2016/12/20161016\\_DfE-HO-MoU-redacted-copy.pdf](http://defenddigitalme.com/wp-content/uploads/2016/12/20161016_DfE-HO-MoU-redacted-copy.pdf)

<sup>25</sup> <http://www.independent.co.uk/news/education/education-news/schools-told-to-guess-pupil-ethnicity-a7372271.html>

<sup>26</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-13/48635/> First admission by government of the extent (volume) of pupil data sharing monthly since July 2015

<sup>27</sup> <https://www.teachers.org.uk/news-events/press-releases-england/school-census-data> NUT statement

<sup>28</sup> <http://schoolsweek.co.uk/nationality-data-wont-be-included-in-national-pupil-database-says-minister/>

<sup>29</sup> <https://www.whatdotheyknow.com/request/361437/response/888880/attach/3/FOI%2041221%20Person.pdf>

*might be used but because these questions are asked at all,” and that “DfE denials of any ulterior motive do not sound convincing.”<sup>30</sup>*

**November 3:** Schools Week<sup>31</sup> reports former Secretary of State for Education Nicky Morgan “had to ‘fend off ideas’ from Downing Street” including blocking plans to share the new census information and that passing on the specific data to the Home Office was “not something we would want to see.” **This calls into question the Department’s transparency about its intended purposes of the collection.**

**November 17:** The Independent reports "Government scraps plans for controversial nationality census for 2-5 year-olds." (This turns out only to be Early Years census, not all 2-5 year olds.)<sup>32</sup>

**November 24:** Right to retract data from autumn census. Lord Nash confirms that if parents have previously provided this information to schools and now wish to retract it, they should inform the school of this decision and the Department will remove any information collected on country of birth and nationality during the autumn census.<sup>33</sup> This is not communicated to schools until 10/1/2017.

**November 28:** the UK Statistics Authority urges the Department for Education to set out plans for ongoing review saying that maintaining public trust is essential, requiring an ongoing commitment to communications and transparency including “clear communication of purpose”<sup>34</sup>

**December 1:** The BBC reports Theresa May had plan to 'deprioritise' illegal migrant pupils and Laura Kuenssberg tweets that letters reveal collection of country-of-birth was agreed as part of this policy compromise, in summer 2015.<sup>35</sup>

**December 15:** The Department for Education released the (revised) Memorandum of Understanding v2.1 with details of the agreement between the DfE and Home Office, via FOI. It reveals the intent was to give pupil nationality data to the Home Office<sup>36</sup>. The original version in place between 2015 and October 14, 2016, would share "(once collected) nationality" (15.2.6). This revised version had been backdated and amended effective Oct 7, 2016 (the day after the first collection of the new data) apparently after campaign pressure, from over 20 rights organisations and press scrutiny.

The question remains unanswered whether this new census nationality data may be used for Home Office purposes within the DfE, even if the nationality data itself is no longer to be exchanged. Country-of-birth, language and nationality data could be accessed and used by the Department for Education search algorithms for this bulk data analysis for immigration purposes and the results providing a higher matched rate of data to the Home Office as a result, and the MOU would still hold true.

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<sup>30</sup> House of Lords Motion of Regret October 31, 2016 [https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education\(PupilInformation\)\(England\)\(MiscellaneousAmendments\)Regulations2016](https://hansard.parliament.uk/lords/2016-10-31/debates/6D06F8D5-7709-43DF-87ED-33CBBC7324FF/Education(PupilInformation)(England)(MiscellaneousAmendments)Regulations2016)

<sup>31</sup> <http://schoolsweek.co.uk/nicky-morgan-i-had-to-fend-off-ideas-from-downing-street/> Schools Week

<sup>32</sup> <http://www.independent.co.uk/news/education/education-news/government-u-turn-scraps-plans-controversial-nationality-school-census-for-2-5-year-olds-a7422831.html>

<sup>33</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2016-11-16/HL3296/> Confirmation data may be retracted. Not communicated to schools until Jan 10, 2017

<sup>34</sup> <https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/11/Letter-from-Ed-Humpherson-to-Iain-Bell-281116.pdf>

<sup>35</sup> <http://www.bbc.co.uk/news/uk-politics-38165395> BBC: Theresa May had plan to 'deprioritise' illegal migrant pupils

<sup>36</sup> para 15.2.6 “(once collected) nationality: [http://defenddigitalme.com/wp-content/uploads/2016/12/20161016\\_DfE-HO-MoU-redacted-copy.pdf](http://defenddigitalme.com/wp-content/uploads/2016/12/20161016_DfE-HO-MoU-redacted-copy.pdf)

## 2017

**January 10:** The Department for Education released revised guidance on the school census to schools with **only one week notice before the Spring census on roll date**. This explains that the data are optional and says for the first time, that data may be retracted<sup>37</sup>. But by now, most schools have already collected the required data since the announcement was made in May 2016.

**January 19:** Spring census collects nationality and country of birth data for the second time, and ethnicity data from 2-5 year olds for the first time in the Early Years census.

**February:** DfE declines to provide numbers about nationality and country-of-birth data collected in autumn census in response to parliamentary question 62925 citing future plans to publish.<sup>38</sup>

**April:** The NUT conference supports motions opposing nationality and country of birth collection and calling for more information to be given to schools and parents.<sup>39</sup>

**May 18:** Summer School Census on-roll day. Nationality and country-of-birth collected for 3rd time.

**May 18:** ICO issues Decision Notice Reference: FS50654175.

**May 23:** Ongoing monthly releases of pupil data to the Home Office Border Force Removals Casework Team continue, and the DfE releases the Q1 numbers via FOI<sup>40</sup>. The DfE decline to provide the audit report to show if and how nationality data is being used and for what purpose.

**June:** The DfE has appealed the ICO Decision Notice Reference: FS50654175

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<sup>37</sup> [http://defenddigitalme.com/wp-content/uploads/2017/01/School\\_census\\_2016\\_to\\_2017\\_guide\\_v1\\_5.pdf](http://defenddigitalme.com/wp-content/uploads/2017/01/School_census_2016_to_2017_guide_v1_5.pdf) DfE guidance

<sup>38</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-02/62925/> PQ 62925

<sup>39</sup> <https://www.theguardian.com/education/2017/apr/17/nut-to-tell-parents-not-to-give-details-of-childrens-nationality-and-birthplace> "This is shocking, this should not be happening. There's no educational worth whatsoever in collecting this."

<sup>40</sup> [https://www.whatdotheyknow.com/request/pupil\\_data\\_off\\_register\\_back\\_off\\_2#incoming-982308](https://www.whatdotheyknow.com/request/pupil_data_off_register_back_off_2#incoming-982308)

## House of Commons Parliamentary Question 42942 answered by School Standards Minister Nick Gibb on July 25, 2016 denied any plans to share with Home Office

Parliamentary question 42942<sup>41</sup> asked on July 15, 2016 and responded to on July 25, 2016 by School Standards Minister Nick Gibb.

*“There are currently no plans to share the data with other government departments...”*

At that time, it would later be revealed, the Memorandum of Understanding to share nationality data (once collected) with the Home Office Border Force Removals Casework Team had been in place already for a year since July 2015. It continued to be so until it was amended in mid October 2016, after the collection of nationality on 6 October 2016 from 8 million children in England.

The answers to the parliamentary questions was clearly untrue.

The MOU does not set out any legal basis, merely policy and process for the data transfers.

The data were collected with inadequate fair processing and without communicating the original intended purposes of collection to schools, parents or pupils. The MOU is not a legally binding agreement, merely sets out the data transfer process. It was amended retroactively on 14 October 2016, backdated to 7 October 2016<sup>42</sup> to remove “nationality”, but other personal data continues to be shared with the Border Force Removals Casework Team on a monthly basis. The DfE has to date not informed schools that their pupils’ school census data are being used this way.

The DfE has declined in May 2017 via FOI to publish how the nationality data since collected, are being used. We believe the data could still be used \*within\* the Department for Education for the intended purpose, and still meet what they say, “these data will not be passed to the Home Office.”

The screenshot shows the House of Commons website interface. At the top, there is a navigation bar with links for Accessibility, Cookies, Email alerts, RSS feeds, and Contact us. Below this is a search bar. The main navigation menu includes Home, Parliamentary business, MPs, Lords & offices, About Parliament, Get involved, Visit, and Education. A secondary menu lists House of Commons, House of Lords, What's on, Bills & legislation, Committees, Publications & records, Parliament TV, News, and Topics. The breadcrumb trail indicates the user is on the page for 'Pupils: Personal Records:Written question - 42942'. The question is titled 'Pupils: Personal Records:Written question - 42942' and was asked by Charlotte Leslie (Bristol North West) on 15 July 2016. The answer is provided by Nick Gibb on 25 July 2016. The question text asks for reasons for collecting birth data on children aged two to 19 from Autumn 2016, limitations on disclosure, and whether protocols for handling and disclosure of confidential information will change. The answer text states that the data will be used to improve understanding of pupil migration and provide evidence for policy decisions. A red box highlights a specific sentence in the answer: 'The data will be collected solely for internal Departmental use for the analytical, statistical and research purposes described above. There are currently no plans to share the data with other government Departments and decisions on whether the Department will release any personal data to third parties are subject to a robust approval process and are based on a detailed assessment of who is requesting the data, the purpose for which it is required, the level and sensitivity of data requested and the arrangements in place to store and handle the data. Details about the process are available here: https://www.gov.uk/guidance/national-pupil-database-apply-for-a-data-extract'. Below this, it states there are no plans to change existing protocols for handling and disclosure of confidential information.

<sup>41</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

<sup>42</sup> <https://www.whatdotheyknow.com/request/377285/response/941438/attach/5/20161016%20DfE%20HO%20MoU%20redacted.pdf> See page 8-10 of the MOU v2.1