

Data Protection Bill, 6 Nov 2017

Amendment 80, page 125, line 41, leave out para 4.

“The Government has added a completely new *immigration control* exemption to the Data Protection Bill (“DPBill”). This exemption does not appear in the Data Protection Act 1984 nor in the Data Protection Act 1998 so the question immediately arises as to “*why an immigration exemption is now suddenly needed?*”.” Dr Chris Pounder, Amberhawk¹

This is not for use-case where something is illegal. Merely for when the purposes can be said to fit in with something vaguely to do with immigration. That is a slippery slope that will lead to error, to harm, and to the unwanted consequences that no one will trust the authorities in a regime in which every one of us is presumed to be a possible suspect.

Should policy be transparent and trusted, or not? This clause suggests there is something the government feels it must hide or practices not within the current legal Data Protection regime.

Has there been independent human rights and privacy impact assessment of this clause and will it be published? There is a strong possibility it would be challenged in practice as regards children.

Article 4 of the UN Convention on the Rights of the Child is clear that governments have a responsibility to take all available measures to make sure children’s rights are respected, protected and fulfilled. These rights are universal and include a right to education in Article 28 as well as a right to privacy and respect of family life of Article 16.

What is it that government wants to be able to do, that it cannot legally within the existing data protection law, and range of immigration and criminal laws it has introduced in abundance? This clause attempts to create exemptions that do not exist today. Why?

1. GDPR Recital 63 clarifies one reason for allowing individuals to access their personal data is so they are aware of and can verify the lawfulness of processing.

GDPR Article 15, Right of access by the data subject supports these rights (for detail see page 4).

But on page 126, in lines 12 and 13 the government’s Schedule 2 Part 1 Paragraph 4 (3)(c) (page 126, line 12-13) removes this right to understand and be informed when data are used.

2. Page 126 line 10(3)(b) seeks to reduce rights, as stated in GDPR Article 14(4):

“Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained.”

This is a core principle of the data protection act today, principle 2 but recent policy tries to ignore it. Such a case is the use of children’s school records, given in for their education.

Repurposing data collected for administrative purposes is harmful to the integrity, quality and access to that data for research purposes.

¹ <http://amberhawk.typepad.com/amberhawk/2017/10/dp-bills-new-immigration-exemption-can-put-eu-citizens-seeking-a-right-to-remain-at-considerable-dis.html>

Public and professional trust in the school census has been damaged in reusing pupil data for operational immigration based uses and misleading data collection purposes. In April 2017, the NUT conference supported motions opposing nationality and country of birth collection and calling for more information to be given to schools and parents. Parents and teachers² are right to ask,

"Did ministers even consider what the consequences of their actions would be? Or have they decided the threat to children's safety is a price worth paying so they can look tough on immigration?"³

Campaigners believe⁴ that these ongoing uses of the database for non-educational purposes threaten the statistical integrity of the National Pupil Database.

Beyond the potential individual and group harms, by repurposing data gathered for statistical purposes for operational uses, campaigners defenddigitalme believe that the use jeopardises the privileges of research exemptions the NPD enjoys under data protection law, in the public interest.

This is perhaps why the government seeks to removed the data protection rights to question the purpose of processing, to lodge a complaint (GDPR Article 15 1(f), and 13 (2)(d) and understand its legal basis as listed in GDPR Article 14 (1)(c).

3. Further, page 126 line 8, Schedule 2, Para 4 3(a) would remove the rights of Article 13 (2)(f) to understand that their data are subject to such profiling and automated decision making.

Recital 71 of the GDPR is explicit solely automated decision making *should not apply to a child* and recital 75 points out the severity of harm that may result from processing data of vulnerable persons, in particular that of children, or where involving large amounts of data.

Page 126, line 10, Para 4 (3)(b) regards article 14(1) to (4) means that the right in GDPR article 14 (2)(c) would be removed, the right to request access to rectification — correction — of data used.

Given the error rate of recent Home Office interventions and well documented letters sent in error - even to a newborn baby. The erroneous letter from the NHS trust stated Violet Vipulanathan Horne, who was born in the UK and has two British parents, would need to pay for treatment she had received at a London hospital, because she was not "ordinarily resident" in the UK.⁵

This secrecy is exemplified in the DfE current approach as regards national pupil data. The DfE refuses Subject Access Requests, *contrary* to the usual recommendations of the Office of the Information Commissioner. They would perhaps prefer we have no ability to ask what data are held, and to whom they have been given, and it seems [are unwilling to promote transparency](#) and permit National Pupil Database subject access rights.

How much harder will it be for parents to prove a child's innocence when the system assumes they are in guilty, and our rights to be informed, to understand and rectify have been removed?

² NUT statement "Schools are not part of policing immigration" <https://www.teachers.org.uk/news-events/press-releases-england/school-census-data>

³ Laura McInerney, Oct 18, 2016 <https://www.theguardian.com/education/2016/oct/18/deportation-boycott-school-census-data-nationality-parents>

⁴ Full briefing on school census expansion http://defenddigitalme.com/wp-content/uploads/2017/03/Briefing_DDM_06032017-1.pdf

⁵ The Independent 19 Sept 2017, NHS letter demands eight-day-old baby provide identity documents <http://www.independent.co.uk/news/uk/home-news/nhs-letter-newborn-baby-eight-day-old-identity-documents-free-healthcare-right-violet-nik-horne-a7955211.html>

Relevant Case Studies

Reference: pupil data use in immigration enforcement [[download Briefing.pdf 713 KB](#)] updated August 17, 2017 with complete timeline of events

What the government says they do with data today, and what they do, can be very different things. National School Records were used in secret and nationality added to the data collected while Ministers told the public and parliament, these data would not be passed to the Home Office. We know that up to 1,500 individual pupils' home address and school address may be made available to the Home Office [on a monthly basis](#) in an agreement in place since July 2015.

This is a policy that started in secret and is well beyond the public and professional expectations of how school children's records should be used.

On October 5, the DfE confirmed to Sky News that information obtained from the National Pupil Database was used to contact families to "regularise their stay or remove them".⁶

[Ed Humpherson](#), the General Director of Regulation at the UK Statistics Authority (UKSA), suggested⁷ in February 2017, (after the Spring school census in January in which there was widespread failure to fairly and legally collect and process the new school census nationality data) that the Department writes before the next autumn school census to "*inform parents ... of their rights in regard to this collection*". This communication to the public has still not happened. There are no Department plans to do so, according to Lord Nash.⁸

This clause that reduces rights to understand and be informed, rather improve today.

In July 2015 the Home Office began to use National Pupil data in secret, for direct interventions in immigration enforcement among a range of data sharing agreement with a range of strategic aims. There was no public or parliamentary discussion of this policy introduction.

Aims include [para 15.1.2]⁹: "to re-establish contact with children and families the HO has lost contact with and trace immigration offenders," to "Create a hostile environment for those who seek to benefit from the abuse of immigration control," and "To reduce the illegal migration population."

"To identify the most recent address and where appropriate any previous addresses that it holds for these subjects in the last 5 years at the date of request in order to maximise the success of tracing missing children and their families and those who have committed an immigration offence."

Is it the intended purpose of clause that no child should be able to understand if their school records have been used for this purpose? Such practices need transparency to engender trust.

In July 2016 the Department laid Statutory Instrument (SI) 808/2016 in order to start collecting nationality and country of birth from every child in the School Census and the Early Years Census. Communication to schools, parliament, and campaigners said there were "*no plans to pass these data*" to the Home Office or share with "other government departments". This was stated in:

- a) Ministerial answer to two Parliamentary written questions in July 2016 [42942]¹⁰ and [42842]¹¹
- b) the BBC press statement in September 2016 issued by the Department for Education¹²

⁶ Sky News 5 October 2017 <http://news.sky.com/story/school-census-boycott-over-child-deportation-fear-11067557>

⁷ Director General for Regulation at UK Statistics Authority calls for communication and greater transparency of school census <http://defenddigitalme.com/2016/04/director-general-for-regulation-uk-statistics-authority-supports-call-for-transparency-and-better-data-handling-of-20-million-pupils-data/>

⁸ No communication plan <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-02-23/HL5598>

⁹ MoU v1.0 "*(Once collected) Nationality*" [paragraph 15.2.6] and strategic aims [15.1.2] <https://www.whatdotheyknow.com/request/377285/response/941438/attach/4/20151218%20DfE%20HO%20Final%20V0%201%20REDACTED.PDF.pdf> Quote also in paragraph 15.1.1

¹⁰ PQ 42942 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-15/42942/>

¹¹ PQ 42842 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-07-14/42842/> note the caveat "unless legally required to do so." The DfE-HO MOU is not a legally binding agreement, as the MOU itself states in para 1.7

¹² Pupil nationality data 'will not be passed to Home Office' <http://www.bbc.co.uk/news/education-37474705>

- c) the Secretary of State statement in October in Education Questions¹³ in the House of Commons
- d) and in the House of Lords questions on October 12¹⁴,
- e) and in the House of Lords Motion-of-Regret on October 31, 2016¹⁵

However, it was not true. The agreement in place all that time, version 1.0 of the MOU, states “(Once collected) Nationality” would be transferred by the DfE to the Home Office.

What is it that the exemption should do and why?

In the words of Dr Chris Pounder,

“The Government has added a completely new *immigration control* exemption to the Data Protection Bill (“DPBill”). This exemption does not appear in the Data Protection Act 1984 nor in the Data Protection Act 1998 so the question immediately arises as to “*why an immigration exemption is now suddenly needed?*”.” Dr Chris Pounder, Amberhawk¹⁶

Schedule 2. Part 1 Para 4, 3(c) means a controller would not need to respect these rights of GDPR Article 15

1. *“The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information*
 - a) *the purposes of the processing;*
 - b) *the categories of personal data concerned;*
 - c) *the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;*
 - d) *where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;*
 - e) *the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;*
 - f) *the right to lodge a complaint with a supervisory authority*
 - g) *where the personal data are not collected from the data subject, any available information as to their source;*
 - h) *the existence of automated decision-making, including profiling, referred to in [Article 22](#)(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.*

2. *Where personal data are transferred to a third country or to an international organisation, the data subject shall have **the right to be informed of the appropriate safeguards** pursuant to [Article 46](#) relating to the transfer.*

3. *The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.”*

¹³ Education Questions October 10, 2016 <https://hansard.parliament.uk/Commons/2016-10-10/debates/4B7349AD-337E-4FAC-BA3E-C8C9877ADA5A/TopicalQuestions#contribution-DBFF2B4F-0BAD-4B57-BC9A-A4F7711E3397>

¹⁴ <https://hansard.parliament.uk/lords/2016-10-12/debates/BE938C0A-75F0-453B-8EB3-D4DC2C4556AF/SchoolCensusPupils%E2%80%99Nationality>

¹⁵ Motion-of-Regret debate, 31 Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 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)

¹⁶ <http://amberhawk.typepad.com/amberhawk/2017/10/dp-bills-new-immigration-exemption-can-put-eu-citizens-seeking-a-right-to-remain-at-considerable-dis.html>