

Ms Jan Persson
By email only

15 April 2016

Case Reference Number: RFA0593008

Dear Ms Persson

I write further to my email of 5 April 2016 in relation to your data protection concerns about the Department for Education (the 'DfE').

When we first wrote to you, we explained that when a data protection concern is reported to us, we will consider whether there is an opportunity to improve the practices of the organisations we regulate.

As you know, we have been in correspondence with the DfE about the two areas of concern you raised with us. These include the handling of your subject access request ('SAR') and the general fair processing issues relating to the DfE's National Pupil Database ('NPD'). Having now reviewed its responses, I am able to give you our view on the matters raised, which I will now address in turn.

Subject Access Request

When you first wrote to us, you reported your concern that the DfE had denied you access to personal data regarding your children held in the NPD, which you requested in your SAR of 29 April 2015. The DfE responded to your SAR on 12 May 2015 and refused to comply with it, claiming the exemption contained at section 33(4) of the Data Protection Act 1998 (the 'DPA').

As you may recall, Section 33(4) provides that:

'Personal data which are processed only for research purposes are exempt from section 7 [the individual's right of subject access] if—

- (a) they are processed in compliance with the relevant conditions, and

- (b) the results of the research or any resulting statistics are not made available in a form which identifies data subjects or any of them'.

In its response, the DfE outlined the pieces of legislation which allow it to collect pupil, child and workforce data from schools, local authorities and awarding bodies and noted that the data collected forms a significant part of its evidence base. The DfE confirmed the NPD data is only processed for statistical/research purposes and is never processed to support measures or decisions about particular individuals. It further confirmed the processing does not cause any substantial damage or distress to individuals and that any results of the research/statistics are not made available in a form which identifies data subjects.

The DfE further explained that at the stage at which this data forms part of its evidence base for certain purposes, it has been anonymised, aggregated and is statistical in nature. Therefore, for the purposes of the DPA, at the stage at which the DfE use NPD data for such purposes, it no longer constitutes personal data in any event.

The DfE also noted that legislation that allows it to share individual pupil data with prescribed persons for research purposes. Access to NPD data by third parties is subject to strict compliance with terms and conditions, imposed under contractual arrangements with these third parties and following a rigorous approval process by the DfE. It explained that once a request is approved, it discloses individual pupil information to third parties for them to use it for research and, or statistical purposes, in order to meet or achieve an identified outcome. Again, once the results of the research are published, they do not identify individuals.

Having carefully considered the DfE's explanations, we are satisfied that it meets the criteria needed to rely on the exemption contained at section 33(4) of the DPA. Furthermore, it responded to your SAR within the statutory 40 calendar day time limit. Therefore, the DfE is likely to have complied with the DPA in relation to this issue.

National Pupil Database

In relation to your concerns about the NPD and the adequacy of the privacy notice provided by the DfE, in broad terms, we consider it likely that this complies with the relevant data protection principles of the DPA.

To explain further, the DPA contains eight principles of good information handling that data controllers should follow. The relevant principles in this case are the first and second principles, which relate to the fairness requirements of the legislation and only using personal data for specified purposes.

One of the requirements of the DPA is that a data controller should be transparent about how it intends to use the personal data it collects, and give individuals appropriate privacy notices when collecting their personal data. However, this does not extend to every possible use of personal data, particularly when the use of the information is something the individual can reasonably expect.

The DfE's own notice explains how it using personal data in relation the NPD. It is for individual schools, as data controllers in their own right, to make it clear in their own privacy notices how they may use personal data, including sharing this with third parties, such as the DfE. As you know, the DfE provides templates for schools to use pointing them towards the DfE's own privacy notice, but it is the individual school's responsibility to comply with the relevant principles of the DPA. By following a school's own privacy notice individuals can then examine the third party's privacy notice to understand how their personal data may be further processed. As noted above, the law permits schools to share personal data of pupils with the DfE.

However, it is possible that the currently used privacy notices used by the DfE, and schools more generally, could perhaps be improved, or made more transparent, as a point of good practice. Therefore, we will take this issue, and others you have referred to in your subsequent correspondence, forward with the DfE itself as general compliance matters, now that you have reported them to us.

Please note that we will keep a record of your concerns on file and this will help us over time to build a picture of the DfE's information rights practices.

Thank you for bringing these matters to our attention.