Summary Case Reference RFA0593008

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*I was appalled in 2014 to discover that the personal data of my three children are included in a database of over 8 million pupils; data that the Department for Education extracts from schools without telling pupils and parents.**[1]** and on 11/09/2014 I wrote to the DfE with questions on the failure of privacy notices in schools.*

*Without our consent or knowledge, the DfE passes on those data **[2]**, even from Tier 1 the most identifiable and highly sensitive level **[3]**, to third parties. These tier 1 uses have included commercial companies and the media, i.e. a BBC Newsnight journalist received Tier 1 data "to cover an education story," or the Cabinet Office granted data for the National Citizen Programme, where it is unclear why Tier 2 data, (still identifying and sensitive data), were insufficient.*

School heads and other school staff I have spoken to in West Sussex, are themselves unaware of the extent of data sharing at an identifiable and sensitive level, if they have heard of the database at all. The DfE suggested privacy notice template, published only in July 2015, fails to mention NPD use, so schools do not pass this fair processing on. [see p9 and Annex 1 for sample notices]

About 700,000 children aged 2-19 (pre-school, primary, secondary and further education), have been added to this database every academic year since 2002. None ever get deleted. The data reportedly contain up to 400 variables per individual. Why do they need so much data, forever?

There has never been an audit of data recipients to check they delete the data which they receive in their own setting.[4] The Department for Education replied in an FOI request:

"We reserve the right in our terms and conditions to audit the Requester's compliance with its responsibilities under the Agreement in respect of technical and organisational security measures to further verify their arrangements; however, we have not needed to exercise this power to date."

Under 10% of NPD data applicants have been rejected. There is no measure by DfE of public benefit of its use. There is no apparent policy on ensuring fair processing happens, no transparency of how data sharing decisions are reached, no published privacy impact or ethical reviews. No process to view our own children's data or have mistakes corrected.

I asked to see what the NPD contains to understand what it gives away about my children:

On 26/04/2015 I made a personal Subject Access Request to the National Pupil Database.
On 12/05/2015 the DfE refused my Subject Access Request, citing the Research, History and Statistics exemption (section 33(4) of the DPA.) I appealed, unsuccessfully.

Since, through my research, the identity of the data controller has become unclear to me, because a third party, the Fischer Family Trust, appears to manage the NPD. Neither the Department for Education or Fischer Family Trust have told data subjects anything at all about this role.

The Department appears to show blatant disregard for the duty of confidence that the public body owes its citizens, and I will show in at least one sample case study [Annex 2], this secondary use data sharing without consent could be highly distressing to individuals.

I ask for your support to achieve changes in the public interest. At the very least, every child and parent should be aware of this significant use of their children's personal data through a transparent process of communication to understand who manages the data they hold, who may access it and why. They should have the right to see it and if necessary, have corrections made. And I have a number of questions which I would like to better understand [collected in Annex 3].

Jen Persson

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[1] NPD user guide: www.gov.uk/government/uploads/system/ uploads/attachment_data/file/261189/NPD_User_Guide.pdf
[2] Table to show data sharing and for what purpose www.gov.uk/government/publications/national-pupil-database-requests-received
[3] Individual level data www.gov.uk/government/publications/national-pupil-database-user-guide-andsupporting-information
[4] What do They Know - Department for Education FOI request, July 23, 2015 www.whatdotheyknow.com/request/pupil_data_application_approvals#outgoing-471138

The National Pupil Database failures on data protection principles

The first principle: fairness and lawfulness

In effect privacy notices from schools cover only direct data use for administration. Further secondary uses by the DfE and whomever they pass it to such as press, are not communicated to pupils. For the fairness test to be met data subjects must be "in a position to learn of the existence of a processing operation."

The Department for Education is aware of its need for communication and suggests in its own user guide *[5]* that it meets its obligation by publishing a web statement.

"The department will not disclose pupils' and/or children's personal information without consent unless the law allows it to do so, and it is in compliance with the Data Protection Act.

"The department has to make it clear to children and their parents what information is held about them, why it is held, the uses made of it by DfE and its partners. The department publishes a statement on its website setting out how the department processes pupils' and children's data."

Some schools point to this statement from their own local webpage *[6].* But the purposes for which the data are intended to be processed are not explained on the Department of Education's central webpage. I examine this on p.8 in detail. It states for example:

"We only hold information provided to us by third parties such as schools, local authorities and awarding bodies. We do not generate any new information about individuals, and ***the data provided to us is only used to make decisions about educational policy on an aggregate statistical basis."***

The NPD recipients file published online in July 2015 *[7]*, of applications up to December 2014, clearly shows data are released at individual level (not aggregate statistical basis), to companies and to the media, and are used for purposes other than 'educational policy'.

Providing an accurate fair processing notice: this could be changed through proper communication and would not involve disproportionate effort, because fair processing notices are already issued to pupils/parents by schools. Currently most omit onward sharing and each one seen to date, omits sharing with commercial third parties and press.

Sensitive personal data: the sharing of these data should demand a greater level of scrutiny. It is questionable whether sharing sensitive data with commercial third parties and press are a legitimate 'necessary' processing for the data subjects education or well-being.

Whether the processing is necessary... for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or whether they have 'legitimate interests' could be debated separately from commercial users, media and others.

Annex 2 lists case studies of released individual, identifiable, sensitive data. Are these **necessary and appropriate** use of sensitive data, and how pupils expect their education data are used when it is extracted from schools? E.g: Avon Scouts in December 2013 *[8].*

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[5] NPD user guide: www.gov.uk/government/uploads/system/ uploads/attachment_data/file/261189/NPD_User_Guide.pdf
[6] DfE website Data usage statement www.gov.uk/guidance/data-protection-how-we-collect-and-share-research-data
[7] Table to show data sharing and for what purpose www.gov.uk/government/publications/national-pupil-database-requests-received
[8] Avon Scouts Tier 2 Line 270 Dec 2013 www.gov.uk/government/publications/national-pupil-database-requests-received

Consent: active pupil and parental consent is not sought for any onward sharing beyond the educational establishment's or Department for Education's own use. There is no opt out or choice given to pupils or parents to have their individual level data used ONLY for the purposes of their educational administration. Some privacy notices issued by schools [see Annex 1] mention that data must be passed to the DfE but not its third party use.

Consent does not cover the specific processing details, the type of information (or even the specific items of information), the purposes of the processing, or third party disclosures that may be made. Parents sign the form because they are obliged to give school personal details of their child and their own address etc for their school administration.

This is not compliant with The UK Data Protection Act 1998 (DPA) or the 1995 European Commission Directive on Data Protection.

The second principle: purposes and limitation

Further processing of data must be for specified purposes, and not be 'incompatible' with the purpose for which the data were obtained. The uses of data by the press, commercial third parties, and for intervention in Cabinet Office led programmes are questionable whether they would meet reasonable public expectations of school 'administration' needs.

The second and fifth principles: data minimisation and retention

Personal data should not be excessive, nor held for longer than is necessary. Data are collected for the administration of schooling. When they are no longer needed for this purpose how long is reasonable to retain and continue to release data at national level?

The sixth principle: rights to one's own data

The Data Protection Act gives rights to individuals in respect of the personal data.

- a right of access to a copy of the information comprised in their personal data;
- a right to object to processing likely to cause or is causing damage or distress;
- a right in certain circumstances to have inaccurate personal data rectified, blocked, erased or destroyed;

SAR refusal for parents and children seems at odds with this principle. Further the sensitivity of data sharing in some cases, could be damaging or cause distress.

The DfE refused my Subject Access Request on the basis of section 33 exemption.

Sixth principle and refusal of Subject Access Request: Section 33 exemption

Section 33(2) of the DPA provides that for the purposes of the second data protection principle, the further processing of personal data only for research purposes (which includes statistical or historical purposes) is not to be regarded as incompatible with the purposes for which they were obtained.

Section 33(1) provides that the processing must comply with two conditions: the data must not be identifying and processed to support measures or decisions with respect to particular individuals, nor be processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.

It appears common in data release notes, that while no names appear to be published in the output from the use of the data, named data are released from the NPD and given to recipients. And in certain cases, these data are sometimes used very specifically by applicants to match together with existing information they hold about named individuals to support activity with named individuals. *[9] see case studies Annex 2 for Case Studies of data use.*

I therefore do not believe section 33 should be applicable because the releases of NPD data are not following the criteria required to use section 33.

- the data are sometimes used to identify data subjects and enable named research;
- the data is in some cases processed to support measures or decisions with respect to particular individuals;
- the processing of data in some cases would not meet individuals' expectations and could be expected to cause substantial distress to those named individuals; and,
- the data is NOT otherwise processed in accordance with the Act due to its failure of fair processing

However my appeal to the DfE National Pupil Database team of their SAR refusal was upheld by their team on May 12th 2015.

The Department does not publish any process for data subjects to view the data they hold and directed me instead to ask my own school. **Unless the school has direct access to the National Pupil Database** this does not enable me to see the data it holds.

The seventh principle: keeping personal data secure

Appropriate security should prevent the personal data from the National Pupil Database being accidentally or deliberately compromised.

Raw data are given to users in their own locations to recipients by password protected email and not in secure settings.

The Department confirmed that there has never been any audit of data recipients.

Given the data content, (including SEN, FSM, exclusions, absence, full personal details, attainment), that data are from children, and the volume of the database I believe these data would be better managed in a secure setting appropriate to its scale and sensitivity. There should be increased transparency for data subjects, and increased scrutiny for data users. The list of recipients should be published in a more timely manner to increase transparency, not just once a year. Independent audits could be carried out to examine the data security settings that users maintain and how they delete data after use.

"We do not record the assessment and outcome in a central location and we are not able to track subsequently the benefit of the release of data as standard practice. [...] We reserve the right in our terms and conditions to audit the Requester's compliance with its responsibilities under the Agreement in respect of technical and organisational security measures to further verify their arrangements; however, we have not needed to exercise this power to date." [10]

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[9] See Annex 2 Case Studies: b. Prince's Trust, d.Nat Cen, and f. Cabinet Office as examples.
[10] DfE FOI response July 23, 2015 www.whatdotheyknow.com/request/pupil_data_application_approvals#outgoing-471138

Fair processing on the DfE website and how it reaches schools

The Department for Education provides two sources of fair processing to schools.

The first is a data usage statement available on its own DfE webpage. *[11]* It is inadequate in explaining purposes, it is confusing and misleading.

I examine the national DfE Data usage statement in detail on the diagram p7.

The second is a DfE webpage of templates with suggested data privacy notice wording for schools. These vary depending by institution type (i.e. academy or pupil referral unit). *[12]*

I examine that national template of suggested wording for schools in detail, and explain why it fails on a diagram (no mention of NPD onward sharing to 3rd parties for example) on page 9. Annex 1 further includes examples of applied local privacy notices provided by schools.

Neither the Department for Education data usage statement nor Department for Education privacy suggested wording templates clearly explain how NPD data are onwardly shared.

The suggested privacy notice content does not mention onward sharing from NPD at all, but suggests a link for more information, which takes users to the data usage page of the DfE website to find out more.

To demonstrate that neither sources of information reach pupils and parents and that the suggested content is not understood, as well as inadequate, I contacted a range of 40 schools in my county of West Sussex, and the South and East of England at random.

Research to date is yet to find a school which says that it has received information about the privacy notice templates from the Department for Education.

Some schools say they have received links some time ago from the Local Authority, but most say they have not received it and do not use suggested privacy notice wording.

I asked the DfE to provide the number of unique visitors to the webpage of template privacy notices with suggested wording since it was updated in July 2015 - to potentially indicate how many schools have seen it for back to school in September 2015, the time when schools issue their annual privacy statement and collect new intake children's personal data and for corrections of the minimum basic personal data they already hold. This response is due from the DfE on October 20, 2015. *[13]*

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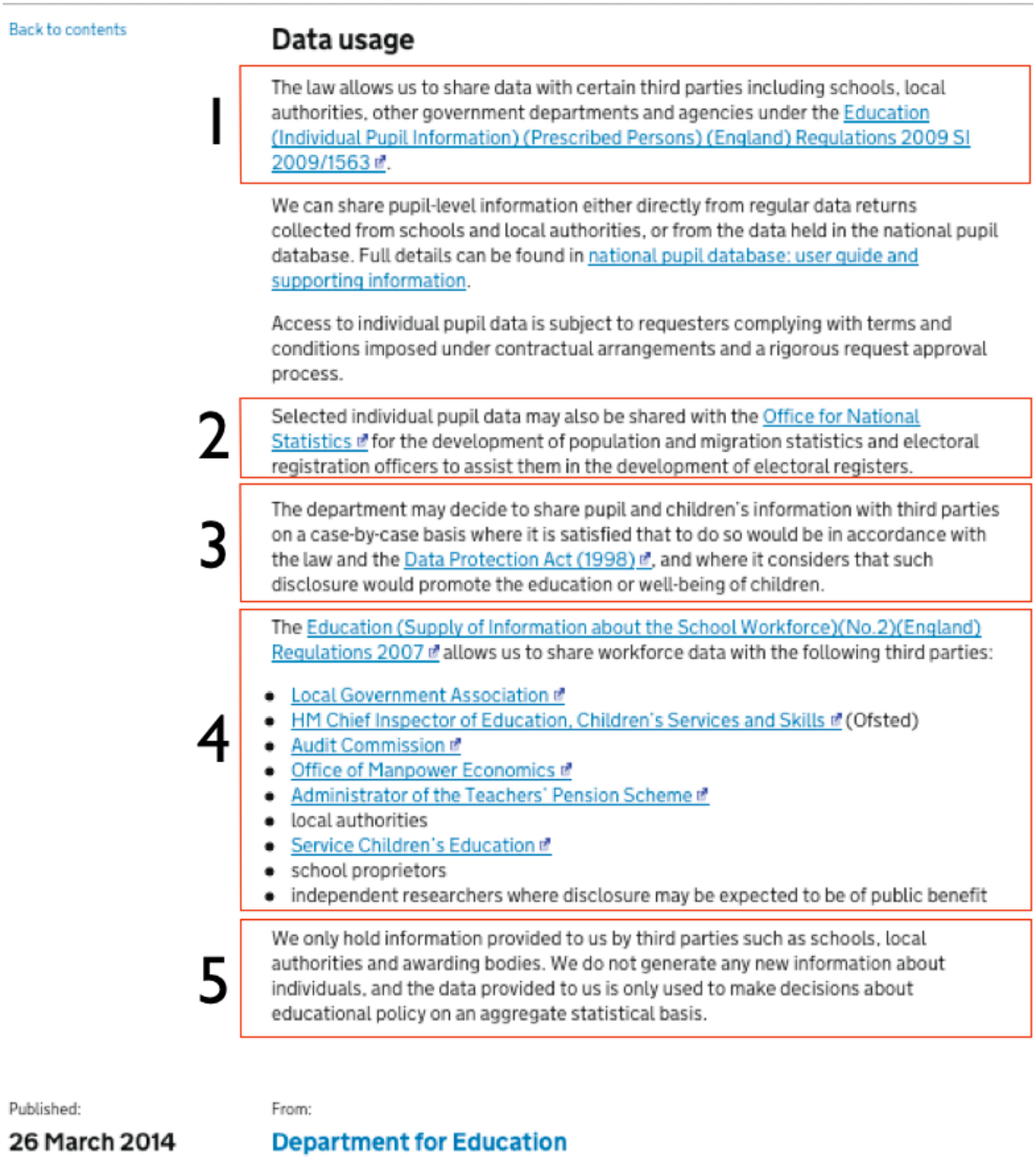
[11] DfE webpage data usage statement https://www.gov.uk/guidance/data-protection-how-we-collect-and-share-research-data
[12] DfE webpage, privacy templates for schools, updated July 3, 2015 https://www.gov.uk/government/publications/data-protection-and-privacy-privacy-notices
[13] FOI Request to DfE to understand what the DfE perception is of how widely their privacy notice is received https://www.whatdotheyknow.com/request/pupil_data_national_pupil_databa#incoming-709475

Failings of the Department for Education Data Usage statement *[11]*



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Data usage

1 The law allows us to share data with certain third parties including schools, local authorities, other government departments and agencies under the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009 SI 2009/1563.

We can share pupil-level information either directly from regular data returns collected from schools and local authorities, or from the data held in the national pupil database. Full details can be found in national pupil database: user guide and supporting information.

Access to individual pupil data is subject to requesters complying with terms and conditions imposed under contractual arrangements and a rigorous request approval process.

2 Selected individual pupil data may also be shared with the Office for National Statistics for the development of population and migration statistics and electoral registration officers to assist them in the development of electoral registers.

3 The department may decide to share pupil and children's information with third parties on a case-by-case basis where it is satisfied that to do so would be in accordance with the law and the Data Protection Act (1998), and where it considers that such disclosure would promote the education or well-being of children.

4 The Education (Supply of Information about the School Workforce)(No.2)(England) Regulations 2007 allows us to share workforce data with the following third parties:

- Local Government Association
- HM Chief Inspector of Education, Children's Services and Skills (Ofsted)
- Audit Commission
- Office of Manpower Economics
- Administrator of the Teachers' Pension Scheme
- local authorities
- Service Children's Education
- school proprietors
- independent researchers where disclosure may be expected to be of public benefit

5 We only hold information provided to us by third parties such as schools, local authorities and awarding bodies. We do not generate any new information about individuals, and the data provided to us is only used to make decisions about educational policy on an aggregate statistical basis.

Published: 26 March 2014

From: Department for Education

Ref 1 and ref 4: These users and purposes are incomplete."..*certain third parties including schools, local authorities, other government departments and agencies"* does not suggest commercial third parties, such as journalists, media, and schools comparison websites.

Ref 2: Individual level it suggests, is shared with the ONS, for very specific purposes: the development of statistics and electoral registers. A case study will show individual named data have been provided from the NPD and linked with ONS data for different purposes, including linked to sensitive health data which would not otherwise have contained name.

Ref 3: Individual level it suggests, is shared with third parties (which one assumes reading are those third parties which have been mentioned - schools, local authorities, other government departments and agencies) only for the promotion of education of children or the well being of children.

Do commercial third parties, such as journalists, media, and schools comparison websites meet the purposes of the promotion of education of children or the well being of children?

Ref 4: The text conflates pupil and workforce data into one data usage statement. Again, listing specific agencies appears to suggest a limitation on bodies which could get data.

Ref 5: It is also misleading to state *"data provided to us is used only to make decisions about educational policy* ***on an aggregate statistical basis."***

Case studies show that government bodies including the Cabinet Office and Department for Business Innovation and Skills have received tier 1 data (identifiable, individual and most sensitive level). These data were used at pupil-level.

"To examine and compare data on persistent unauthorised absence with data on the Troubled Families Programme. ***To compare and reconcile pupil-level absence data*** *from 10 local authorities. This will involve comparing data on unauthorised absence for pupils at Pupil Referral Units (PRUs) with data from the local authorities."[14]*

Further, "*We do not generate any new information about individuals,"* does not mention that new information is generated for recipients who do not hold these data already by joining their existing data such as health data to NPD stored data, or data held by third party organisations such as The Prince's Trust or NatCen, as shown in case studies. *[see Annex 2]*

Public engagement research in 2014 including polls by Ipsos MORI in conjunction with the Royal Statistical Society, and with the Administrative Data Research Network, show that the public are largely supportive of bona fide research in the public interest. The majority does not support the use of their personal data without consent, for commercial purposes.

"Three-quarters of Britons (78%) think that companies use personal information for their benefit, not the individual's, and 63% think the same of government and public services." [15]

The Department for Education data usage statement fails to adequately inform the public how it manages and processes their sensitive and identifiable data. And I do not believe these uses are in keeping with public expectations how their children's data are used.

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[14] Cabinet Office Tier 1 - Line 299 Feb 2014 www.gov.uk/government/publications/national-pupil-database-requests-received
[15] The Data Trust Deficit: http://www.statslife.org.uk/news/1672-new-rss-research-finds-data-trust-deficit-with-lessons-for-policymakers

Department for Education Privacy Notices Suggested Wording

The DfE published a template privacy on their website in **July 2015** *[a]* for schools and other settings to adapt and use as a local privacy notice yet omits any mention of onward sharing from the NPD to third parties. It is very hard to find from the DfE website *[b]*, and unless you know to look for it, it is highly unlikely that schools would do so.

Its purposes are incomplete [1] and confusing [2]. It conflates multiple purposes in this template and offers an unclear opt out of some sharing [3] It does not state DfE will onwardly share data with third parties [4]. The link to the data usage statement on DfE website is unhelpful and incomplete [5] and suggests responsibility for SARs is only with schools [6]. There is no suggestion that schools should explain the DfE NPD responsibility.

Privacy Notices:

Information about pupils in schools, alternative provision, pupil referral units and children in early years settings

Suggested wording

Data Protection Act 1998: How we use your information

1

We process personal information relating to our pupils and may receive information about them from their previous school or college, local authority, the Department for Education (DfE) and the Learning Records Service. We hold this personal data to:

- support our pupils' learning
- monitor and report on their progress
- provide appropriate pastoral care; and
- assess the quality of our services

Information about our pupils that we hold will include their contact details, national curriculum assessment results, attendance information, any exclusion information, where they go after they leave us and personal characteristics such as their ethnic group, any special educational needs they may have as well as relevant medical information. For pupils enrolling for post 14 qualifications, the Learning Records Service will give us the unique learner number (ULN) and may also give us details about your learning or qualifications.

2

In addition once our pupils reach the age of 13, the law requires us to pass on certain information about them to [insert name of local authority or the provider of Youth Support Services in your area] who have responsibilities in relation to the education or training of 13-19 year olds. We provide them with these pupils' names and addresses, dates of birth, name(s)/address(es) of their parent(s)/guardian(s) and any other information relevant to their role. We may also share certain personal data relating to children aged 16 and over with post-16 education and training providers in order to secure appropriate services for them.

3

A parent/guardian can ask that no information apart from their child's name, address and date of birth be passed to [insert name of local authority or the provider of Youth Support Services in your area] by informing [insert name of school administrator]. This right is transferred to the child once he/she reaches the age 16. For more information about services for young people, please go to our local authority website [insert link].

[Careers guidance – schools that pass young people's information to careers guidance services, or to the national careers service, may wish to set out details here.]

4

We will not give information about you to anyone without your consent unless the law and our policies allow us to.

[For schools:] We are required, by law, to pass certain information about our pupils to our local authority (LA) and the Department for Education (DfE).

[For academy and free school use only:] We are required, by law, to pass some information about you to the Department for Education (DfE). This information will, in turn, then be made available for the use by the LA.

5

If you need more information about how our local authority and/or DfE collect and use your information, please visit:

- our local authority at [insert relevant LA website link]; or
- the DfE website at https://www.gov.uk/data-protection-how-we-collect-and-share-research-data

6

If you want to receive a copy of the information about you that we hold, please contact:

- [insert name/contact details of your school administrator].

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[a] NPD data privacy template: https://www.gov.uk/government/publications/data-protection-and-privacy-privacy-notices
[b] DfE website without any mention of NPD https://www.gov.uk/government/organisations/department-for-education and next level https://www.gov.uk/government/organisations/department-for-education/services-information

Summary of the Department for Education Data failure of Fair Processing and its Communication to schools, pupils and/or parents

Sample copies of schools privacy notices and fair processing information applied in practice are included in Annex 1.

There is no direct communication of the NPD data sharing as yet evidenced by those who responded. One replied 'we've never heard of it, and another said that the most recent update about data privacy was sent from the local authority in 2010 - that preceded the legal and policy changes in 2013 which enabled third party use for wider purposes.

40 schools were invited to share their data privacy policies between 14 Aug - 19 September 2015. To date eleven have replied. Six secondary schools (11-18), and five primary schools (5-11). *[current October 6, 2015]*

0 responses from 11 schools who responded, said they were informed about the Department for Education onward sharing of pupil level data.

0 responses from 11 schools who responded, give their pupils and/or parent/guardians any statement about the use of the NPD data by commercial third parties in their data protection policies and/or privacy statements.

The majority of policies viewed online to date include only one sentence from the suggested privacy notice wording (updated on July 3, 2015):

"The school is required to share some of the data with the Local Authority and with the DfE."

Some schools link to the DfE usage page, but fail to transparently mention the National Pupil Database or onward sharing. Pupils are not informed their personal data are given to third parties, or how to ensure their data is accurate, lawfully retained and used.

Conclusion

Communicating fair processing with a data usage statement on a DfE webpage and privacy templates without any effective mechanism for them to reach schools, parents and pupils, is clearly no communication process at all. This is aside from addressing their inadequate content. Evidence shows schools are not told about NPD collection & purpose. They cannot therefore be held responsible for its communication. The Department for Education is aware and has taken no action to address fair processing issues.

The Department for Education's handling fails to meet a number of other data protection principles in practice: principles 1, 2, 3, 5, and 7; purposes, minimisation and retention, and security. It has also failed its obligations in subject access, principle 6 and the criteria required for using section 33 exemption should be examined with Annex 2 of case studies, showing data released from the NPD between December 2012 and 2014, incl. matching with sensitive health data, other individual level data, and person level activity.

These secondary uses are not in line with public expectation of how their children's data are used when they submit them in for the direct purposes of school administration.

Inadequate NPD security, governance and transparency with data recipients and subjects are inappropriate for the scale and sensitivity of the 8m children's records it holds.