
Director General for Regulation

Jen Persson
Defend Digital Me
(By email)

18 September 2019

Dear Jen,

Thank you for contacting us regarding the latest Department for Education (DfE) external data shares outlining requests from third party organisations wishing to access information in the National Pupil Database (NPD).

As per our previous correspondence, you may well be aware that we are in regular communication with both the DfE and the Information Commissioner's Office (ICO) regarding the privacy and confidentiality issues. We shared your concerns at our most recent meeting with them.

The DfE reported that they had made significant progress with moving to the Office for National Statistics (ONS) Secure Research Service (SRS) as the default data sharing platform, although there are, and will continue to be, cases where this does not meet needs and a data transfer will be necessary. In these cases, strict processes are followed to ensure that organisations receiving data directly have secure systems and mechanisms in place to control who can access the data.

From our perspective, it is clear that DfE have put in place a range of measures to support appropriate access to and use of the NPD. Please see the attached annex which sets out how these measures relate to the Data Governance (T6) practices in the Code of Practice for Statistics. Our judgement is that DfE's measures are consistent with these practices in the Code.

To further increase transparency, DfE agreed at our most recent meeting that it would focus on:

- Making clearer the reasons why some organisations obtain the data directly and others access it via ONS.
- Making more information available about what is done to safeguard data once shared, and to publicise this more.
- Routinely publishing relevant information from Data Protection Impact Assessments.

We will continue to meet with DfE and ICO regularly and will follow up on these improvements with them.

Yours sincerely



Ed Humpherson
Director General for Regulation

Annex

The Office for Statistics Regulation upholds the [Code of Practice for Statistics](#). This Annex sets out OSR's assessment of the actions DfE is taking to ensure that information is publicly available about how and why NPD data can be shared with other organisations. We have done this by considering each practice within the [Data Governance](#) principle (T6) of the Code of Practice.

Practice T6.1 All statutory obligations governing the collection of data, confidentiality, data sharing, data linking and release should be followed. Relevant nationally- and internationally-endorsed guidelines should be considered as appropriate. Transparent data management arrangements should be established and relevant data ethics standards met.

OSR Assessment: The website [Data protection: how we share pupil and workforce data](#) sets out DfE's approach to data sharing. We are content that the processes DfE follow meet the relevant statutory obligations and are aware that DfE works closely with the ICO to monitor this. The transparency of their arrangements has improved over time as more information has been made available. We have made a number of recommendations for further improvements to the information available and are content with the progress made to date and the Department's plans for future improvements.

In addition, DfE have published [statistical policy notice on confidentiality](#) which sets how the Department maintain the confidentiality of the data it receives, stores, processes and disseminates. It has also published a [Data Protection toolkit for schools](#) which provides guidance to support schools with data protection activity, including compliance with the General Data Protection Regulation (GDPR).

Practice T6.2 The rights of data subjects must be considered and managed at all times, in ways that are consistent with data protection legislation. When collecting data for statistical purposes, those providing their information should be informed in a clear and open way about how that information will be used and protected.

OSR Assessment: DfE is not directly responsible for data collection, it relies on schools to perform this role. DfE supports and encourages schools in this role in several ways. For example, DfE provides guidance to schools with example privacy notices, which include details of the NPD and its potential uses by third parties.

We asked DfE what methods they use to promote the use of these privacy notice documents and have been provided with the following information about the channels they use:

- inclusion within all data collection guides – these have been referenced in DfE guidance for all individual level data collections from schools and local authorities since 2016. For the school census DfE is currently trialling a new approach for how it makes available data collection guidance transitioning from content being available via downloadable pdfs to searchable web content. This will be in place for the [next school census collection](#).
- publication within the privacy notice channel on the Department's data collection online forum – in readiness for GDPR, a specific privacy notice channel was set up for schools and local authorities in May 2018 following publication of the updated suggested wording on 15 May;
- inclusion in individual level data collection readiness bulletins;
- inclusion within the [data protection toolkit](#) for schools;
- inclusion within the '[school census advice on processing personal data](#)' video.

DfE also informed us that the suggested wording for privacy notices has been updated to include more detail about the uses of the NPD, including uses by the Home Office. The documents also provide a direct link to the [transparency publication of all DfE data shares](#). This now includes details of all DfE individual level data sharing in one place, with a description of each project and consistent information about data sensitivity and identification risk using language tested for plain English. Through these channels, DfE seeks to make information publicly available on the NPD and its uses.

DfE told us that they monitor the usage of the materials they provide, and reported the following to us:

- The privacy notice page on GOV.UK has had almost 110k unique views since it was updated in May 2018 in advance of GDPR.
- From this page, the privacy notice user guide (which contains an example privacy notice) has been downloaded almost 31k times since being first published in May 2018 with the suggested wording for schools being downloaded almost 28k times during the same period.
- The data protection toolkit for schools has been downloaded over 73k times since its initial publication in April 2018.

We have not verified these figures and they have not been published elsewhere.

Practice T6.3: Organisations, and those acting on their behalf, should apply best practice in the management of data and data services, including collection, storage, transmission, access, and analysis. Personal information should be kept safe and secure, applying relevant security standards and keeping pace with changing circumstances such as advances in technology.

OSR Assessment: DfE's decision to use the SRS to enable access to data for research and statistical analyses meets this requirement. DfE also has procedures in place to oversee the release of data to third parties where SRS access is not practicable that ensure data are appropriately safeguarded. Steps are being taken to resolve the issues that are currently preventing some data from being accessed via the SRS.

Practice T6.4: Organisations should be transparent and accountable about the procedures used to protect personal data when preparing the statistics and data including the choices made in balancing competing interests. Appropriate disclosure control methods should be applied before releasing statistics and data. Appropriate protocols should be applied to approved researchers accessing statistical microdata.

OSR Assessment: The information added to the [Data protection: how we share pupil and workforce data](#) website in 2018 in response to our interventions has improved the transparency of DfE's procedures. DfE's intention for the SRS to be the default access platform for data provides a safe setting with statistical disclosure control of outputs applied to the analyses produced. All users accessing data via this route must now complete ONS's Approved Researcher training.

For the limited number of cases where accessing data via the ONS is not suitable, DfE require all individual users to provide a copy of a 'basic disclosure' certificate that is no more than 2 years old and sign a declaration form to confirm that they will abide by the legally binding data sharing agreements the DfE have entered into with the requesting organisation. Prior to receiving any data, external organisations are also required to submit an information security questionnaire to DfE detailing the security arrangements for the data and level of data protection and information security training employed within the organisation.

In addition, DfE has also overhauled the language on GOV.UK to describe the data that they share, with the aim that interested citizens can better understand the thinking and sensitivity/risk around data shares. We continue to make recommendations to further increase transparency and have sought assurances from DfE's Head of Profession for Statistics that these will be actioned.

Practice T6.5: Regular reviews should be conducted across the organisation, to ensure that data management and sharing arrangements are appropriately robust.

OSR Assessment: DfE has met this requirement by conducting a number of major reviews in recent years, resulting in the new procedures for accessing data for research and statistical purposes introduced in 2018. There is a programme of work to produce Data Protection Impact Assessments (DPIA) for all DfE data collections, this work involves reviewing data management and sharing arrangements.

We understand that a summarised public version of the DPIAs for the NPD and Alternative Provision Census was made available to yourself under FOI with the response being available from the link below:

https://www.whatdotheyknow.com/request/pupil_data_alternative_provision#incoming-1375464.

We have recommended that DfE routinely make information from their DPIAs available through their website.