

## OPEN LETTER

The Information Commissioner John Edwards  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire SK9 5AF.

*By email only.*

March 21, 2023

Dear Mr. Edwards,

Today, on the *2023 UN International Day for the Elimination of Racial Discrimination*, we, the undersigned organisations and individuals, write to ask you as the UK Data Protection Regulator to use your powers as set out in data protection law, to protect children. We call for an end to the misuse of their national pupil records by the UK Department for Education (“DfE”) in England for the purposes of immigration enforcement and furthering the policy aims of the Home Office Hostile Environment.

In 2015 the DfE began routinely handing over personal details to the Home Office from records stored in the National Pupil Database, and in secret without any public or parliamentary debate. By searching the dataset of more than 21 million people made from linking twenty three separate DfE-controlled databases,<sup>1</sup> the DfE enables the monthly matching of pupils’ records with the current or former pupil names the Home Office wants to find. The personal data handed over if they find a match, includes five years of past home and school addresses and more.<sup>2</sup> We do not know of any safeguards for errors, or of any routes for redress.

The data sharing agreement first signed off in 2015<sup>3</sup>, states that, *“where it is suspected that 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, the DfE will rely on their common law powers and utilise the exemptions granted under Section 29(3) of the DPA by sharing their data with the HO to assist in the process of identifying potential new contact details (including addresses) for the individual(s) and their family members.”*

The strategic purposes<sup>4</sup> of the data sharing include to, *“create a hostile environment for those who seek to benefit from the abuse of immigration control,”* and *“to reduce the illegal migration population.”*

Families entrust children’s data to schools with the expectation that it is only for the purposes of their education. These DfE-Home Office purposes are incompatible with education and go beyond those permitted by education law governing the control of pupil data.

---

<sup>1</sup> **The National Pupil Database is made from 23 separate data collections** <https://find-npd-data.education.gov.uk/categories>

<sup>2</sup> **The data handed over by the DfE includes:** Surname Forename Middle name (If held) Former surname (If held) Preferred surname Multiple or sole addresses (for the last 3 to 5 years where held) House number/ name, street name and town/ city Post code Relevant census collection date for this record Multiple or sole school information to include for all School number School name School postcode Earliest known pupil date at school Latest known pupil date at school and Adopted From Care Flag. Nationality (“once collected”) was included in the first agreement and withdrawn after public outcry in a new agreement signed off on October 7, 2016 the day after nationality and country of birth was collected by the DfE for the first time.

<sup>3</sup> **Memorandum of Understanding between the Home Office and Department for Education (2015) para 2**  
<https://www.whatdotheyknow.com/request/377285/response/941438/attach/4/20151218%20DfE%20HO%20Final%20V0%201%20REDACTED.PDF.pdf>

<sup>4</sup> **Memorandum of Understanding between the Home Office and Department for Education (2015) para 15.1.2**  
<https://www.whatdotheyknow.com/request/377285/response/941438/attach/4/20151218%20DfE%20HO%20Final%20V0%201%20REDACTED.PDF.pdf>

The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009<sup>5</sup> allows the DfE to share pupils' personal data collected from educational settings in England with certain third parties. This must be, "*for the purpose of promoting the education or well-being of children in England*" as set out in the Education Act 1996, which is amended by the Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009 (Amended 2013).<sup>6</sup>

The 1996 Act s537A(7)<sup>7</sup> creates an expectation of professional confidentiality in that it expressly prevents publication of the information "in any form" which includes the name of the pupil or pupils to whom it relates. The Department breaches this assurance and instead communicates names and addresses to an opaque and unlimited chain of third-parties starting with the Home Office.

Between July 2015 and December 2022 (the most recently available data)<sup>8</sup> the Home Office requested the matching of 6,914 individuals and were given the data from 1,790 via the DfE monthly searches. This is neither necessary nor proportionate use of 21 million + records.

Neither department takes any responsibility for or even seems to know what happens to children or family members as a result of matching pupil data monthly. The Member of Parliament for Brighton, Pavilion, Caroline Lucas, has asked<sup>9</sup> the Home Office about their impact of using pupil data from the DfE but the Home Office declined to provide this, and in answer to FOI the DfE say they do not know.

Educational settings send children's personal data to the Department for Education in good faith, daily, monthly and annually in over twenty-three collections. But the Department for Education has failed to tell schools that they have changed the purposes for which they collect pupil data across them all, or that they had started a new policy in July 2015. Schools and families are not told who controls the data after it is handed over, or where it goes after that. Families and children whose names will never be in the "looked for" lists will nonetheless have their records searched for this purpose, and have not been informed. We are deeply concerned that any continuing opaque practices around the processing of children into the immigration system is unsafe.

We understand that the ICO is trialling an approach with greater use of discretion to reduce the impact of fines on the public sector. We do not ask for any penalty. We simply want the unlawful and unethical policy and practice to stop.

The executive summary of the DfE audit in 2020 omits any comment on the lawfulness of this DfE practice. We ask you to review this, and to take action to protect the data rights of every child in the National Pupil Database and their family members using your powers under the UK GDPR 58(2)(f) to impose an immediate and definitive limitation on the non-compliant practice.

Sincerely,

---

<sup>5</sup> **The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009** (3) Prescribed Persons <https://www.legislation.gov.uk/ukxi/2009/1563/regulation/3/made>

<sup>6</sup> **The Education (Individual Pupil Information) (Prescribed Persons) (England) (Amendment) Regulations 2013** <https://www.legislation.gov.uk/ukxi/2013/1193/regulation/2/made>

<sup>7</sup> **The Education Act 1996** (Part IX Chapter IV Section 537A) <https://www.legislation.gov.uk/ukpga/1996/56/section/537A>

<sup>8</sup> **DfE external organisation data shares** <https://www.gov.uk/government/publications/dfe-external-data-shares>

<sup>9</sup> **Written parliamentary question PQ 92745 tabled on 21 September 2020 to the Home Office** <https://questions-statements.parliament.uk/written-questions/detail/2020-09-21/92745>

### **Against Borders for Children**

Zita Holbourne, **BARAC UK**

### **Defend Digital Me**

### **Duncan Lewis Public Law**

### **Haringey Welcome**

Cllr Maya Evans, Deputy Leader of **Hastings Council**

Liz Fekete, Director, **Institute of Race Relations**

Kate Adams, **Kent Refugee Help**

### **Kids of Colour**

Gisela Valle, **Latin American Women's Rights Service**

Ruth Ehrlich, Head of Policy and Campaigns, **Liberty**

Zrinka Bralo, CEO, **Migrants Organise**

Fizza Qureshi, **Migrants' Rights Network**

### **No More Exclusions**

### **No Police in Schools**

Dr Remi Joseph-Salisbury (UoM); **Northern Police Monitoring Project**

### **Privacy International**

Shadin Dowson-Zeidan, **Project 17**

Eiri Ohtani, **Right to Remain**

Selma Taha, Executive Director, **Southall Black Sisters**

### **West London Welcome**

Prof. Floya Anthias

Dr. Ron Ayres

Prof. Giorgia Doná (UEL)

Prof. Gina Netto (HWU)

Dr. Victoria Redcliff (UCL)

Dr. Rachel Rosen (UCL)

Dr. Ulrike M. Vieten (QUB)