

Governors' data collection by the Department for Education

In March 2016 the government set out plans to implement a national database of all volunteers involved in school governance by extending the information collected online via EduBase. There is no opt out of the personal data collection. No new legislation was put in place (unlike they did for pupils' nationality and country of birth data¹). This collection relies on Section 538 of the Education Act 1996,² provision of information to the Secretary of State by governing bodies of maintained schools:

"The governing body or temporary governing body of a community, foundation or voluntary school or a community or foundation special school shall make such reports and returns, and give such information, to the Secretary of State as he may require for the purpose of the exercise of his functions in relation to education."

We do not believe that this information is necessary for the exercise of the Secretary of State functions.

We believe that s538 confers a power to be used rather for reporting and school-type data, not to be used to set up a mass, regular information flow, of identifiable level data about individuals, especially when one compares the detail in section 537 to confers powers to collect pupil level data. Our view of s538 is that if the Secretary of State for Education wants to require governing bodies to provide this sort of information for a national database, the government needed secondary legislation.

There is also inadequate fair processing. On both these grounds, this collection of confidential personal data therefore has no fair and valid legal basis. Collection should therefore end and data should be deleted.

Concerns and unanswered questions

1. There is no register of who can and has accessed this data. We asked the Department for a list of all users (redacted for personal data) of the newly extracted data since its collection in autumn 2016 and were told that *"the users of the governance data collected via EduBase since 2016 have been from the department – for its functions on academies, due diligence, governance and the EduBase team itself."*

2. We asked for a copy of any data sharing agreement/MOU with other government Departments for the use of this data. The reply was ambiguous about wider use, and did not provide any MOUs.

3. There was no obvious consultation or transparent approval process of this expansion. *"Changes were agreed with the contractor (named above) who subsequently worked up a specification for the changes to EduBase. This is standard practice for changes made to the EduBase system."*

4. Security of personal data in the publicly searchable database. Part of the information is publicly searchable.³ We question the need for a national database that's searchable, and could be extracted by anyone, en masse as opposed to local school website, as now. This could put off some individuals especially if vulnerable, from volunteering and adding value to their school community in these important roles.

5. There are open questions on precise purpose for its collection and use, indefinite retention, deletion, use and access by third parties, and what happens after the term of governor is over.

Conclusion: What safeguarding duties does the Department have that cannot be carried out at local level under local disclosure and barring? For communications, no personal data should be necessary, rather a Head@ or Chair@governors@ blind email would be sufficient. We find this data collection policy outside the statutory remit of the Secretary of State for Education, without transparency or oversight, and a concerning overreach and infringement of privacy for volunteers who are not employed by the State. This should also be considered against the backdrop of the use of pupil data in secret since 2015.⁴

¹ Letter to the SI legislative review committee <http://defenddigitalme.com/wp-content/uploads/2016/09/Defenddigitalme-submission-SI2016-808.pdf>

² Section 538 Education Act 1996 <http://www.legislation.gov.uk/ukpga/1996/56/section/538>

³ EduBase governors' personal data on public website <http://www.education.gov.uk/edubase/searchgov.xhtml>

⁴ MOU between DfE and HO Border Force on pupil data for http://defenddigitalme.com/wp-content/uploads/2016/12/20161016_DfE-HO-MoU-redacted-copy.pdf

White Paper: March 2016 [point 1.39 page 18]⁵

*"We will also establish a database of everyone involved in governance and **we intend to legislate to enable us to bar unsuitable individuals** from being governors of maintained schools, to mirror the existing barring power for academies and independent schools."*

Government announcement: National database of governors July 1st 2016⁶

"Under section 538 of the Education Act 1996, maintained school governing bodies will be under a duty to provide the information required on EduBase from September 2016, and keep it up to date as those involved in governance change. We do not hold information on maintained school governors and so cannot pre-populate these fields. The fields are already live for governing bodies that wish to populate them in advance of the duty coming into force in September. We will update the Governance handbook on the constitution of maintained schools governing bodies() to reflect this new requirement."*

*"For all maintained school governors, and academy trustees, members and local governors, the data we will collect in EduBase **and make publicly available is:***

- full name (including title)
- appointing body (e.g. board, foundation, parents etc)
- date of appointment
- date term of office ends / ended if in last year
- for maintained schools whether they are the chair of governors or a member of the governing body, and for academies whether they are a trust member, a trustee, the chair of trustees, or a local governor on a local governing body

*In addition, for all these individuals we will collect within EduBase, but not publish, a range of information **to help us to identify specific individuals:***

- postcode
- date of birth
- previous names
- nationality
- direct email address for chair

"This governance data that is not publicly available will be encrypted within the system and access will be restricted to a small number of users who need it to fulfil their official responsibilities. The email address of the chair of the board will be made available to regional schools commissioner offices on request where they need direct contact with the chair."

References: * [Academies handbook, point 4.7.4 page 40/59]⁷ and Maintained schools [The constitution of governing bodies of maintained schools, statutory guidance].⁸

Freedom of Information Request 2017-0002704: DfE answered on January 13, 2017

The Data Controller is the Department for Education. Texuna Technologies Ltd. is the data processor. EduBase is available via the department's Secure Access portal. The secure access portal allows registered users access to the department's systems. Access is granted on a user-by-user basis.⁹

⁵ White Paper March 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508447/Educational_Excellence_Everywhere.pdf

⁶ DfE news: National database of governors July 1, 2016 <https://www.gov.uk/government/news/national-database-of-governors>

⁷ Academies handbook, point 4.7.4 page 40/59 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535870/Academies_Financial_Handbook_2016_final.pdf

⁸ The constitution of governing bodies of maintained schools, statutory guidance point 33, p12/29 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558622/2012_Constitution_Regulations_Statutory_Guidance_-_Sept_16.pdf

⁹ Freedom of Information Request 2017-0002704 https://www.whatdotheyknow.com/request/governors_database