

defenddigitalme  
September 21 2017

XXXX, Department for Education, DDU  
XXXX Department for Education, Data division  
XXXX, ICO  
XXXX, ICO

Dear XXXX  
re: the [RFC Notice 957 2018 Alternative Provision Census expansion of sensitive health data collection by DfE at national level](#)<sup>1</sup>

I copy to Information Commissioner staff, and XXXX as part of our ongoing conversations, as we have serious concerns that these pupil data expansions continue, regularly, and collect increasingly sensitive data at national level for millions of children without any plans for implementing data protection and privacy impact assessments, or communicating to the families involved. No impact assessments have been done to date, and no consultation published. We want to bring the below into any upcoming discussion.

After three years of requests for improvement, and since we are yet to see any change, while the releases to third parties of raw sensitive data continue including these [sensitive health conditions to journalists](#)<sup>2</sup> and parents still have no idea these data are collected at national level - as well as the pupils who have left school - with the next planned AP Census collection date on January 18, 2018<sup>3</sup> and UK / GDPR Data Protection law changes pending, this is growing increasingly urgent.

### **Expansion of sensitive health conditions data collection at national level**

The Alternative Provision Census will start the collection of expanded mental and physical health data for children by the Department in January, in reasons for placement. New data protection laws regarding impact assessment, under Section 3 of the GDPR, and the nature, national scope and sensitive data involved of children who "merit specific protections" suggest that this type of national data expansion, should have a DPA / PIA carried out, and we would hope it would be published.

We suggest it would be a good opportunity to do so, in order to begin this process for all new data collections starting anytime in 2018, since no Data Protection and Privacy Impact Assessment has ever been carried out for the forever incrementally expanding National Pupil Data collections.

At very minimum, we would like clarification of its legal basis, why these data are not handled as health/sensitive, and the planned and effective method of communications to parents and pupils.

### **Disability Codeset Matrix**

The tab Disability Codeset Matrix in the CBDS Codeset<sup>4</sup> is detailed in its level of disability and health conditions and needs. We would like to understand what the current categories of this type of sensitive data you collect are, because the multiple tabs and years make it unclear what data you hold from children in the past, and is available for release from the NPD, and what is still being

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<sup>1</sup> RFC Notice 957 2018 Alternative Provision Census expansion of sensitive health data collection by DfE at national level [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/639453/RFC\\_957\\_-\\_new\\_data\\_items\\_-\\_AP\\_census.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639453/RFC_957_-_new_data_items_-_AP_census.pdf)

<sup>2</sup> Example of journalist sent Tier 1 sensitive and identifying SEN data in the past <http://defenddigitalme.com/wp-content/uploads/2017/06/BBCNewsnight.pdf>

<sup>3</sup> <https://www.gov.uk/government/publications/alternative-provision-census-2018-guide>

<sup>4</sup> The CBDS Codeset is a list of the past and current data collected which this expands upon. <https://www.gov.uk/government/publications/common-basic-data-set-cbds-database>

collected on children today. Therefore what additional level of detail the expansion adds to the classifications of health conditions in [para 4.15](#)<sup>5</sup> and 5.4 includes reasons like pregnancy.

### **A question of consent / legal basis and communication of fair processing**

We would like to understand what consent mechanism or other legal basis you rely on to collect this sensitive data, its plans for third party distribution<sup>6</sup>, retention, and purposes limitation, given its sensitive characteristics, and how this legal basis and purposes will be made clear to families. The current privacy notices DO NOT REACH parents and pupils.

### **Release to third parties continues as raw identifying and sensitive data including SEN**

This is particularly of concern, as your Department releases special needs characteristics, without small number suppression, in identifying raw data to journalists and commercial bodies today. Further, commercial and research third parties<sup>7</sup> have their own copies of the National Pupil Database, and make linkage with their own supplemental data, with and without informed consent.

### **Summary of questions. Please can you:**

1. Confirm whether or not you have carried out a Data Protection and Privacy Impact Assessment regards RFC notice 957 or have plans to do so, and publish the outcome.
2. Clarify the categories of this type of sensitive data (SEND data) and provide a breakdown of the subcategories in Primary SEN, SEN and disability, and EHC codes and data descriptions.<sup>8</sup>
3. Confirm what data you already hold from children in the past, in those categories, and what is now being collected on children today, and what the expansion will add to for children at the different types of establishment or census collection in which it is gathered.
4. Clarify the legal basis for collection of SEN data, and its past/current release to journalists.
5. Will these new data also be added to the National Pupil Database and be available for release?
6. Confirm the effective method of communications planned to parents and pupils about the expansion, including purposes, distribution, planned processors and controllers, and retention by DfE and by third parties in their own copies of NPD and linked NPD data retained by them.

We are happy to discuss if easier for you instead of letter. I look forward to hearing from you.

Sincerely,  
Jen Persson  
Director, defenddigitalme  
XXXX

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<sup>5</sup> 2017-18 Alternative Provision Census Guidance for schools [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645914/2018-Alternative\\_Provision-Census-Guide-V1.2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645914/2018-Alternative_Provision-Census-Guide-V1.2.pdf)

<sup>6</sup> Identifying pupil data releases to third parties since 2012 (see also archive on page) <https://www.gov.uk/government/publications/national-pupil-database-requests-received>

<sup>7</sup> [https://educationendowmentfoundation.org.uk/public/files/Evaluation/Applying\\_for\\_NPD\\_Data/The\\_EEF\\_Data\\_Archive\\_-\\_advice\\_for\\_evaluators\\_\(including\\_consent\)\\_July\\_2017.pdf](https://educationendowmentfoundation.org.uk/public/files/Evaluation/Applying_for_NPD_Data/The_EEF_Data_Archive_-_advice_for_evaluators_(including_consent)_July_2017.pdf) "Fischer Family Trust is contracted to provide data management services to the EEF. FFT are the EEF's Data Processor and not a third party. EEF are the joint data controllers with the evaluator –both organisations determine the purposes for which and the manner in which any personal data are, or are to be, processed."

<sup>8</sup> Education, Health and Care plan (EHC plan): An EHC plan details the education, health and social care support that is to be provided to a child or young person who has SEN or a disability. It is drawn up by the local authority after an EHC needs assessment of the child or young person has determined that an EHC plan is necessary, and after consultation with relevant partner agencies