Department for
Digital, Culture
Media & Sport

DataProtectionBill Mailbox

Fwd: NatCen Call for views 10th May

Good afternoon,

Please would you include our question for the Call for views survey for GDPR.

My apologies if this is late however the site stated replies by 10th May. Or indeed if I need to redirect to anyone?

Address to ICO https://www.gov.uk/government/consultations/general-data-protection-regulation-call-for-views

From: Michael Davies Information Security Manager,

Reference: Government call for views on the exemptions contained in the GDPR.

Closing date: 10th May 2017

Question from NatCen (National Centre of Social Research)

NatCen is a not-for-profit social research organisation that, amongst other activities, conducts surveys for public and private entities. NatCen is committed to the highest standards of ethical research, holds ISO27001, ISO 20252 quality standard for research and IG Toolkit information security accreditation, and is a data controller and data processor for a number of datasets containing sensitive personal data.

After reading the GDPR, NatCen would like to confirm research carried out on behalf of the government can be carried out under the" Legitimate Interests" route, as opposed to the "Consent" route. We have included an example

scenario, approach with supporting justifications below.

An example scenario might be:

The Department for Education commissions a programme of trials of mental health interventions in schools (under 16).

To gain the widest response we would need to ensure that our consent processes are in line with GDPR requirements. Our preference would be to administer a parent opt out consent to collect, store and analyse the pupil data for research purposes and to link to attainment data from the National Pupil Database. We would need to collect names but would not collect sensitive personal data such as ethnicity and SEN to avoid the need for opt in consent. We would ask for pupil assent to take part at the start of the survey. We are keen to confirm whether parent opt out consent would be permissible. To collect opt in consent from parents would make the trial unfeasible as it would introduce a high level of drop-out and bias which would undermine the ability to measure intervention impacts.

The question could be expanded if the need for sensitive/special information was needed?

Respondent feedback is strictly confidential and responses aggregated with no respondent being affected by conclusions. Technical and Organisational controls have been established to protect the information and Psuedonymisation techniques used. Privacy Notices are also used.

Our concern is that as research, such as this, is in the national interest & greater clarity may be needed within the GDPR to ensure national surveys paint the most accurate picture.

Our concerns being that consent requirements under GDPR could affect outcomes.

On internal review of the GDPR, we note the following (extracts from clauses are below the main text):

· Processing is lawful when necessary for the purpose of the legitimate interests of the data controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject…, in particular where the data subject is a child. However this does not apply to processing carried out by public authorities in the performance of their tasks (Article 6 (1) (f)).

· The under 16 year old age limit (which could be reduced to 13 years) requiring parental consent appears in Article 8 only which is specific to information society services. The type of research we are considering is not part of the definition of information society services (http://www.elot.gr/Directive_EU-2015-1535_en.pdf).

· Children merit specific protection with regard to their personal data but preventative or counselling services offered directly to the child are exempt (clause (38)).

· Data can be processed without consent for health purposes ((52), (53) and particularly (54)).

· The Regulation refers to ‘consent given as a child’, which implies that it is possible to do so (65).

· Further processing of collected data for scientific research purposes (which includes public health research) is permitted (Article 5 (1)(b)). Details of research exemptions are in Article 89.

While it is NatCen's practice to seek consent for (sensitive) personal data processing where appropriate and where the outcomes of the research will not be impaired, we feel that in this instance the bias that could be introduced on the basis of parental opt-in for minors would considerably damage the project results.

We believe that once appropriate safeguards are in place, which may include e.g. Privacy Impact Risk Assessments, and subject to the permission of the relevant public authority on the basis of a public health need, it will be possible to process children's sensitive personal data without parental consent for the purpose of the research described above.

We would appreciate your comments on this approach. In particular, if you feel that we have overlooked something that means our approach does not meet the GDPR requirements, we would very much welcome your views.

Kind regards,

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Department for Digital, Culture Media & Sport

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