

The Code of Data Matching Practice – Response to Consultation

September 2018

Contents

1. Introduction	3
2. The consultation exercise	4
3. Issues raised	6
4. Summary of responses and Government responses to these	7
5. Next Steps	10

1. Introduction

- 1.1. The National Fraud Initiative (NFI) is the Cabinet Office data matching exercise that assists in the detection and prevention of fraud pursuant to powers set out in Part 6 and Schedule 9 of the Local Audit and Accountability Act 2014.
- 1.2. Under paragraph 7 of Schedule 9, of that Act, the Minister for the Cabinet Office is required to publish and keep under review a Code of Data Matching Practice (“The Code”).
- 1.3. The Code of Practice was last published on 21st July 2008. Since that time there have been a number of significant changes to the way in which the NFI operates and the legislation under which it does so.
- 1.4. As the existing Code was out of date it was decided to review and update it, in particular to:
 - 1.4.1. take account of the release of the NFI fraud prevention AppCheck tool and FraudHub technology;
 - 1.4.2. remove references to obsolete legislation and bodies; and
 - 1.4.3. take account of changes to data protection legislation and the latest Information Commissioner’s guidance.
- 1.5. The Local Audit and Accountability Act 2014 requires that before preparing or amending the Code, certain named bodies and individuals must be consulted.
- 1.6. We have considered all the consultation responses received. Section 3 of this document gives a high level summary of the responses. Section 4 of this document sets out our decisions on whether any of these responses require a change to the Code.
- 1.7. We would like to thank all those that took the time to respond to the consultation and for providing their comments.
- 1.8. Enquiries about this document should be addressed to: nfiqueries@cabinetoffice.gov.uk.

2. The consultation exercise

- 2.1. The consultation draft Code of Data Matching Practice and a Data Deletion Schedule was placed on GOV.UK on 21st September 2017 and responses were due by 2nd November 2017.
- 2.2. A specific email with links to these documents were sent to all mandatory and voluntary participants in England, to the Information Commissioner and to representatives of mandatory and voluntary bodies. A message was also added to the NFI web application directing all 8,000 users of the NFI to the consultation.

- 2.3. In total six responses to the consultation were received from:

Government Agency/Other public sector

Information Commissioner's Office (ICO)

Department for International Development

Local Authority

London Borough of Enfield

West Suffolk Council

Dartford Borough Council and Sevenoaks District Council

Professional body/other interest group

CIPFA

- 2.4. The small number of comments from consultees may reflect the relatively non-controversial nature of the updates we proposed.
- 2.5. The majority of comments were received from the Information Commissioner's Office. A significant proportion of those comments related to changes due to the General Data Protection Regulation and the Data Protection Act 2018 which came into effect on 25th May 2018.
- 2.6. Several respondents did not comment on the Code itself, but took the opportunity to raise practical and operational issues about the NFI and data matching generally.
- 2.7. For example, one respondent felt that it would be better if the law was changed to provide blanket coverage for all to give a mandatory only basis on which to data match rather than voluntary as it is easier to find a legal basis for processing under data protection legislation. However, the consultation was not about amending the current law in relation to the NFI as set out in the Local Audit and Accountability Act 2014, but instead about updating the content of the Code for the reasons given above.

- 2.8. Others raised queries around greater emphasis on making effective use out of the NFI, or how to handle false positives. Again this is not addressed below, because it is a matter outside the scope of the consultation.
- 2.9. Where appropriate, the Cabinet Office will be responding to these “out of scope” issues on an individual basis.
- 2.10. A separate Code of Data Matching Practice exists for bodies in Wales, Scotland and Northern Ireland. These versions of the Code are compiled and kept under review by the Auditor General for Wales, Audit Scotland and Northern Ireland Audit Office, respectively and are not covered by this consultation.

3. Issues raised

- 3.1. The key themes from the consultation were around:
 - 3.1.1. data protection legislation;
 - 3.1.2. the application of the General Data Protection Regulation (GDPR);
 - 3.1.3. the content of privacy notices; and
 - 3.1.4. security measures.
- 3.2. We have considered all responses and where appropriate made changes to the consultation draft of the Code in respect of those comments. These changes are explained in further detail below.
- 3.3. We have sought to take account of these responses in respect of 3.1.1 - 3.1.3 above where appropriate, however the Code is specifically directed at the activities of the Cabinet Office and its powers to data match under the Local Audit and Accountability Act 2014. Its purpose is to assist users of the NFI, not to give more general guidance in meeting the requirements of data protection legislation and as such it often refers to central guidance in this respect.

4. Summary of responses and Government responses to these

- 4.1. References to paragraph numbers below are references to paragraphs in the final version of the Code as published.
- 4.2. There were some comments about improving the clarity of the Code in respect of data protection legislation requirements. As a result of these we have made the following changes:
 - 4.2.1. References to the Data Protection Act 1998 have been replaced with references to data protection legislation (which is defined to mean the GDPR, the Data Protection Act 2018 and relevant regulations) (1.3.2, 1.6.2, 1.7.1, 2.1.6, 2.2.3, 2.3.2, 2.7.2, 2.7.4, 2.8.1, 2.9.1, 2.16.4, 2.18.3, 3.2.3).
 - 4.2.2. In respect of the relationship to data protection legislation and other information sharing codes, we have now referred participants to the ICO guidance on its website (1.6.1).
 - 4.2.3. The timing of a further review of the Code as a result of future changes to the law has been added (1.6.3);
 - 4.2.4. Reference to the provisions under which pilot data is provided has been added to 2.5.2.
 - 4.2.5. In respect of the data to be provided, we have amended the wording to more closely align with the third data protection principle that is data will be adequate, relevant and limited to what is necessary to undertake the matching exercise (2.6.1).
 - 4.2.6. The paragraph that sets out the authority under which the processing of data by the Cabinet Office in a data matching exercise is carried out has been moved from 2.8.2 to 2.7.5 to provide clarity as it sits better in the section on powers to obtain data.
- 4.3. There were a number of comments about changes to data protection legislation and specifically the GDPR. As a result we have:
 - 4.3.1. sought to clarify that this Code is designed to help bodies taking part and is not the definitive source on data protection legislation (2.1.4, 2.15.5);
 - 4.3.2. further noted the importance of participants undertaking their own legal scrutiny of their specific data processing arrangements when processing data for the NFI (2.1.4);
 - 4.3.3. removed references to the public register of data controllers that process maintained by the Information Commissioner (2.4.8, 2.4.9 now deleted);
 - 4.3.4. amended Part 2.8 to more accurately reflect the requirements in relation to fairness and transparency following the new data protection legislation;
 - 4.3.5. added reference to the right under data protection legislation to have inaccurate personal data rectified (2.9.3) and this requirement has also been referenced in 2.14.3;

- 4.3.6. added reference to the requirements, under the new data protection legislation, to notify data subjects and Information Commissioner of personal data breaches (2.10.7);
- 4.3.7. updated paragraphs relating to a data subjects right of access to their data (2.16.1, 2.16.2, 2.16.6); and
- 4.3.8. data protection legislation and data controller has been added to Appendix 2 - Definitions of terms used in the Code.
- 4.4. We had a number of responses regarding privacy notices. In particular concerns were raised around privacy notices and specifically whether it was necessary to name the Cabinet Office as some users do not currently do so and they questioned whether this was correct. Another issue raised was whether we could expand upon the guidance on retrospective privacy notices:
 - 4.4.1. With regards to the content of privacy notices, we have expanded 2.8.2 to include all of the information, required by data protection legislation, to be in a privacy notice.
 - 4.4.2. We have also included a reference in 2.8.3 to the details of the legal basis the data controller is relying on for processing. This paragraph has also been amended with regard to who the data will be shared with. Rather than specifically stating that the Cabinet Office should be named we have referred users of the Code to the ICO guidance. Whilst we would suggest Cabinet Office is named there is an option to state a 'well defined category of companies'.
 - 4.4.3. We have added a reference to the ICO's guidance on when to actively communicate privacy notices at 2.8.4.
 - 4.4.4. Reference to Cabinet Office potentially seeking input from the ICO on participant's adherence to privacy notice requirements has been added to 2.8.5.
 - 4.4.5. In 2.8.7 we have sought to clarify retrospective privacy notices by including a link to the ICO guidance.
- 4.5. We also had a response in respect of security issues, specifically the use of technical buzzwords rather than being clear about the controls in place.
 - 4.5.1. The inclusion of some of the security controls applied to the NFI gave a false impression that they were the only measures that are applied. For this reason and due to the fluid nature of security risks, threats and threat landscapes, references to specific security controls have been replaced with references to the Cabinet Office's Information Assurance and Risk Management Processes and the NFI Security Policy. Both of these are regularly reviewed as part of the annual HMG accreditation process (2.10.4, 2.10.5, 2.12.3, 2.13.3).
- 4.6. Other minor changes include:
 - 4.6.1. The Cabinet Office FEDG Team address has been updated (1.8.1)
 - 4.6.2. Footnote 4 relating to patient data has been removed as this term is defined in Appendix 2.
 - 4.6.3. Footnotes 5, 6 and 7 have been removed as they have been superseded by new data protection legislation.

- 4.6.4. In 2.2.2 'or circumstance' has been added after 'inconsistency'.
- 4.6.5. Rather than using 'beyond the scope of the Code' in 2.14.1 this has been replaced with 'outside the scope of the Code'.
- 4.6.6. A missing reference to a related party in 2.15.3 has been inserted.
- 4.6.7. Superfluous references to sub paragraphs of the Local Audit and Accountability Act 2014 in 2.15.5 have been removed.
- 4.6.8. Appendix 2, the option to opt out of the appointed person arrangements has been added to the Auditor and Appointed Auditor definitions.

5. Next Steps

- 5.1. Participating bodies will wish to take account of this report and the requirements of the 2018 Code in preparing for the next NFI exercise, which commences in October 2018.
- 5.2. It is our intention to further review the Code following the introduction of any new relevant legislation.