



Department
for Education

Government response to the consultation on draft advice on protection of biometric information of children in schools

December 2012

Introduction

The purpose of this consultation was to gather views on a Department for Education draft advice document intended to explain the legal duties schools and colleges have if they use automated biometric recognition systems.

Schools and colleges are increasingly making use of biometric identification systems, for example for attendance registration, cashless catering and site access. Biometric technologies are defined by the Information Commissioner as *'those which automatically measure people's physiological or behavioural characteristics.'* Examples of such systems in place in schools and colleges include automatic fingerprint recognition, iris and retina scanning, and face recognition.

In addition to the existing requirements under the Data Protection Act 1998, the provisions in the Protection of Freedoms Act 2012, which will come into force from **1 September 2013**, will apply to any school, sixth form college or further education institution where education is provided to children under 18.

Under the provisions in the Protection of Freedoms Act 2012 schools and colleges must notify the parents of pupils under 18 where they intend to use their child's biometric data as part of an automated biometric recognition system. As long as the child does not object and no parent objects, the consent of only one parent will be required. Parental consent, objection or withdrawal of consent must be in writing. A pupil of any age may object or refuse to participate in an automated biometric recognition system. Where a parent has refused consent or a pupil has refused to participate, the school or college must provide reasonable alternative arrangements to the biometric system.

The consultation sought feedback on the Department for Education's draft advice document before publishing final advice in the 2012 autumn term, ahead of the duties in the Protection of Freedoms Act coming into force in September 2013. The consultation was open from 14 May to 3 August 2012.

This report has been based on the 38 responses to the consultation document.

As some respondents may have offered a number of options for questions, total percentages listed under any one question may exceed 100%. Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

The organisational breakdown of respondents was as follows:

School/College Support Staff:	10	26%
Head teacher:	5	13%
Representative Body:	5	13%
Local Authority:	3	8%
Union:	2	5%
Voluntary Group:	1	3%
Teacher:	1	3%
Parent/Carer:	1	3%
Other – Please specify	10	26%
Total:	38	100%

**Those which fell into the 'other' category included: Big Brother Watch, Biostore Ltd, the Information Commissioner's Office and the Children's Food Trust and School Food Trust.*

The report starts with an overview, followed by a summary analysis of each question within the consultation.

Overview of responses

1 Do you find the explanations in sections 1-3 of the advice about what is meant by "biometric data technology" and "processing" clear enough?			
There were 33 responses to this question			
Options	Responses		Across Consultation
Yes:	31	94%	82%
No:	1	3%	3%
Not Sure:	1	3%	3%
2 Do you think the advice in sections 4-6 setting out the notification and consent requirements and the pupil's right to object is sufficiently clear?			
There were 35 responses to this question			
Options	Responses		Across Consultation
Yes:	24	69%	63%
No:	9	26%	24%
Not Sure:	2	6%	5%
3 Having read the advice document, do you understand the legal duties on schools and sixth form colleges?			
There were 33 responses to this question			
Options	Responses		Across Consultation
Yes:	28	85%	74%
No:	3	9%	8%
Not Sure:	2	6%	5%
4 Is there anything you think we could usefully add to the 'Frequently Asked Questions' section of the document?			
There were 32 responses to this question			
Options	Responses		Across Consultation
Yes:	19	59%	50%
No:	9	28%	24%
Not Sure:	4	13%	11%
5 Do you think the notification and consent form template is clear enough for schools and families to understand and use?			
There were 31 responses to this question			
Options	Responses		Across Consultation
Yes:	17	55%	45%
No:	10	32%	26%
Not Sure:	4	13%	11%

The majority of respondents felt that the draft advice was sufficiently clear in explaining biometric data technology, the processing of biometric information and the new duties on schools using or planning to use these systems.

As set out in detail in the Summary and Responses section below, a number of respondents felt that some specific areas of the draft advice would benefit from clarification and we will aim to address these in the final version of the advice.

Whilst most respondents felt that the advice is helpful, 32% of respondents said that the notification and consent form template is not clear enough for schools and families to understand and use (Question 5). As set out in the summary, schools can adapt the template, as appropriate, to their own particular circumstances and we will aim to clarify this in the final advice document.

Summary and Responses

Q1) Do you find the explanation in sections 1-3 of the advice about what is meant by “biometric data technology” and “processing” clear enough?

There were 33 responses to this question

Yes 31 94% No 1 3% Not Sure 1 3%

The majority of respondents felt that the explanations given for the meanings of biometric data, biometric recognition technology and the processing of biometric information were sufficiently clear.

A number of respondents suggested that further clarification may be required on the status of photographs in relation to biometric data. The reference to photographs in Section 1 1) of the draft advice will be removed and clarified within the ‘Frequently Asked Questions’ section of the advice document to explain that the use of photographs and CCTV generally (i.e. other than for the purposes of an automated biometric recognition system) is governed by the Data Protection Act 1998.

A few respondents queried the explanation of processing data in relation to recording, storing and using that data. Paragraph 3 1) of the draft advice on data processing will be amended to set out that data processing takes place when any of the processes listed at a. b. and c. take place, clarifying that not all three need to occur for processing to take place.

Q2) Do you think the advice in sections 4-6 setting out the notification and consent requirements and the pupil’s right to object is sufficiently clear?

There were 35 responses to this question

Yes 24 69% No 9 26% Not Sure 2 6%

A number of respondents suggested that the advice in these sections could be clearer on the requirements on schools for notifying and obtaining consent from parents and the definition of parent in relation to the duties in the Protection of Freedoms Act 2012. These paragraphs will be redrafted to reflect this.

A number of respondents expressed the view that the paragraph in the draft advice setting out that schools should take steps to ensure pupils understand that they can object to having their biometric data processed could be strengthened to make sure that pupils are aware of their rights in relation to their biometric data, including that the information given to pupils should take into account the child’s age and understanding. Reference to this will be added to the advice.

A few respondents suggested that the advice document should include information on how processing biometric data relates to the schools’ Privacy Notices issued to pupils. The final advice document will set out that, in addition to the required actions for notification and obtaining consent, schools may wish to include information in the Privacy Notices they issue to pupils about the requirements and explaining how

biometric information is processed and stored by the school. The advice document will provide a link to the DfE guidance on Privacy Notices.

Q3) Having read the advice document, do you understand the legal duties on schools and sixth form colleges?

There were 33 responses to this question

Yes 28 85% No 4 9% Not Sure 2 6%

Most respondents agreed that the draft advice enabled them to understand the duties on schools in the Protection of Freedoms Act 2012.

A number of respondents expressed the view that the draft advice did not include information on the advantages and benefits of such systems for pupils and schools. This is outside of the scope of the DfE advice on the duties in the Protection of Freedoms Act 2012 and we would expect schools to enable parents and pupils to make informed decisions about participating in the automated biometric recognition system in this context.

A few respondents were concerned about the practicalities of implementation, setting out that where a system is already in place in a school, some parents of pupils currently attending the school and using the biometric system may fail to provide consent when notified under the new duties. It was suggested that schools could take failure to respond as consent in these circumstances. The Protection of Freedoms Act 2012 does not provide for this suggestion and requires active consent from parents in writing. The advice document will be amended to include clarification about the introduction of the new duties, clarifying the fact that there will be no circumstances in which a school or college can lawfully process a pupil's biometric data without having received the necessary written consent.

Q4) Is there anything you think we could usefully add to the 'Frequently Asked Questions' section of the document?

There were 32 responses to this question

Yes 19 59% No 9 28% Not Sure 4 13%

A number respondents suggested that the draft FAQ on the use of photographs and CCTV in schools could be clarified to explain the additional requirements in the Protection of Freedoms Act relating to biometric information used as part of an automated biometric recognition system and the requirements in the Data Protection Act which apply to the processing of all biometric information, including the taking, use and storage of photographs and the operation of CCTV in schools and colleges for whatever purposes. This FAQ will be amended in the advice document to reflect these distinctions.

Some respondents felt that further explanation should be given on how the biometric data might actually be collected, for example that an actual fingerprint may not be retained but a mathematical algorithm of the data, or a number of points of that data, which could not be 'reverse engineered' into a fingerprint image. While a full explanation of the range of systems in use is outside the scope of the advice document, we would

expect schools to provide these explanations to parents and pupils as an element of notification and consent. However, a footnote will be added to section 3 of the advice document 'What does processing data mean', which will include the example of the measurements from fingerprints being converted into a template.

Q5) Do you think the notification and consent form template is clear enough for schools and families to understand and use?

There were 31 responses to this question

Yes 17 55% No 10 32% Not Sure 4 13%

A number of respondents felt that the template notification letter and consent form do not go far enough in explaining the benefits and advantages of biometric systems or the services provided by the systems or what schools hope to achieve by using the technology. It is outside the scope of the template letter provided in the DfE advice to include this kind of information. The template is intended as a suggested letter and schools may adapt it or provide their own letter. However, as set out in the template, schools must notify parents and provide sufficient information for the parents to make an informed decision; this should include the school's duty to make reasonable alternative arrangements if the child or parent does not agree to the processing.

Some respondents said that the template notification letter and consent form are complex and will not be understood by many readers. As set out above, schools are free to adapt the suggested template and produce their own material appropriate to the requirements.

The template will be retained in the advice and amended to provide a clear outline of what should be included in the notification to parents which schools may adapt.

Next Steps

The Department for Education will publish a revised version of the advice document by the end of the autumn term 2012.

DfE will monitor the impact of the introduction of the new duties on schools and review the advice document in future years.



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