

Douglas Ross MSP
Convener
Scottish Parliament Education, Children and Young People Committee

By email only:

28 March 2025

Dear Mr Ross

Thank you for your letter dated 13 March 2025 in which you sought the Information Commissioner's Office views on the Scottish Government's ability to share personal data under UK GDPR legislation and in particular information on:

- Whether barriers in relation to Free School Meal (FSM) data sharing could be overcome by introducing legislation in Scotland, as has been done elsewhere in the UK.
- The potential for establishing a Unique Learner Number (ULN) and how this ambition might be realised.

As the independent regulator of Data Protection law in the UK we have powers to enforce data protection legislation as well as to work with government and organisations upstream to ensure that data is shared fairly and securely for public benefit.

Rather than act as a blocker Data Protection law can be used as an enabler to deliver fair and proportionate data sharing for the public good . Data Protection law will never prevent necessary and proportionate data sharing.

The committee should note that we have not, to date, had any discussions with the Scottish Government, local authorities or institutions on how data can be shared fairly and proportionately to support widening access to university or any engagement on the North East Scotland pilot. Nor have we had any engagement with the Scottish Government on the

Data Protection considerations associated with establishing an identifier like the ULN.

We do, however, stand ready to provide advice and guidance should the Scottish Government, Local Authorities or institutions approach us on these issues.

We would require more detail on the Data Protection issues cited at the committee meeting on 5 March to advise on whether new legislation was required.

What we can say, however, is all data sharing involving personal data must be lawful, fair and proportionate, comply with the Data Protection principles and not result in any unmitigable high risks to individuals. It is also good practice to have data sharing agreements in place. Data sharing agreements are there to ensure that people's data is appropriately protected and all parties are clear on their roles and responsibilities. This is particularly important when children and young people's data is being shared. Data sharing agreements need not be overly burdensome and can take a variety of forms dependent on the nature of the data sharing. We have produced detailed guidance [and resources](#) including a [Data Sharing Code of Practice](#) to assist organisations on data sharing and data sharing agreements.

To comply with the 'lawful' principle in Data Protection law relevant bodies need to be able to be assured that they can identify at least one clear lawful basis for sharing FSM data under Data Protection law. They also need to be assured that the sharing is lawful in a general sense. For public sector bodies this means that they must have a legal power to share the data in question. The legal power might come from common or case law, or from an express statutory power or obligation, but it could also come from implied statutory powers (which may be silent on data sharing).

For public sector bodies the 'public task' or 'legal obligation' bases are most likely to provide the Data Protection lawful basis for data sharing. Local Authorities need to be able to demonstrate that the sharing of data is necessary for them to perform their tasks as set down in law and that the data sharing is clear and foreseeable.

If Local Authorities have assessed that they currently have no valid lawful basis for sharing FSM data with institutions, then it is possible that a new express power or obligation may allow them to do so. This would be a matter for government to consider however. All legislative proposals involving personal data must come to the ICO for consultation under Article 36(4) of the UK GDPR. If such a proposal was put forward we would provide advice on privacy risks and considerations.

It may however be possible that the data sharing is not happening for other reasons. For example, there may be concerns about the unintended risks posed to children and young people, or a curtailing of rights when the data is shared. Steps may be required to address and mitigate these risks before any sharing takes place.

We would be happy to explore and discuss all of the above with the relevant bodies.

Finally, the Committee has asked for a view on the introduction of a Unique Learner Number which we understand would be used to track learners' progress from early learning, throughout education and onwards into employment. This is ultimately, a policy decision ultimately for Scottish Government, however, we would be very happy to provide advice on this to the Scottish Government. Key considerations should include whether it is fair and proportionate to the purpose to track individual learners in this way and what kind of safeguards and governance should be in place to protect individual's right and freedoms. We would encourage Scottish Government to consider a range of options to gather the data and insight required and to select an option that builds in Data Protection by design.

I hope this information is helpful and I would be happy to provide more detail if required.

Yours sincerely

Jenny Brotchie (Acting Head of Scottish Affairs)