



Education & Skills
Funding Agency

Education and Skills Funding Agency
Department for Education
5 Quinton Road
Coventry CV1 2WT

Ms Persson
By email
Ref: 2021-0000498

1 March 2021

Dear Ms Persson,

Thank you for your request for information, which was received on 4 January 2021. You requested:

“Dear Education and Skills Funding Agency,

having received your reply today, to my FOI request made on 30 December 2020 re Pupil data: Learner Records's Service breach investigation, please can you re-consider your response.

The online link to the executive summary of the ICO general audit of the Department for Education in 2020 does not supply the information requested, nor does it comply with your obligations under the Act to state whether the information is held and has been refused, or withheld under which sections of the Act, or if you have determined it is exempt on what grounds.

To clarify, please can you provide a copy of the ESFA investigation findings.

Thank you for your consideration.

Sincerely,

I am dealing with your request under the Freedom of Information Act 2000 ("the Act").

Further to my letter of 2 February 2021, I apologise for the delay in responding to your request.

I can confirm that the Department holds information in scope of your request.

A copy of the information that can be disclosed is enclosed at Annex A headed "*Full investigation into the inappropriate use of the Learning Records Service that resulted in the Sunday Times story claiming betting firms were using student data*". You will see there are a number of redactions where we are withholding information and are therefore applying the following exemptions:

Section 40(2) – Personal Information

We have applied section 40(2) because the information in question includes 3rd party personal data. Personal data is that which relates to a living individual who can be identified from that data, or from that data and other information, which is likely to be in, or to come into, the possession of the requester. Disclosure of this information would be considered unfair under Data Protection Act / General Data Protection Regulation 2018. By that, we mean the likely expectations of the data subject that his or her information would not be disclosed to others and the effect which disclosure would have on the data subject. Section 40(2) is an absolute exemption and is not subject to the public interest test.

Section 36(2)(c) – would be likely otherwise to prejudice, the effective conduct of public affairs

Under Section 36(2), the Department is not required to provide information, if in the reasonable opinion of a qualified person (a Minister in the case of Government Departments) disclosure of the information under the Act would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

In relation to your request, a Minister has decided that, in her reasonable opinion, disclosure is likely to have this prejudicial effect and therefore the exemption in Section 36 applies.

Section 36(2) is a qualified exemption and therefore a public interest test has been carried out. In doing so the following factors have been taken into consideration:

- Disclosure is likely to increase access to information held by the Department, increase trust and improve our accountability and transparency in the use of public funds and help to show that we can obtain value for money.

Against this, the department considered that:

- The Department notified the Information Commissioner's Office (ICO) of the Learning Records Service data breach. We continue to work with the ICO regarding the breach. The release of the ESFA investigation findings in full at this time may have a detrimental impact on, and prejudice the outcomes of the ICO's ongoing enquiries.

For this reason, we consider that the public interest in maintaining this exemption outweighs the arguments in favour of disclosure.

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If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

If you are unhappy with the way your request has been handled, you should make a complaint to the Department by writing to me within two calendar months of the date of this letter. Your complaint will be considered by an independent review panel, who were not involved in the original consideration of your request.

If you are not content with the outcome of your complaint to the Department, you may then contact the Information Commissioner's Office at the address below or seek to enforce this right through a judicial remedy:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 0303 123 1113. Fax: 01625 524510 You can also visit the Information Commissioner's Office website: <https://ico.org.uk/>

Yours sincerely

S Rudge

Customer Experience, Digital and Data
Education and Skills Funding Agency

Annex A

Date: 21 February 2020
From: David Craig, ESFA Data Science division, <redacted>

	To Comment/note	To Decide
Secretary of State	✓	
Also copied to: PS Advisers, Permanent Secretary, ESFA Chief Executive, Comms and Legal.		

Full investigation into the inappropriate use of the Learning Records Service that resulted in the Sunday Times story claiming betting firms were using student data

Purpose

1. This paper is to update the Secretary of State on the investigations above, to advise on steps taken to secure the Learning Records Service (LRS) following the Sunday Times report on 19th January. <redacted>.

Summary

2. LRS access was removed for all users on the 17th January once concerns were raised about its security. Access was returned on the 23rd January for approximately 7,500 registered organisations, including all those we have now validated as receiving funding from the DfE. As of 17th February, a further 630 independent schools and training providers have had their access returned following additional verification checks.
3. 2,600 inactive organisations (those who no longer had any users or were no longer using the service) have had their accounts deactivated. Access for a further 1,900 users remains suspended as we have not been able to validate their accounts. These organisations have not contacted the DfE since their access was suspended on 17th January. The ESFA will write to these organisations at the end of February to invite them to re-register using the new registrations process.
4. Investigations support the reassurance we provided previously, that we can find no evidence of widespread abuse of the LRS and the incident reported in the Sunday Times remains an isolated incident.
5. <redacted>.
6. <redacted>.

Recommendation

7. There are no recommendations in this paper for the Secretary of State, but he is asked to note the recommendations that have been made to the DfE Chief Data Officer and ESFA Executive in paragraphs 41 and 42. The Secretary of State is invited to provide any comments and to request any further clarifications or briefings at his discretion.
8. The Sunday Times published an article on 19th January claiming that data from the department's LRS was being shared with a commercial data broker, following a claim by the commercial data broker (GB Group) on their website that they had access to such data. DfE investigations have subsequently identified a potential security weakness in its provider registration system (UKRLP) and the LRS, and identified a company (Trustopia), <redacted> that had been using the LRS as a data checking service for GBG in clear breach of their agreement with us. The same issue was raised by Bob Neill MP in his letter to the Secretary of State dated 8th January.
9. The DfE has conducted investigations into the system abuse to ascertain whether there is a widespread problem. The LRS was switched off on 17th January as a precaution whilst we completed initial investigations. The ICO was informed of the potential breach on 17th January <redacted>.
10. An initial investigations report was provided on 24th January confirming that the LRS had been switched back on for the majority of users and that this breach of agreement appeared to be an isolated incident. The report laid out additional security measures put in place to reduce the likelihood of a repeat

Legal advice and The Information Commissioner's Office

11. <redacted>.
12. <redacted>.
13. <redacted>.

The Learning Records Service - a review of current users

14. Access to the LRS was initially removed for all external users on 17 January as a precaution whilst DfE completed initial investigations into the system abuse to ascertain whether there was a widespread problem. We can find no evidence of widespread abuse of the LRS and this remains an isolated incident.
15. LRS automatically logs the activity of users and organisations. This meant the LRS team could easily profile how each organisation uses the LRS. The declaration process showed that <redacted> Trustopia was in clear breach of his agreement.

16. The LRS was brought back in service on 23 January with strengthened security measures. Of the 12,600 users registered prior to that date, access was returned to approximately 7,500 verified users who met the criteria of one of:
 - a. having a contract with either English, Welsh or Northern Irish government to provide education or training
 - b. Returns school census data (or the Welsh or NI equivalent)
 - c. Having registered with an Ofqual-recognised Awarding Organisation.
17. After an initial investigation 2,600 organisations were deregistered. These were organisations that had not used LRS for over 12 months, and were either dissolved companies or old accounts for learning providers that had changed details (e.g. academy convertors). These organisations typically had no registered users.
18. As of 17th February, a further 630 independent schools and training providers have had their access returned following additional verification checks.
19. The remaining 1,900 organisations are now required to re-register. These fall into one of the following categories:
 - a. Independent providers/organisations that do not have a contract with or receive funding from the DfE.
 - b. Organisations using out-of-date registration details (for example where the provider had been dissolved as part of a merger or a takeover).
 - c. Independent companies providing careers advice and guidance (not contracted with the National Careers Service)
 - d. Organisations receiving other funding through organisations other than the ESFA (e.g. European Social Fund via the Northern Ireland Managing Authority).

The LRS Registration Process

20. The registration process for access to the LRS has been tightened up significantly. In addition to the extra checks put in place by the UKRLP detailed later in this report, new applicants must:
 - a. provide their Companies House number and be a listed as a registered & active company on the CH website

- b. provide their ICO Registration number and be listed on the ICO register (ICO website)
 - c. provide their UKPRN and be listed as active on the UK Register of Learning Providers
 - d. provide details of the Awarding Organisation (AO) that they are accredited with (for those providers not funded directly by the ESFA)
 - e. provide approximate volumes of learners that they expect to register per annum
 - f. submit an LRS agreement that is signed by one of the company directors listed on the Companies House website
21. In addition, the 'reason for access' section of the registration form will no longer be a simple free text field. Instead there will be a defined list of reasons to access LRS which the organisation must select. The LRS support desk will follow up with those who register for any purpose other than to assist with enrolling their own students. They will only grant access to such providers by exception.
22. In turn, the LRS service desk will verify that the AO listed on their application are accredited by (via the Ofqual website), and will contact the AO, and ask them to provide written confirmation that the registering organisation is an accredited provider with them – sending us a copy of the Accreditation Certificate.
23. The LRS registration form has been updated to include all of the above information, and any organisations who have had their access revoked as part of the recent incident will need to resign the updated agreement/registration form. The registration form also includes a section cleared by commercial lawyers that
- States DFE's right of recourse against licensees to LRS
 - States that we will restrict the rights of licensees with regard to the sublicensing of access to LRS
 - Includes specific text around any relevant indemnities
 - Includes text acknowledging/outlining other sanctions that organisations will be subject to if they break the terms of the agreement (such as ICO prosecution)

24. Any organisation that requests a change of details (for example when a school becomes an Academy, or when an ITP changes its registered name), must meet the same criteria as the initial registration process.
25. The housekeeping tasks to de-register organisations from LRS are being automated going forwards using a weekly data feed from UKRLP¹, as well as removing any organisation or individuals who have not used the system for over a year.

Failsafes and improvements to improve security

26. Nightly checks are being run routinely now to identify any cases of excessive usage of the LRS. From the end of February, those who are using the LRS excessively will have their account automatically suspended; for the moment those suspensions will be done on a case by case basis as we refine the rules of acceptable usage.
27. The housekeeping tasks to de-register organisations from LRS will be enhanced going forwards using a weekly data feed from UKRLP, as well as removing any organisation or individuals who have not used the system for over a year.

The UK Register of Learning Providers (UKRLP)

28. The UKRLP service is provided by IDP-Connect on behalf of the ESFA. This service is well established and contains detailed robust processes for registering over 50 provider types. However, the process for checking the validity of private companies and sole providers who register as Independent Training Providers (ITPs), and for reviewing whether those registered as ITPs, has been weak, with checks focusing on the Companies House registration.
29. The UKRLP has been increasingly used as a starting point by new ITPs to engage with the ESFA – for example it is one of the primary requirements for applying to the Register of Apprenticeship Training Providers, which has led to a big increase in limited companies applying.
30. We have put in place the following additional checks when new entrants to the market apply to join the UKRLP:
 - a. Each applicant must register with the ICO, and include their ICO number in their UKRLP application

¹ Providers often need access for a short period of time after they have de-registered with UKRLP, in order to make data returns and/or ensure examination registration details are accurate

- b. UKRLP will check each applicant's website(s) and review their line of business (including the description of their business on Companies House)
- c. Each new applicant must give a reason for registering with the UKRLP. This will be validated against a set of criteria such as whether they are funded by government and whether they are registered with awarding bodies.

Whilst some applicants will fail that initial registration process, those that pass will be given a RAG rating applied based on these factors . This information will be shared with those offering digital services such the LRS. This information can be used to decide whether access is granted or whether further assessments need to be given before access is granted.

- 31. IDP-Connect will continuously review the current acceptance / rejection process and monitor frequent requests. Those currently registered with the UKRLP will be reviewed against these new criteria.
- 32. IDP-Connect and ESFA are now meeting every 2 weeks to review the changes proposed to the UKRLP process and to evaluate progress with respect to the agreed changes and the operational challenges.

Communications with the education sector

- 33. An update was published on 22nd January on Gov.uk that outlined our reasons for suspending access to the LRS, our plans to turn the service back on, and an assurance that we will leave no options off the table when it comes to taking action against any provider that has breached its agreement with us.
- 34. As at 17th February, 373 providers have contacted the LRS helpdesk to raise concerns about access being suspended. Communications with these providers has been routine – all bar 49 have had their access restored following additional checks, whilst the remainder have been asked to re-register with up-to-date provider details.
- 35. We will write to approximately 1,900 providers, who have had their access removed, at the end of February asking them to re-register.
- 36. Since the Secretary of State's statement to the House, there have been a small number of follow-ups from MPs, the media, from the data privacy lobby and interested parties. These have been routine and volumes low. In addition there have been a small number of Subject Access Requests from concerned individuals.

Wider processing of Personal Data in the Department

37. The department process a lot of personal data covering pupils and learners, teachers and social workers as well as staff. Data Protection is overseen by the Departmental Data Protection Officer (DPO) who is part of the Data Directorate. In light of this event we put a temporary break on all external data shares and are slowing re-introducing them, starting with those we share with other parts of government including the Office for Students. We have also be writing to all non-government data sharing partners very shortly to remind them of their responsibilities to departmental data.
38. As part of the lessons learnt from this incident we will be looking at data sharing across the department and looking to learn lessons from different areas including the Data Sharing Approvals Panel which oversees requests to share bulk database information. Details of approved data shares are published as part of the department's commitment to transparency (<https://www.gov.uk/government/publications/dfe-external-data-shares>).
39. <redacted>
40. The department works closely with the ICO who are currently auditing the department's data protection processes. The final report will not give the department a rating but will list actions the department need to take to improve their processes. The ICO are holding face to face interviews with DfE/ESFA staff in the week commencing 24 February. We expect to see the results from their investigation as part of the main audit report no later than 6th April.

Recommendations made to the Chief Data Officer and to the ESFA executive.

41. In addition to the improvements specific to the LRS and the UKRLP, several detailed recommendations have been made to the DfE's Chief Data Officer and to the ESFA's Digital / Data director as part of an internal retrospective. They are
 - a. For a deep dive into the ESFA's externally facing digital / data systems across the department and those supplied by third parties to assess whether the security of personal and sensitive data meets current standards
 - b. For a review into the data protection, legal and security resource within the ESFA and wider DfE to ensure we have the right expertise in case of any future incident.
42. The DfE should consider running a discovery exercise in 2020-21 into the possibility of creating a single data system for education and training, where

all primary and secondary data & MI systems used across the education sector are held by the ESFA / DfE. That discovery could include:

- a. A full review of all our available data, where it is held and who it is supplied by.
- b. An investigation of externally-facing/outourced services, data systems and their processes where we don't have full control over our data.
- c. A review of other data systems and services already held across DfE to determine where other systems and services may be open to abuse.

Next Steps:

- 43. All new applicants and those making amendments to their registration will now follow the new application process.
- 44. From 24th February, any organisation whose access has been suspended will now also have to go through the new process. The process to review individual cases ends on 21st February.
- 45. All existing users will be asked to sign a new user agreement that includes the legal text summarised in paragraph 24.
- 46. Recommendations made above will be considered by the ESFA executive and DfE Chief Data Officer in late February.

Annex A – <redacted>

Annex B - <redacted>