

CONSULTATION QUESTIONS

Are you responding *primarily* as a data custodian, data user or data subject? (*We recognise all people are data subjects and many organisations act as data guardians and data users, but please tick only one box*)

Data Subject (e.g. member of the public or group representing citizens)

1. Are there any benefits of data linkage for statistical and research purposes that are not sufficiently described here?

No, the benefits are described fully

If you ticked 'yes', please describe the further benefits of data linkage for statistical and research purposes.

Comments

2. Are there challenges or barriers preventing more effective and efficient data linkages for statistical and research purposes taking place that are not sufficiently described here?

No, the challenges have been identified

If you ticked 'yes', please describe the challenges or barriers.

Comments

3. Are the guiding principles sufficient and appropriate? Please explain your answer fully and make suggestions for improvement.

No, they are not

Please explain your answer fully and make suggestions for improvement.

The principles are strong but could be improved, as follows:

1. Principle 15 only suggests that 'serious consideration' be given to conducting a privacy impact assessment (PIA). PIA could be made into a requirement (default) with a proviso that any inability or failure to comply should be publicly articulated. This would also obtain for Principle 16 (secondary purposes) requiring a new PIA to be conducted. It is good that Principle 15 indicates that a PIA should precede any data linkage (this point is probably not so well understood by data users), but it doesn't say to whom the user should

deliver the PIA in the first instance. Further, what 'publicly available' means would need to be specified, and the Privacy Advisory Service (PAS) could be the body that receives and vets the PIA from the user and then acts as a channel for wider public dissemination. The PAS could also be the body that scrutinises the data custodian or user's explanation for not doing a PIA. In addition, whether it would be the ICO's version of PIA or any other (or better) one is for consideration. It might be too easy for the PIA to be treated as a box-ticking exercise (a common fault with PIAs) based too closely on the Data Protection Act's Principles, rather than customised for data-linkage purposes. It might even be possible to develop a PIA that doesn't only consider the impact on individual privacy but goes further towards exploring the impact on categories or groups of persons whose data are likely to be linked, and who might be adversely affected by the way classifications are formulated for policy-related purposes, beyond the effect on individual's rights as such.

2. Principle 20 does not say how explicit consent should be obtained, or what the criteria are. This is a vexed question and more detailed guidelines would be helpful. 'Informed consent' (not only 'explicit') is also a vexed issue but is relevant to this Principle, and is mentioned in Principle 21; it should be addressed with a view to standardising procedures. Further, the definition of 'personal data' (also much debated) is not exactly aligned with that in the Glossary and both need more precision in terms of current law and interpretation. Principle 21 says that data subjects should be informed 'where possible and practicable' but this will need guidance and illustration. In addition, there should be a requirement that the data user explain to another body (perhaps the PAS) why, in any instance, it was not 'possible or practicable', and what steps were taken to inform the data subject to the best of the data user's ability under the circumstances. In other words, here and elsewhere in the Principles some accountability requirements should be built in for data users to explain and give an account of what they do (or fail to do), to indicate to whom they should be accountable and under what circumstances, and to indicate what the receiver of such accounts (e.g., the PAS) should then do. Principle 23 begins to approach these 'what if?' matters but doesn't deal with them all, and 'appropriate oversight body' needs clarification.
3. Principle 29 mentions 'public scrutiny and review regarding access policies, but this too needs to be elaborated in terms of procedures. Principle 32 calls for roles and responsibilities of those involved in data linkages to be subject to 'robust governance mechanisms', but what they are, and who exercises them, is not clear. Whether the PAS or other bodies are implicit in this should be indicated.

4a. Are the objectives set out for a Privacy Advisory Service in Section 3c the right ones?

Yes, the objectives are right

Please explain your answer fully and make suggestions for improvement.

The objectives are right but need refinement and elaboration. Section 3c describes the PAS, but if the PAS are involved in some of the Principles I have identified, this should be reflected in 3c. The 5 objectives hint at this: for instance, help with PIA, and help with consent issues (ethical and legal). But as my points (above) suggest, the role of the PAS or other parts of the governance structure in data users' reporting and accountability processes needs to be fleshed out more specifically, and also the role and identity of other 'oversight bodies'. I would also say that, while 3c mentions the PAS' role in helping to 'strike the right balance', the phrasing of the Summary Overview (p. 2), that 'it is in the public interest both to safeguard individuals' right to privacy and to make efficient use of data for statistical and research purposes' is much better and should be repeated in 3c. This is because the 'balance' alluded to in 3c could too easily be construed as 'the individual v. the public interest, which is too loaded a formulation in current circumstances, and makes it too easy to lose sight of the Summary's point, that there are two 'public interests' that have to be balanced or reconciled, and that is a rather different challenge involving a different way of weighing up the issues. In either case, however, how the judgements are to be made when 'balancing' is a matter on which data-linkage persons might need guidance, and perhaps the PAS could offer that, or at least open out the issues for others to consider, or the heuristics, in making their own judgements. There is no magic bullet or algorithm for the latter.

4b. Do you wish to be consulted on firmer proposals for a Privacy Advisory service as and when they are developed?

Yes

5a. Are the functions that will be led by the National Data Linkage Centre set out in section 3d the right ones?

Yes, they are the right

Please explain your answer fully and make suggestions for improvement.

Comments

5b. Do you wish to be consulted on firmer proposals for a National Data Linkage Centre as and when they are developed?

Yes