

From: Michelle Thomson MSP <michelle.thomson.msp@parliament.scot>
Sent: 05 February 2025 13:25
To: Cabinet Secretary for Education & Skills 2024 <CabSecES2024@gov.scot>
Subject: MSP Enquiry (Case Ref: MT4478)

Good afternoon Cabinet Secretary,

I am writing regarding concerns raised by a constituent following reports of data from the Scottish Government's Health and Wellbeing Census 2021/22 being advertised for use by external researchers, apparently without the knowing consent of pupils and parents.

I have outlined to my constituent the reasons for which the survey was conducted in schools and what the results were used to inform in terms of improved policy and curriculum around various issues.

I share however, constituent concerns that data has apparently being advertised for external researchers to use. I would be grateful if you could clarify the following points:

- Why has the Scottish Government deemed it appropriate and/or necessary to share this data with external researchers?
- Were pupils made aware at the time of completing the survey that the data they shared would be made available to external researchers at a later date?
- If yes in answer to the previous, how was this made clear?
- What, if any, benefit does the sharing of this data have beyond the reasons for conducting the census?
- How will the Scottish Government ensure that identifying data is not shared with external researchers?

I also understand that consent for the collection of data was done on an 'opt-out' basis – I note that the Information Commissioner guidelines on data collection state that "There is no such thing as 'opt-out consent'... failure to opt out is not consent as it does not involve a clear affirmative act" and that consent must instead be given on an opt-in basis – what is the Scottish Government's response to the position of those who say that consent was not appropriately sought from those participating in the survey?

I would appreciate your response to the points set out above to allow me to respond to my constituent's concerns.

Kind regards,

Michelle Thomson MSP
Member of the Scottish Parliament for Falkirk East

Michelle Thomson MSP is a data controller and is required to process your personal data in line with the UK General Data Protection Regulation 2018 and the Data Protection Act 2018. Further information about how your personal data will be processed is available by emailing michelle.thomson.msp@parliament.scot

From: Mairi Gougeon MSP
Sent: 10 February 2025 10:58
To: Cabinet Secretary for Education & Skills 2024
Subject: (Case Ref: ME8293)

Dear Cabinet Secretary for Education and Skills,

I am writing to you on behalf of Mairi Gougeon MSP regarding a constituent's concerns about the Scottish Government's Health and Wellbeing census.

Mairi has been contacted by a constituent from Inverbervie who is highly critical of the Scottish Government's decision to ask highly personal questions to 130,000 school children across half of Scotland's council areas in 2021 and 2022. The constituent believes it is "disturbing" that the Scottish Government failed to inform parents of the nature of the questions in advance, which he believes were inappropriate and intrusive. Furthermore, he is highly critical of the Scottish Government's failure to gain the active consent of parents before sharing their children's private information for use by external researchers. He believes it is unjustifiable for the state to keep this information from parents.

The constituent would like to know why the Scottish Government felt it was necessary to collect this data, and why it did not secure the active consent of the pupils' parents before proceeding with the survey. Furthermore, he would like to know what steps will be taken to ensure that future surveys of school children can only proceed with the active consent of their parents.

Thank-you for your assistance with this case.

Best wishes,

[REDACTED s38(1)(b)]
Caseworker for Mairi Gougeon MSP

From: Michelle Thomson MSP
Sent: 10 March 2025 11:34
To: Cabinet Secretary for Education & Skills 2024
Subject: MSP Enquiry (Case Ref: MT4478)

Good morning,

I am writing in reference to the response received 5th March with the reference 202500451533. I attach below a further enquiry from my constituent, in full, and would be grateful if you would respond accordingly.

“Jenny Gilruth needs to take a long hard look at herself in the mirror. I also watched FM questions today and observed Ms Gilruth continually and I observed to be rudely speaking over other people (bbc live in Scottish Parliament refers).

I know a political answer that tries to swerve the issue when I see it. On the one hand, she says it was all about health and wellbeing of pupils. On the other, she admits this data collection will not occur again (an admission in my mind that the original survey was wrong and won't recur).

She also seems to suggest the data may be collected though in other ways (eg, via nhs) in future. This is concerning. I would like an explanation about what this means.

Lindsey Paterson (Edinburgh Uni), a very well respected educationalist Ms Gilruth, as a previous educator, will be aware of has concerns that pupils can indeed be individually discovered through aggregating this survey data with other data. This has not been addressed in her reply.

Also, she infers the automatic opt-in is fine. No it isn't. Sensitive data like medical, sexual issues are sensitive personal data that must in law be protected above general data. This has not been addressed in her reply. People should be default opt-out.

I have already said 40% of pupils are now regarded to be ASN but I have yet to be advised how pupils in general, and ASN in particular, and their parents, were adequately made aware of the implications of completing the survey and that this would be pimped to external agencies (who would kick back money if the data was successful commercially). It isn't satisfactory to say the data has now been removed - it should not have been pimped to "external researchers" for reasons including potential commercial gain in the first place and it hasn't been addressed why this was allowed to happen. I need a further explanation.

I request a proper response that doesn't attempt to swerve or minimise the issues please. We are supposed to be a modern democracy. This requires Govt ministers to give open and honest answers to constituents. I invite Ms Gilruth to have another attempt to do so.”

Kind regards,

Michelle Thomson MSP

Member of the Scottish Parliament for Falkirk East

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