The Scottish Government - Consultation on proposed amendments to the National Health Service Central Register (Scotland) Regulations 2006

February 2014

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaign group that was founded in 2009. We have produced unique research exposing the erosion of civil liberties in the UK, looking at the dramatic expansion of surveillance powers, the growth of the database state and the misuse of personal information.

Specific to this inquiry we have produced a number of reports on data protection, for example NHS Data Breaches and Local Authority Data Losses.¹²

As well as the research we have carried out, our Director has given oral evidence to the Science and Technology Committee on a number of occasions, covering topics such as the use social media data and the future applications of biometric data. We have also given oral evidence to the Health Select Committee on the implementation of the care.data scheme.

Key Points

- There is a basic lack of transparency around many aspects of the scheme.
- Too many organisations are in line to have access to the scheme.
- A central database could become a ‘honeypot’ for hackers.

General Concerns

The specific questions posed by the consultation will be answered below; however there are some general issues that should be raised beforehand.

Safeguards

Any large database or collection of information has the potential to become a target for theft. The proposed ID Card scheme provides an example of this. Commenting on the plans Jerry Fishenden, formerly Microsoft’s National Technology Officer, said “putting a comprehensive set of personal data in one place produces a honeypot effect - a highly attractive and richly rewarding target for criminals”. The potential for misuse means that any database should have an effective set of safeguards in place to deter anyone wishing to unlawfully access the information.³

² Big Brother Watch, Local Authority Data Loss, November 2011: http://bigbrotherwatch.org.uk/la-data-loss.pdf
³ The Scotsman, ID Cards will lead to ‘massive fraud’, 18th October 2005: http://www.scotsman.com/news/politics/top-stories/id-cards-will-lead-to-massive-fraud-1-1100713
A concern for any project involving the large scale storage of personal information is that the legislative safeguards to deter the misuse of personal data are not effective. Currently the Data Protection Act 1998 doesn’t provide the option of custodial sentences for those found guilty of the most serious data protection offences.

The threat of a fine, rather than jail time, is rarely seen as a deterrent. This is evident when it is set against the potential financial gains that can be made by selling the information. One example that highlights the ineffective nature of fines is the case of a probation officer who disclosed the personal details of an abuse victim to her alleged abuser. The victim’s name, new address, date of birth and information relating to the lead officer of the case were disclosed. In response, the officer was given a fine of just £150. The case was subsequently dropped, which led the Information Commissioner to say that it represented the “unpleasant but unremarkable face of data protection crime - not journalists, not lawyers, just individuals for whom the current sentencing regime holds no terror.”

It is not only organisations like Big Brother Watch and the ICO that believe custodial sentences should be introduced. This measure is also supported by the Home Affairs Select Committee, the Justice Select Committee, Lord Leveson and the Joint Committee on the Draft Communications Data Bill.

Transparency

Key information aspects of the scheme is lacking. The answers to the specific questions provide more detail on this; however a brief overview is useful.

We are concerned about the unnecessarily large number of “service providers” that will have access to the database under these plans. Currently there is no information about how the Scottish Government arrived at the decision making process that led to the “service providers” being selected. The consultation document also fails to set out any alternative selection methods or why they were discarded.

It would be preferable that the criteria for their selection as well as any other proposals around how they would be chosen be published alongside the scheme.

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6 The Justice Select Committee, The functions, powers and resources of the Information Commissioner, Page 13, Paragraph 33: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/962/962.pdf


8 BBC News, MPs call for tougher personal data abuse laws: http://www.bbc.co.uk/news/uk-politics-15465349


10 Joint Committee on the Draft Communications Data Bill, Final Report, Section 5, Paragraph 226: http://www.publications.parliament.uk/pa/jt201213/jtselect/jtdraftcomuni/79/7908.htm#a31
The safeguards, as outlined in the previous section, leave much to be desired. It would be reassuring to members of the public if the Scottish Government were to publish information about the safeguards that would protect their information.

Response

1. Where data relating to a citizen is held it should be accurate. Do you agree that the approach suggested at paragraphs 9-11 is an effective approach to achieving this?

Ensuring the accuracy of the data held about citizens is a laudable aim. If they are taken in isolation paragraphs 9 to 11 give the appearance of a sensible solution to the issue of outdated and inaccurate information. What is concerning is the wide range of public bodies that will have access to this information. Schedule 3 of the amendments reveals that over 100 organisations, excluding local authorities, will be able to have access to this information.

It’s unclear why bodies such as a Bòrd na Gàidhlig or Quality Meat Scotland need access to the database. Equally unclear is how this will be of benefit to any of the stated aims of the scheme, not least the desire to improve the accuracy of citizens’ personal information.

2. We propose to extend the current ability to trace persons a) who go missing whilst in education and b) who should pay for treatment provided by the NHS. Do you agree with these proposal set out in paragraphs 12-13?

Ensuring that missing persons can be quickly and effectively traced is important. It is therefore vital that this scheme properly explains the steps that will be taken to achieve this aim. There are a number of grey areas within the current sections on tracing missing persons. The phrase “children who go missing whilst in education” can be interpreted in a number of ways. It could mean literally going missing or not appearing in any kind of educational or training programme and therefore being invisible to authorities. There needs to be a single clear explanation of the circumstances that would lead to information will be shared.

There is little explanation of why the Scottish Government has deemed the NHSCR to be the best resource for identifying the addresses of the relevant individuals. Efforts should be made to outline the alternatives, as well as why these alternatives have been dismissed.

Finally there needs to be more clarity over what type of organisations can access this information. Schedule 2 currently proposes the following:

1. A practising solicitor; or
2. A body which may refer to itself as a “charity” in Scotland.

Organisations that have charitable status can cover a wide variety of bodies. If charities are to have access to this information it must be done in a restrained and transparent manner. It is important that only charities that deal with children are provided with the information. The process for selecting these bodies should be similar to the one outlined in response to question 3. Charities that may need this information should apply and demonstrate their need.
It would also be instructive for the Scottish Government to publish information on the need to trace individuals who leave Scotland without paying for treatment under the NHS. Any figures should include the amount of money that is lost and the number of individuals that avoid payment by emigrating or leaving Scotland. This will help establish the necessity of further data sharing in this area.

3. In order to allow citizens to make use of myaccount for a wider group of services (beyond health and local government), as set out in paragraphs 14-16, we propose to provide access to the bodies named in draft Schedule 3 (Annex B). Are there any additional service providers who you feel should be included?

The number of organisations found in Schedule 3 is already unnecessarily large. Further organisations should not be added at this point. It is unclear why bodies such as the boards of trustees for both the National Museums of Scotland and the National Galleries of Scotland or the Moredun Research Institute need access to the database.

Organisations should only be granted access to the database after a convincing argument has been made to include them. It would also be preferable that this representation came from the organisations themselves, rather than being named by the Scottish Government. It is unclear which approach was taken in this instance. Therefore there is a need for greater transparency in this area.

Transparency is another key area that has been missed. Currently there is no explanation for the inclusion of the organisations. Ideally the project should start from a zero sum approach. Each organisation could then come forward and explain why it would benefit from access. The proposal and response should then be made public.

Linked to this there is a limited amount of information available around the retention period for the information. This is particularly pertinent if a person emigrates. It would be useful to see a section on the procedures for this in another draft of the document.

4. Do you consider that the proposals set out in paragraph 18 are an effective method to identify Scottish Tax payers?

The nature of the issue is unclear. Although paragraph 18 does argue that this function is necessary because prior to the change in income tax arrangements in 2016 “there has been no need to identify Scottish tax payers separately to UK tax payers, so there is currently no mechanism in place to do so”. However the document doesn’t explain how income tax is currently being collected in Scotland, if the paragraph is accurate it is being done so without a workable database of addresses. If one does exist it would surely be simpler to isolate the Scottish addresses.

The consultation document also gives no thought to how HMRC is currently able to identify and separate income tax contributions between England, Scotland, Wales and Northern Ireland as it has done so in documents such as “A disaggregation of HMRC tax receipts between England, Wales, Scotland & Northern Ireland”. The existence of such a publication would seemingly point to the ability of HMRC to separate Scottish income tax data already. If this is the case there would be no
added benefit in pursuing this element of the proposed scheme as it would at best simply duplicate information.\textsuperscript{11}

At the very least there doesn’t seem to have been any consideration of other methods of achieving this aim, if it is indeed needed. It would be preferable that the Scottish Government make clear the process that it used to arrive at this solution. This would ideally include detail on other plans that were considered and the reasons for their rejections.