

Paul Lowe
Chief Executive
National Records Scotland

Marcial Boo, CEO

Our ref: 802Lowe

By email only

Wednesday 24 November 2021

Dear Mr Lowe,

Collecting data on sex and gender

I am writing in relation to the guidance you produced earlier this year on the upcoming census in Scotland. As you know, the Equality and Human Rights Commission was involved in the Scottish Government's sex and data working group and we provided a submission in 2019 that set out our position on the equality and human rights considerations of data collection on sex and gender.

We did not provide any formal advice to National Records Scotland. But I thought you should know that we have updated our 2019 submission following the Judicial Review ruling earlier this year that led to the Office for National Statistics to change their guidance on the collection of data on sex and gender in the census in England and Wales.

I attach the revised submission that we have sent to the National Statistician. This sets out the factors that public bodies should consider when collecting data on sex and trans status, so that they are compliant with equality and human rights law. We concluded that our 2019 submission to the Scottish Government should now clarify that there are circumstances, for example where there is a requirement in statute such as for the census, where any potential interference with Article 8 rights arising from collecting data on sex and trans status is likely to be justified.

It is important that, as Britain's equality regulator, we are clear in our advice, and balance the different considerations that come into play when collecting data on sex and gender, and that we update our advice as necessary to respond to judicial rulings or changes in the law.

I hope that you find this helpful.

Yours sincerely,



Marcial Boo

Chief Executive

Equality and Human Rights Commission |