

Sharing personal data about candidates recommended for judicial appointment with the Ministry of Justice, Judicial Office and Tribunals Judicial Office

**A consultation produced by the
Judicial Appointments Commission**

**Consultation paper CP 01/10
Published on 23 March 2010
This consultation will end on 28 May 2010**

**This information is also available on the Judicial Appointment
Commission website: www.judicialappointments.gov.uk**

About this consultation

- To:** This consultation is aimed at all those with an interest in judicial appointments, including the Judiciary, candidates, legal professional bodies and groups with an interest in diversity.
- Duration:** From 23 March 2010 to 28 May 2010
- Enquiries (including requests for the paper in an alternative format) to:** Nigel Reeder,
Judicial Appointments Commission,
Steel House,
11 Tothill Street,
London,
SW1H 9LJ
- 020 3334 0572
- datasharingconsultation@jac.gsi.gov.uk
- How to respond:** Please send your response by 28 May 2010 to:
- Ben Elton,
Judicial Appointments Commission,
Steel House,
11 Tothill Street,
London,
SW1H 9LJ;
- datasharingconsultation@jac.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by late September 2010 at:
www.judicialappointments.gov.uk

Copies of this consultation paper are being sent to:

Lord Chief Justice
Senior President of Tribunals
Senior Presiding Judge
HMCS
Tribunals Service

Council of HM Circuit Judges
Association of District Judges
Association of Women Judges
Forum of Tribunal Organisations

Bar Council
Law Society
ILEX
Institute of Trade Mark Attorneys
Chartered Institute of Patent Attorneys

Black Solicitors Network
Society of Asian Lawyers
Lawyers with Disability Division
InterLaw Diversity Forum
Association of Women Solicitors
Association of Women Barristers

Judicial Appointments and Complaints Ombudsman

Equality and Human Rights Commission
Northern Ireland Judicial Appointments Commission
Judicial Appointments Board for Scotland
Attorney General's Office
Chairman of the Commons Justice Committee
Chairman of the Lords Constitution Committee
Data Protection Forum
Information Commissioner's Office
Information Commissioner's Office (Wales)
National Association of Data Protection Officers
Statistics User Forum

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Introduction

1. The Judicial Appointments Commission (JAC) was set up under the Constitutional Reform Act 2005 (CRA) and launched on 3 April 2006. It has responsibility for selecting candidates to recommend to the Lord Chancellor for appointment to judicial office.
2. The JAC is an independent body created as part of a new constitutional settlement that reinforced the separation of powers, by which the legislature, executive and judiciary though inter-related are independent of each other. This constitutional arrangement was intended by Parliament to move the selection of judicial office-holders away from the Lord Chancellor to the JAC, an independent statutory body. When the JAC recommends a candidate to the Lord Chancellor for appointment to a judicial office, and the Lord Chancellor does not accept the recommendation, he may reject it or ask for reconsideration on limited grounds.
3. In terms of day to day governance, the JAC is an executive non-departmental public body sponsored by the MoJ. The JAC's aims and objectives are agreed with the MoJ and set out in the JAC Corporate and Business Plans available on our website www.judicialappointments.gov.uk.
4. Under the CRA, the JAC's statutory duties include:
 - to select candidates solely on merit;
 - to select only people of good character; and
 - to have regard to the need to encourage diversity in the range of persons available for selection for appointments.
5. The Commissioners have responsibility for ensuring the JAC fulfils its statutory duties as set out in the CRA, and meets its aims and objectives. Its major concerns are to carry out its statutory duties and to safeguard the independence of the selection process.
6. The JAC selects for all offices listed in Schedule 14 to the CRA including High Court, Circuit and District Judges, Recorders and Deputy District Judges, other posts such as Masters of the High Court and Costs Judges and legal and non legal members of tribunals. The CRA allows the JAC to determine its own selection processes for these selections within the framework set down by the Act.
7. The JAC also selects for senior judicial offices: that is, the Lord Chief Justice, Heads of Division, and the Lords Justices of Appeal. The CRA stipulates that for these offices, the JAC should convene a selection panel, which will be a committee of the Commission. The selection panel will determine the selection process and make a selection.

8. Details of the JAC's selections processes, and the processes established by the CRA for Senior Appointments can be found on our website, www.judicialappointments.gov.uk.

Summary of the question for consultation

9. The JAC seeks views on whether it should ask candidates for judicial office for their consent to share personal data about them with the Ministry of Justice (MoJ), Judicial Office (JO) and Tribunals Judicial Office (TJO). The data in question is the diversity data it collects from its Application Monitoring Form; consent would be positive and would be sought at the time of filling in the form by means of a tick box on the form itself.
10. The purpose of sharing this data would be to create a robust and consistent dataset of judicial diversity that can be used by all the bodies concerned for statistical and research purposes.
11. This consultation is limited in scope to sharing information only with those parties listed above as there is no intention to share access to the data with any other individual or party.

The question for consultation

12. The JAC application pack includes an Application Monitoring Form (AMF) (Annex A to this consultation document) which it asks applicants to complete and return with their application form. Candidates can choose not to complete the form.
13. The AMF collects data on:
 - Gender
 - Ethnicity
 - Disability
 - Age
 - Professional background
 - Working patterns
 - Participation in judicial work shadowing
 - Attendance at a JAC outreach event
14. If the Equality Bill becomes law, it will create a number of protected characteristics. The JAC and other bodies may be required or may choose, to collect data on these characteristics. As currently drafted the Bill would create the following protected characteristics:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity

- race
- religion or belief
- sex
- sexual orientation

15. The AMF states that data provided will be kept confidential and will be used for 'statistical and research purposes only', and not as part of the selection process.
16. The JAC uses the data to ensure the fairness of its processes and to track the progress of under-represented groups. Data is also used to assess the impact of the judicial work shadowing scheme and of the JAC's outreach activities. This is in order to aid the JAC's work to ensure there is a diverse range of applicants and a fair selection process.
17. The JAC is considering seeking candidates' consent to the personal and sensitive data on their Application Monitoring Forms being shared with the MoJ, JO and TJO. Such consent would be requested by means of a tick-box on the form, which would mean that candidates are given a choice at the time they fill in the form whether or not their data is shared should they be successful for appointment. This would be an opt-in system. Declining to give consent to data sharing would have no impact whatsoever on an individual's application.
18. The rubric on the AMF would be amended to state that data would be used for 'statistical and research purposes only, and if you give your consent in the relevant box on this form, personal data relating to successful candidates would be shared with the Ministry of Justice for their statistical and research purposes, and those of the Judicial Office and Tribunals Judicial Office'.
19. If candidates consent to the sharing of the data, once appointed, the relevant data would be transferred to a secure database to be managed by MoJ statisticians, but to which JAC, JO and TJO statisticians would also have access for research and statistical purposes. This new database would allow analysis based on appointments (a function of the Lord Chancellor) as well as of selections, for which the JAC is responsible.
20. All work done by statisticians would follow the relevant Codes of Practice for Government statisticians and would conform to the eight data protection principles, which safeguard security, confidentiality and integrity. They would also ensure that personal data is processed fairly and lawfully, is obtained only for specified and lawful purposes and not further processed (including disclosed to third parties) incompatibly with those purposes, and that the processing is adequate, relevant and not excessive in relation to the purpose for which it was obtained. The database would link individuals to their diversity data, but the statisticians employed by the MoJ who would operate the database

would ensure that no reports produced by the database could be used to identify individuals; they would therefore maintain the anonymity of those people whose details are held. For example, in keeping with current practice even anonymised reports would not be released if the numbers involved were so small that the identity of individuals could be deduced.

21. The reason for exploring how the JAC could share certain personal data is that work to enhance judicial diversity must be based on robust data which both accurately shows the current situation and allows for analysis of the reasons for it. Sharing data would mean that the JAC, MoJ, JO and TJO would be working from an agreed set of data. This would allow for greater consistency of data, better co-ordination and closer co-operation. Greater sharing of data is also a recommendation of the Report of the Lord Chancellor's Advisory Panel on Judicial Diversity, Chaired by Baroness Neuberger (page 21).
22. Furthermore, a shared high quality database would enable each of its users to generate statistical answers to questions from interested parties, Ministers, Members of Parliament and the public, more quickly, when possible and appropriate under the Code of Practice for Official Statistics. These answers would not allow individuals to be identified.
23. The Chief Statistician in the MoJ would control access to the database and ensure it was only used in ways that are lawful, meet obligations under the Code of Practice for Official Statistics on confidentiality and be open to scrutiny by the JAC. Only those who needed to use the database for lawful purposes would have access to it.
24. The Chief Statistician reports both to Ministers and the National Statistician. Decisions on statistical matters are the sole responsibility of the Chief Statistician.
25. Section 139 CRA, which protects the confidentiality of information obtained during the judicial selection and appointment process, provides that data concerning individual candidates may be shared with the consent of the candidate. Therefore the JAC could share data under this provision if a candidate had ticked a box on the AMF stating that s/he was happy for that data to be shared with specific people and for specific purposes if they are recommended for appointment.
26. In addition, we believe that this proposal is likely to be compatible with the Data Protection Act 1998 if, from the outset, candidates explicitly consent to the sharing of their data. Other aspects of Data Protection Act compliance will be dealt with during the Privacy Impact Assessment process, which is discussed in more detail below.
27. Although the MoJ, JO and TJO could collect diversity information themselves by sending out a second questionnaire to appointed judges, this is a duplication of activity both for officials and candidates.

There is also a resource implication for undertaking this second request for personal information. In addition, there is a risk of inconsistency between different data sets if the answers are slightly different.

28. The JAC is keen both to maintain the current high response rate of over 95% to the Application Monitoring Form and to protect candidate confidentiality. We are therefore seeking views on our proposal to share personal and sensitive data we currently collect, and data we may collect in the future under the Equality Bill, should it become law, with the MoJ, JO and TJO, managed by MoJ statisticians.

29. This consultation closes on 28 May 2010.

Impact Assessments

30. This policy would not have an impact on the private sector, and would have an impact on the public sector of less than £5 million, there is therefore no need for a full Impact Assessment.

31. The JAC has done an analysis of the impact of the policy. There would be a small administrative cost to the JAC in transferring the data in terms of staff and time, and for the MoJ in receiving the data, creating the database and maintaining it.

32. The JAC undertook an Equality Impact Assessment (EIA) screening, to determine whether a full EIA is necessary. We found that while data sharing might reduce the completion rate of the AMF there is no evidence that it would have a disproportionately negative impact on those groups covered by an EIA.

33. On the other hand, sharing the data could have a positive effect by enabling the JAC, Ministry of Justice, JO and TJO to develop their policies for increasing diversity on a robust evidence base. A full EIA is therefore not necessary.

34. We will review these analyses on the basis of the evidence we receive in the consultation process. We would therefore welcome views and additional information.

Privacy Impact Assessment

35. This proposal would involve the processing of personal data in new ways, as it would be transferred to the MoJ, placed and maintained on a database and reports run from it. It will therefore be necessary to conduct a Privacy Impact Assessment (PIA).

36. Paragraphs 17 to 24 set out detailed information on how the personal data will be used, as well as some information of the measures that will be taken to ensure that the data is kept and transferred securely and processed.

37. We welcome views on these measures so that any data protection issues or risks can be addressed during the development of this proposal as well as during the PIA process, which will eventually form the PIA report. To aid consultees, attached to this paper is the results of the Privacy Impact Assessment screening exercise, which confirmed the need for a PIA and highlights the areas that will need to be considered in detail.

Questions for consultation

1. Should the JAC seek the informed consent of candidates to enable it to share the diversity data it currently collects from candidates with the Ministry of Justice, the Judicial Office and the Tribunals Judicial Office, when they are successful?
2. Do you think that the JAC should share data it may collect in the future if the Equality Bill becomes law?
3. Do you think that requesting candidates' consent to share their data for statistical and research purposes will have an impact on the completion rate of the application monitoring form?
4. Do you have any other views on the data-sharing proposal set out in this paper which you would like to bring to the JAC's attention?
5. Do you agree with the initial Impact Assessment? Do you have any evidence of impacts we have not considered? Do you think there should be a full Impact Assessment?
6. Do you have any information or views on the Equality Impact Assessment? Do you consider that data sharing in the way described will have a disproportionate impact on any group? How could that impact be mitigated?
7. Do you think that the data protection issues set out in this paper are sufficient? If not, what others would you suggest?

Contact details and further information

Please respond on the issues set out in this document to:

Ben Elton
Assistant Director, Equality and Fair Treatment
Judicial Appointments Commission
Steel House
11 Tothill Street
London,
SW1H 9LJ

Email: datasharingconsultation@jac.gsi.gov.uk

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

| | |
|---|---|
| Full name | |
| Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.) | |
| Date Company name/organisation (if applicable): | |
| Address | |
| Postcode | |
| If you would like us to acknowledge receipt of your response, please tick this box | <input type="checkbox"/> (please tick box) |
| Address to which the acknowledgement should be sent, if different from above | |

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 28 May 2010 to:

Extra copies Further paper copies of this consultation can be obtained from this address and it is also available on-line at www.judicialappointments.gov.uk

Alternative format versions of this publication can be requested from Ben Elton – see contact details above.

Publication of response A paper summarising the responses to this consultation will be published by the end of July 2010. The response paper will be available on-line at www.judicialappointments.gov.uk.

Representative groups Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the JAC.

The JAC will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** or the topic covered by this paper, you should contact

Nigel Reeder
Director, Strategy and Outreach
Judicial Appointments Commission
Steel House
11 Tothill Street
London,
SW1H 9LJ

Email: datasharingconsultation@jac.gsi.gov.uk

Annex A

Privacy Impact Assessment screening exercise

Set out below are the questions that comprise the screening exercise used to determine whether a proposal requires a Privacy Impact Assessment, and if so, the areas that need to be looked at in detail. The conclusion is that this proposal does require a PIA.

Technology:

- *Does the proposal apply new or additional information technologies that could affect an individual's personal data?*

Yes. This proposal involves the creation of a new database which would be maintained by Ministry of Justice statisticians. This would store personal data, including sensitive personal data and produce reports derived from that data about successful applicants for judicial office.

Identity:

- *Does the proposal involve new identifiers, re-use of existing identifiers, or intrusive identification, identity authentication or identity management processes?*

Yes. Sensitive personal data would be associated with individuals on the database. It would therefore be possible for a person using the database to see personal data about an individual's diversity status from their entry on the database, even though no reports would be run from the database that identify individuals. The database would not include other personal data, such as address or National Insurance number, as these are not necessary to produce reports on diversity.

- *Might the proposal have the effect of denying anonymity and pseudonymity, or converting transactions that could previously be conducted anonymously or pseudonymously into identified transactions?*

Yes. If the database were to be misused, the diversity information given by candidates to the JAC could be revealed which would link sensitive personal

information to individuals. This risk and way to mitigate it will be addressed in the PIA.

Multiple Organisations:

- *Does the proposal involve multiple organisations, whether they are government agencies (e.g. in “joined-up government” initiatives) or private sector organisations (eg as outsourced service providers or as “business partners”)?*

Yes. Data would be transferred securely from the JAC to the Ministry of Justice. Controlled access would be given to the Judicial Office and Tribunals Judicial Office. The PIA will look at the appropriate security measures for the transfer and storage of the information.

Data:

- *Does the proposal involve new or significantly changed handling of personal data that is of particular concern to individuals?*

Yes. Diversity information given to the JAC would be placed on a Ministry of Justice database and processed to produce reports on diversity trends of appointed judges. There is a risk of unauthorised disclosure of individuals’ diversity data, which the PIA will discuss and propose measures to mitigate.

- *Does the proposal involve new or significantly changed handling of a considerable amount of personal data about each individual in the database?*

Yes. The JAC’s Application Monitoring Form currently collects details of:

- Gender
- Ethnicity
- Disability
- Age
- Professional background
- Working patterns
- Participation in judicial work shadowing
- Attendance at a JAC outreach event

If the Equality Bill becomes law, the JAC may be required, or may choose to collect information on the following, which would become 'protected characteristics:

- age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation
-
- *Does the proposal involve new or significantly changed handling of personal data about a large number of individuals?*

Yes. Approximately 500 judges are appointed each year. The database would only include data relevant to newly appointed judges.

- *Does the proposal involve new or significantly changed consolidation, inter-linking, cross-referencing or matching of personal data from multiple sources?*

Yes. The JAC would supply data to the MoJ on candidates recommended to the Lord Chancellor for appointment, once he has agreed to appoint them. When these candidates are actually appointed (which can be some time later) their entry on the database would be amended to reflect that, in order that accurate reports of the diversity of appointed judges can be produced.

Exemptions and exceptions:

- *Does the proposal relate to data processing which is in any way exempt from legislative protections?*

The data would be processed for research and statistical purposes only, and so is except from some data protection principles. For example, data may be

disclosed to third parties for research purposes, as long as they do not reveal the identities of Data Subjects.

- *Does the proposal's justification include significant contributions to public security measures?*

No

- *Does the proposal involve systematic disclosure of personal data to, or access by, third parties that are not subject to comparable privacy regulation?*

No