

Dr Kath Murray, Lucy Hunter  
Blackburn, and Lisa Mackenzie  
MurrayBlackburnMackenzie

**Marcial Boo, CEO**

Our ref: 764MBM

**By email only**

Wednesday 3 November 2021

Dear Dr Murray, Ms Blackburn and Ms Mackenzie,

**Subject: Collecting data on sex and gender**

Thank you for your letters of 27 September and 28 October, in which you outline your concerns regarding the recent guidance published by the Scottish Government on the collection of data on sex, gender identity and trans status. You ask that the Commission makes clear that accurate data collection on sex is legitimate, lawful and necessary for the purposes of equalities monitoring. I'm sorry for our delay in replying.

The Commission supports accurate data collection in relation to both sex and gender reassignment in order to ensure effective compliance with the public sector equality duty. We agree that it is legitimate and lawful to ask questions on legal sex, sex registered at birth, gender identity and trans status, provided that the questions are proportionate and appropriate to the particular purpose for which the data are being collected, and do not discriminate against or breach the human rights of respondents. It is data owners' responsibility to satisfy themselves about this.

I also agree that our previous advice to the Scottish Government could have been clearer on how equality and human rights are engaged. We also note the recent High Court decision regarding the 2021 Census in England and Wales. We are now developing guidance for public authorities on the factors they need to consider when collecting data on sex and trans status so that they are compliant with equality and human rights law.

Organisations in Scotland and elsewhere, like us, rightly want to improve how accurate data on protected characteristics can be collected, so that the data can better inform public policy. We will continue to work others, including Office for National Statistics, the Scottish Government's Chief Statistician and the Office for Statistics Regulation, to ensure that clear guidance is available for public bodies, researchers and others in this important area.

I am copying this letter to the Office for Statistics Regulation for information.

Yours sincerely,



Marcial Boo

**Chief Executive**

**Equality and Human Rights Commission |**

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[equalityhumanrights.com](https://equalityhumanrights.com)