

Data Protection Update 2002

The Data Protection Act 1998 continues to go from strength to strength. Much has happened in his field and all managers need to be aware of the increasing importance of the Act in their day to day activities.

Recent cases show that the Data Protection Act 1998 can be a powerful stick with which individuals can beat data controllers, including local authorities, if they fail to respect their privacy when it comes to using their photographs. In October, at a High Court hearing, Newham Council agreed to pay a disabled girl £5,000 in damages and approximately £50,000 towards legal costs after using her photograph without her permission. Jacklyn Adeniji was shunned after friends saw her face on the front of a brochure setting out Newham's Aids strategy. The legal action cited breach of confidence as well as the Data Protection Act 1998 and the Human Rights Act 1998.

Another interesting case, not least because of its subject, is *Campbell v Mirror Group Newspapers* (2002). In March the High Court awarded £3,500 damages to Naomi Campbell following the publication of an article and photographs in the *The Mirror* about her leaving a Narcotics Anonymous meeting. The trial judge ruled that the supermodel had established she was entitled to damages for both breach of confidence and under the Data Protection Act 1998.

This is the first time that a trial court has awarded compensation under the Data Protection Act 1998. The Newham case was actually settled between the parties. In *Campbell* the trial judge, Mr Justice Morland, stated that even celebrities are 'entitled to some space of privacy'. With regard to the Data Protection Act, he said that the information contained in the *Mirror* article as to the nature of, and details of, the therapy that Campbell was receiving, including the photographs with captions, was clearly related to her physical or mental health or condition and was therefore "sensitive personal data" as defined by the Act. He ruled that *The Mirror* did not have one of the legitimising conditions in Schedule 3 of the Act to enable it to lawfully publish such material.

This case comes as a salutary reminder to everyone, including local authority managers, that they must be aware of privacy issues when taking and using photographs of people. Steps must be taken to obtain consent, especially where an individual is photographed in circumstances which may put them in a bad light either through the photograph itself or the use to which it is put. For example, a simple photograph of people walking in a high street may be fine without consent but a shot of an individual walking into a sex shop may not.

A recent report detailing the level of compliance with the Data Protection Act 1998 by UK based websites makes interesting reading. It reveals a startling amount of non-compliance. 42% of 170 sites did not post any form of privacy information and of those that did, only 5% were intelligible to the average reader. With the march of e-government more and more councils are making their websites interactive allowing council tax and other bills to be paid online. Managers must ensure that their council websites comply with the 1998 Act. Amongst other things, there should be a privacy policy clearly displayed setting out what personal data will be used for and getting the consent of the users for any non-obvious purposes.

Those of you who do not normally visit the Information Commissioner's website, I would suggest should take a look www.dataprotection.gov.uk. The latest content includes:

- A free online newsletter
- Free online seminars on data protection
- Various guidance on specific issues DP to download

The old chestnut of the use of council tax data just refuses to go away. I read with interest the articles of Paul Russell and Chris Lickorish in last month's issue. I also welcome the recent clarification brought by the legal opinions of various barristers in this field. It is good to see that people have now realised the error of the Information Commissioner's guidance note on this topic. I first raised this issue back in July 2002 when I explained in an article in this magazine why the Commissioner's view was wrong in law. However she has still not officially changed her view.

Perhaps this will come when the new Information Commissioner starts his job In December. Richard Thomas, currently director of public policy at law firm Clifford Chance, will take over from Elizabeth France. Previously, Mr. Thomas was director of consumer affairs at the Office of Fair Trading. His involvement with data protection issues go as far back as 1984, when he helped draw up the original Data Protection Act. It has also been announced that the title of his office will be the Information Commissioner's Office. The former title of Office of the Information Commissioner was felt unsuitable perhaps due to its acronym, OIC!

Ibrahim Hasan is Principal Solicitor at Calderdale Council and a consultant to a data protection training organisation (www.actnow.org.uk)

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