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No Chinese Walls Please!

Data Protection and The Use of Council Tax Data

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“We need Data Protection like a hole in the head.” This is a sentiment which is often expressed by those in the public sector who find that they cannot use council tax data for legitimate council purposes due to the restrictions of the data protection regime.

Council tax records are a valuable resources which council’s spend a lot of time and money maintaining. New government backed initiatives such as Best Value, reducing homelessness and joined up government have encouraged councils to ensure that they are using this resource efficiently. Thus more and more councils are now using this data for, amongst other things, the collection of council debts, environmental enforcement matters and identifying void properties.

After reading Ian Russell’s article in Legal Corner in February a lot of councils felt that there was now no legal bar to using council tax data for other unrelated purposes. This was based upon a misunderstanding of what Mr Russell (which is in no way his fault). The general rules are that the data subject must be given access to his/her personal data (i.e. the subject access provision) and that data can only be used or disclosed for the purpose it was collected for (i.e. the non disclosure provision). What I believe Mr Russell was saying (and which I totally agree with) is that section 28 of the Data Protection Act 1984 (now section 29 of the 1998 Act) provided an exception to these general rules. Thus it could be relied on by an organisation to disclose personal data to a council which needed it for the assessment or collection of council tax even though it might have been collected for another purpose. Furthermore, notwithstanding the subject access provisions, councils need not disclose personal data to the subject if it would prejudice the collection or assessment of council tax. Section 28 did not allow (nor does section 29 of the 1998 Act allow) councils to force organisations to disclose personal data to them or to use council tax data as they wish.

The fundamental question still remains: can councils use council tax data for other purposes not connected with council tax? Unfortunately the advice from the Data Protection Commissioner is very restrictive. I hope here to offer an alternative view.

In May 1999 the Commissioner produced a guidance note on the use of council tax data. The crux of the advice was as follows:

- A billing authority may only use and disclose council tax personal data for council tax purposes.

- If the personal data is to be used for other non council tax purposes then this can only be done under regulations made by the Secretary of State pursuant to paragraph 17 of Schedule 2 of the Local Government Finance Act 1992.
- To date no such regulation have been made and therefore the processing of council tax personal data for other purposes is ultra vires (beyond a council's powers).

It is submitted that this view is open to considerable doubt if the law is examined properly, in particular paragraph 17 of Schedule 2 of the above mentioned Act. Subsection 1 states:

“Regulations under this schedule may include provision that an authority-

- (a) May supply relevant information to any person who requests it for a purpose not relating to Part 1 or 2 of the Act (i.e. Council Tax)
- (b) May charge a prescribed fee for supplying the information”

This gives the Secretary State the authority to make regulations to allow an authority to supply council tax data to any person for a non-council tax purpose. Thus far the Commissioners advice is correct.

However subsections (2) and (3) go on to explain that this power does not cover information about an individual, which identifies the individual i.e. personal data. Therefore the fundamental premise, upon which the Commissioners Guidance is based, that the use of council tax personal data can only be allowed by regulations is wrong since even if there were regulations made under paragraph 17(1) they would not help councils who want to use personal data as opposed to non personal data.

Furthermore, paragraph 17(1) states that the Secretary of State may prescribe fees to be charged for the disclosure of such non personal data. This implies that this power is really to allow councils to sell their non personal council tax data to other organisations that may have use for it for statistical or research purposes. It is not, as the Commissioner's Guidance suggests, there to deal with the situation of internal use of council tax data. This is further evidenced by the fact that throughout Paragraph 17 reference is made to the “supply” of information not the “use” of it. If a council allows council tax data to be used by another department it cannot be said to be supplying that information.

At this stage one point needs clarification. Subject to some limited exceptions, councils are not allowed to disclose council tax data to external organisations. Often councils answer queries from utility companies, who are chasing bills, by using council tax records. This is definitely a breach of the Data Protection Act 1998.

It is suggested that, in the light of the above discussion, the internal use of council tax data is allowed so long as it is done for a legitimate purpose such as collection of council debts or to assist in other statutory functions such as the environmental health or planning. Of course it would be helpful if the statutes conferring these functions give the council a power to use all information at its disposal. However, even if they don't, it is possible to justify such use under section 111 of the Local

Government Act 1972. This allows a local authority to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions. Function “embraces all the duties and powers of a local authority; the sum total of the activities that Parliament has entrusted to it” per Lord Templeman in *Hazell v Hammersmith and Fulham* (1992).

Before using council tax data, councils must ensure that all the provisions of the Data Protection 1998 Act are adhered to. In particular the requirement that an individual must given certain information about the way his/her data is processed must be adhered to. This is called the Fair Processing Code and is laid down in Schedule 1 Part 2 (paragraph 1-4) of the Act. Appropriate notices on data collection forms could do this. The Commissioners Guidance entitled “Notification Clauses” dated July 1998 should also be followed.

Thus in conclusion it is submitted that council tax data can be used to discharge other statutory functions of a local authority such as its duties under the Environmental Protection Act 1990. To say that it cannot would mean that the councils would have to set up “Chinese walls” between the council tax department and other departments to prevent the latter from getting access to council tax data. This would be undesirable, inefficient and would go against the grain of joined up government and Best Value

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