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Draft Code On Use Of Employee Data

Local authorities have a few months to ensure that they fully comply with the Data Protection Act 1998.. The Act had a commencement date of 1st March 2000 but due to various transitional provisions it is not yet fully in force. Up to now most local authorities have been able to take advantage of these provisions so that they have only had to apply the Act to personal data held on computer. From 24th October this year the provisions of the Act which cover structured manual files will come into force. This will bring many personnel records within its scope for the first time. Amongst other things, personnel managers will have to ensure that the information held about prospective, existing and former employees is processed fairly and lawfully and the subject is given access to it if requested.

To complement the Act, the Data Protection Commissioner has issued a draft Code of practice entitled “The use of personal data in employer/employee relationships” . (see www.dataprotection.gov.uk). Whilst the 60-page Code does not carry statutory force it will be taken into account by the courts and the Commissioner in deciding data protection issues. The aim of the Code is to help employers grasp their obligations under both the Data Protection Act and the Human Rights Act. It covers a wide range of personnel issues, including recruitment, shortlisting, managing employment records, references, monitoring, drug testing and discipline.

The key principle of the Code is that what employers do with employees’ data should be "necessary and proportionate" and they must aim to be as open as is possible. The Code examines each stage of the recruitment process and sets out the standards which the Commissioner thinks organisations should achieve and

the steps which need to be taken to achieve them. Certain steps are not considered necessary but good practice and these are highlighted to avoid confusion.

On the current hot issue of email/internet monitoring the Code places emphasis on the rights of employees to privacy in their communications. It advises the following.

- When deciding if monitoring is justified, take into account the privacy of the sender and recipient.
- If monitoring is to detect pornography, it should be justified on the grounds of "a realistic analysis of the risks faced"..
- Do not monitor the content of e-mail messages unless it is clear the business purpose for which the monitoring is undertaken cannot be achieved by the use of a record of e-mail traffic
- No record should be kept of the sites employees have visited or the content they have viewed.

These rules don't sit well with the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 which allow surveillance and monitoring in certain circumstances (see legal article LGC 24/11/00) .

The Code will have implications for all employers especially large ones like local authorities. They need to ask questions of their current personnel practices. For example, is all the information requested on an application form necessary for the recruitment process? Where applications can be made online, adequate security measures will need to be put in place.. After all if Microsoft can be the victim of hackers then who is safe?. The Code also challenges existing practices. It frowns upon the use by employers of employee data for the purpose of marketing. Many local authorities use payslips to market insurance policies or loans on behalf of

other organisations. The Code requires employees to be informed of this use and for any objections to be actioned.

It becomes clear from examining the Code in detail that local authorities should implement a rigorous information management policy. This should set out clearly, amongst other things, the following:

- What information is kept
- Where and for how long it is kept
- Who has access to the information and whether this needs to be controlled
- Security measures which are/need to be in place to prevent unauthorised access

With the implementation of the Freedom of Information Act 2000 not far away (see legal article LGC 10/1/01) non personal data should also be included.

The closing date for consultation comments on the Code was 5th January. The Commissioner has stated that she does not envisage any major changes. Personnel managers are advised to study and commence implementation of the Code before the final version comes into force in the next few months.

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