

The Information Commissioner's View of the Robertson case.

The Information Commissioner (the "Commissioner") has considered the judgment in the above case. The Commissioner welcomes the ruling. It makes helpful reference to the 1999 Howarth Report Home Office Working Party on Electoral Procedures - Chairman George Howarth MP - Final Report dated 8 October 1999 and, significantly, to the detailed submission made by the Commissioner (as Data Protection Registrar) and referred to in that Report.

The Commissioner's concerns about the uses of the electoral register were, in this way, taken account of in the judgment. Those concerns are consistent and long-standing and can be traced back over eleven years to the publication of the Data Protection Registrar's Sixth Annual Report (June 1990) and those following.

Up to now the position has been that Electoral Registration Officers ("EROs") were under a legal duty to disclose the full register upon payment of the appropriate fee Representation of the People Act 1983 (as amended by Representation of the People Act 2000), see sections 9 to 13, as supplemented by Representation of the People (England and Wales) Regulations 2001 (SI 2001/No.341), see regulations 48 and 49, and Representation of the People (England and Wales) (Amendment) Regulations 2001 (SI 2001/No.1700) whilst having no authority in law to limit the content of the register.

Proposed regulations Draft Representation of the People (England and Wales) (Amendment No. 2) Regulations - see Commissioner's Response to the Home Office's formal consultation intended to address the limited sale of the full register whilst at the same time providing for the compilation and sale of an edited register were the subject of further submissions by the Commissioner earlier this year (June 2001). Those draft regulations were not pursued further to the initial consultation exercise and have subsequently been withdrawn.

Essentially the Commissioner's view is that as individuals are required to supply personal information to Electoral Registration Officers ("EROs") on penalty of a criminal offence see regulation 23 Representation of the People (England and Wales) Regulations 2001 any additional, i.e. non-electoral, uses of the information that may be permitted should be kept to a minimum. The Commissioner's long-held view has been that the current arrangements for the sale of the entire register to anyone prepared to pay the fee were inconsistent with the requirements of the data protection principles and appeared to conflict with the right to respect for private and family life embodied in Article 8 of the European Convention on Human Rights ("ECHR") and, consequently in UK law, the Human Rights Act 1998.

This ruling appears to confirm such view and to render the current practice of provision of the whole register to commercial concerns unlawful on wider human rights grounds, taking account also of the right to free elections at Article 3 of the First Protocol of the ECHR.

It follows from this judgment that the continued practice of selling the electoral register to commercial concerns without provision for individual opt-out is, in the Commissioner's view, unlikely to comply with the First Data Protection Principle of the Data Protection Act 1998 (the "Act"). It is also the Commissioner's view that the use of copies of the full version of the Register obtained by commercial concerns since they became aware that, as a result of the judgment, the electoral register has been compiled unlawfully is also unlikely to comply with the same provision of the Act.

The Commissioner awaits the Government's view of the case and its implications. She understands that the Department responsible, DTLR, is giving further consideration to the ruling before advising Ministers on a proposed policy on the sale of the electoral register. Any draft regulations addressing the issue are expected to be introduced in Parliament next Spring. In the meantime, DTLR and the Electoral Commission are advising ERO's not to sell to commercial concerns the revised register which is now becoming available on a rolling basis.

The Commissioner's view is that this is sound advice in the circumstances. The Commissioner hopes she can make a useful contribution to the deliberations of the Government in light of this case and her previous

contributions to the debate with which it is concerned.

One other aspect of the judgment requires further consideration by the Commissioner. This concerns the judge's interpretation of section 11 of the Act. He interpreted the scope of this provision widely, on the basis of Article 14(b) of Directive 95/46/EC, so as to require any ERO to consider and anticipate the purposes for which personal data are intended to be processed by any person to whom they are disclosed, at least in terms of direct marketing. The implications of this, if any, for more general interpretation of the Act are still under consideration by the Commissioner.