

Data Protection Notifications

Information Commissioner v Islington Borough Council

Much has been written about the Data Protection Act 1998 in the last 12 months. It has taken on much more prominence as its provisions are interpreted in the light of the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights (respect for private and family life). Some argue that the Data Protection Act will be an important tool for lawyers who wish to protect their clients' privacy (see *Campbell v Mirror Group Newspapers* (2002)).

One of the less onerous requirements of the 1998 Act is the process of Notification (formerly known as Registration under the Data Protection Act 1984). This is where a Data Controller, i.e. any organisation or individual who processes personal data (subject to some limited exemptions (see table)), informs the Information Commissioner (IC) of, amongst other things, what information it is holding and what it is intending to do with it. All this is common knowledge to most large organisation, especially local authorities, and it would be very surprising if any have not notified. However, a recent case has shown (albeit brought under the 1984 Act) that it is very important that notifications are kept up to date.

The *Information Commissioner v Islington Borough Council* was heard on 24 May 2002. It was an appeal by way of case stated by the IC against a decision of a Magistrates Court to dismiss seven charges brought against the Council for not being registered under the Data Protection Act 1984. The High Court upheld the court's decision in six of the charges, as insufficient evidence had been adduced to have any real prospect of a conviction. The case was remitted to the Magistrates court to continue the hearing in relation to one of the charges.

This case was precipitated after a solicitor (who, incidentally, has written a book on data protection!) complained that his office address was being used by the Council to send letters to his client demanding payment of council tax. Upon investigation by the IC, it was found that the Council's relevant registration had expired. Islington LBC acknowledged that it had failed to renew the registration, in spite of reminders. It said

www.actnow.org.uk – the only data protection resource specific to local government

that this had been “overlooked due to pressure of work and clerical error”. The High Court held that where a corporate body such as a local authority failed to renew its registration under the Data Protection Act 1984 notwithstanding reminders to do so, it could reasonably be inferred that the body was aware of its omission so that its continued holding and use of personal data "knowingly" or "recklessly" contravened s.5 of the 1984 Act.

This case shows how a data controller (especially a large organisation), due to pressure of work or staff leaving, can overlook seemingly minor administrative issues. However the IC will not accept such excuses.

The original idea behind the new system of Notification under the 1998 Act was as follows: Instead of an unwieldy Registration process where some data controllers (e.g. Councils) had a dozen or more separate Registrations (for each department) each costing £75 for three years, the new system would mean a single Notification for each legal entity at a cost of £35 a year.

However Councils must not be under the illusion that they only have to notify once. The IC is of the view that councillors have to separately notify. Whilst the council may not be legally required to notify on behalf of councillors it may well be called upon to assist them. Certainly it will have to notify for the Electoral Registration Officer and the Superintendent Registrar of Births, Marriages and Deaths.

Under the extended transitional arrangements, data controllers can add expiring entries under the 1984 Act to continuing entries for other purposes, until the last such entry expires. However, notification is such an easy exercise to undertake that there is really no excuse for not getting it done sooner. Templates are provided on the IC’s website (www.dataprotection.gov.uk) for each type of data controller including councils solicitors firms.

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

First published in the Solicitors Journal

Act Now Training Limited

We provide training and resources on all aspects of information law for local government including:

- The Data Protection Act 1998
- The Freedom of Information Act 2000
- The Regulation of Investigatory powers Act 2000
- The Human Rights Act 1998
- Associated Legislation

We organise and deliver both in house and external course. For more details see:

Website : www.actnow.org.uk

FREE e mail newsletter available on request

E Mail: info@actnow.org.uk