

## **SALE OF THE ELECTORAL REGISTER**

### **R v (1) WAKEFIELD METROPOLITAN COUNCIL (2) SECRETARY OF STATE FOR THE HOME DEPARTMENT, EX PARTE BRIAN REID BEETSON ROBERTSON (2001)**

#### **High Court QBD Before Mr Justice Kay**

Claimant's Case: The claimant ('R') challenged the refusal of the Electoral Registration Officer ('ERO') of Wakefield Council to accede to his request that his name and address on the electoral register should not be supplied to commercial organisations.

Decision: The refusal of an ERO to accede to the claimant's request was contrary to the Data Protection Directive and to Art.8 and Protocol 1 Art.3 European Convention on Human Rights.

#### **REASONING:**

The ERO had a duty under the Representation of the Peoples Act 1983 (as amended by the 2001 Act) and the Representation of the Peoples Regulations 2001 to supply a copy of the Register to anyone on payment of a fee. It was in being mindful of this duty that the Wakefield ERO refused to accede to R's request.

However the court held that:

- This was in breach of Section 11 of the Data Protection Act 1998, which gives an individual the right to object to his personal data being processed for the purpose of direct marketing. It mattered not that the ERO would not be the one using the data as long as he knew or anticipated that anyone buying the register is going to use it in this way.
- The 2001 Regulations have to be read to give effect to section 11 and also the EU Data Protection Directive which talks about the right to opt out. Where there is any inconsistency the Directive and the Act take precedence.
- The court also said the at the supply of the information to commercial organisations without a right to opt out was a breach of the right to privacy and the right to free elections contrary to the Human Rights Act 1998.

### **Implications for ERO's**

The ERO must still sell the electoral role to anyone who wants to buy a copy pursuant to the duty under the 2001 Regulations. However the ERO must keep a record of all the people who express an objection (pursuant to section 11 of the Data Protection Act 1998) stating that they do not want their data to be processed for direct marketing. Their names should then be deleted from the version of the Register which is for sale to commercial organisations

In effect the ERO now has to make an edited version of the Register which is what it would have had to be had the Government brought into regulations to give effect to section 9 of the Representation of the People Act 2001 Act (which requires ERO's to make an edited version of the Register which should be sold). The case does mention that the government will be doing this anyway but in the meantime ERO's must respects peoples right to opt out of the sale of their details.