

Information Law Newsletter April 2008

Welcome to the 30th issue of our quarterly Newsletter.

Next issue July 2008

Probably the newsletter with the highest circulation in the sector with over 5,000 subscribers and published every quarter and completely free. Plus all the previous versions are archived on our website. If you've received this from a colleague and would like to subscribe in your own right you can do so at <http://www.actnow.org.uk> and choosing Newsletter from the front page.

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Additions to 2008 Course Programme

- | | | |
|---|------------|-----------------|
| • Data Protection Masterclass | Manchester | 7th July |
| • Child Protection and Child Care Law | Hull | 18th June |
| • Child Protection and Child Care Law | Truro | 30th September |
| • DP & FOI for schools | Coventry | 8th October pm |
| • DP & FOI for schools | Bradford | 14th October pm |
| • DP & FOI for schools | Belfast | 21st October pm |
| • Data Protection from A to Z | Belfast | 22nd October |
| • DP & FOI for schools | Omagh | 23rd October am |
| • Data Protection Masterclass, | London | 29th October |
| • Freedom of Information from A to Z | Belfast | 31st October |
| • DP & FOI for schools | Newcastle | 11th November |
| • Multi Agency data sharing | Manchester | 18th November |
| • RIPA and surveillance law from A to Z | Belfast | 20th November |
| • Environmental Information Regulations | Manchester | 21st November |
| • Child Protection and Child Care Law | Stoke | 24th November |
| • Child Protection and Child Care Law | Sheffield | 26th November |
| • Child Protection and Child Care Law | Newcastle | 8th December |
| • FOI Exemptions and updates | Belfast | 11th December |
| • CCTV Systems, the essential law | Belfast | 15th December |

In house Training

Act Now trainers also deliver in-house training at your site. In the last three months we have done in house training on FOI, EIR, DPA, Data Sharing and RIPA for General Medical Council, Healthcare Commission, Aberdeenshire Council, South West Illegal Money Laundering Team, University of the Highlands and Islands, Isle of Wight Council, Reigate & Banstead Council, Dungannon & South Tyrone Council, High Peak Council, Northern Ireland Deaf Youth Association, Aberdeen City Council, Preston City Council, Dumfries and Galloway Council, Rotherham Council,

If you would like a quote to bring the trainer to you please use our new online enquiry form:
<http://www.actnow.org.uk/content/12>

Legal Advice, Training, Podcasts and Consultancy

For Consultancy, Audit & Training see Paul's website <http://www.paulsimpkins.com>

For Legal Advice, Podcasts & Training see Ibrahim's website <http://www.informationlaw.org.uk>

Thank you for your continuing support

Paul & Ibrahim

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FREEDOM OF INFORMATION

1. Latest Commissioner and Tribunal Decisions

Lots of interesting FOI appeal decisions have come out in the last few months, from both the Information Commissioner's Office and also the Information Tribunal. These have dealt with difficult issues such as:

- More guidance on what is information under FOI
- Release of sensitive information relating to the circumstances around the Iraq war
- A Tribunal decision on the definition of personal data
- Disclosure of ASBO information
- More on MP's expenses
- Disclosure of salaries
- Disclosure of pension fund information
- FOI and Trading Standards information
- And the first decision requiring disclosure of legal advice on public interest grounds

If you would like a full explanation of all the latest FOI decisions then listen to the FOI podcast from Ibrahim Hasan. This is the first service of its kind in the UK and it's completely free. It's even been mentioned in The Times.

Every month Ibrahim discusses the latest legal cases and gives his personal views as to how they affect FOI practice. There are also interviews with experts and FOI stakeholders. The first eleven episodes are now on Ibrahim's personal website. You can also read the full transcripts.

See: <http://www.informationlaw.org.uk/page10.htm>

2. Should Legal Advice Be Disclosed?

The Section 42 exemption is often relied upon by public authorities when refusing to disclose legal advice. It has been the subject of many decisions by the Commissioner and the Tribunal. Despite it being a qualified exemption, no decision has (until now) ever required disclosure of legal advice on public interest grounds. Indeed following the Tribunal decision in *Bellamy v The Information Commissioner* (3 April 2006), which stated that "there is a strong element of public interest inbuilt into the privilege itself", most public authorities were almost treating section 42 as akin to an absolute exemption.

On 15th February 2008, the Information Tribunal ruled for the first time ruled that legal advice should be disclosed on grounds of public interest. In *Mersey Tunnel Users Association v Information Commissioner and Merseytravel*, the request concerned the legal advice received by the public authority in respect of the way it made repayments of loans from various local authorities. The overall consequence of following the advice was that for many years (and to this day) the public authority used operating profits to pay off the loans rather than reduce the tolls. This was done despite the objections of the complainant's organisation which represented the views of tunnel users.

In deciding to order disclosure of the advice on public interest grounds, the Tribunal considered various factors. Firstly the "striking circumstances in this case that a public authority has pursued a settled course over a period of many years, involving tens of millions of pounds, and in effect preferring one sector of the public over another in circumstances where legitimate and serious questions can readily be asked about both the power to make the payments and the obligation to do so."

Secondly, it gave weight to the age of the advice. It found counsel's opinion was still live and relied upon but was not recent (some ten years old). It stated that different considerations apply to a request for a recent opinion, a request made before it can be said, as in this case, that the authority has clearly embarked on a settled course of action. In the case of the former, there would be tactical questions involved, and the prospect of challenge through other routes (legal, the ombudsman, the auditor) is more real when action is first taken, than when it has continued for years.

Thirdly, the context of the legal advice is also an important factor in determining where the public interest lies. The Tribunal stated:

"If it is permissible to differentiate between the weight given to privilege in different contexts – and we think it is, given that the balance must be struck "in all the circumstances of the case" – then a question of pure public administration, such as the one in this case, where no significant personal interests are involved ...is at the opposite end of the spectrum of importance to, for example, legal advice in a criminal or childcare case."

Finally, the Tribunal also suggest that thought should be given as to whom the legal advice protects; individuals or corporations:

"... we accept that public authorities are entitled to the protection of legal professional privilege on the same basis as natural persons ... but that if the issues addressed in the advice do not affect individuals significantly, there is less inbuilt weight attaching to the exemption."

This is a significant decision for public authorities and their legal advisers. It demonstrates that legal privilege is not and never has been an absolute exemption. No longer can lawyers and their public authority clients hide completely behind the cloak of privilege.

Advertisement

FOI not MI5...

Can you answer **Yes** to these questions?

- Are you a Public Authority?
- Do you receive FOI requests?
- Do you need to deal with requests more effectively?
- Do you have a dedicated FOI officer?
- Do you require a trained FOI professional?



If yes you would almost certainly benefit from the **ISEB Certificate in Freedom of Information**.

For more information and accredited training providers visit <http://www.iseb-exams.com> or call 01793 417418.

3. Information Tribunal Backs Durant

The Section 40 exemption continues to be the subject of rigorous debate amongst information lawyers. Of course the first question is whether the information being requested is “personal data” within the meaning of section 1 of the Data Protection Act 1998. Much has been written over the years about the significance of the Durant decision (Durant v Financial Services Authority [2003] EWCA Civ 1746)) which seems to have substantially narrowed the definition of personal data. In the words of Auld J:

“...not all information retrieved from a computer search against an individual’s name or unique identifier is personal data within the Act... ... It seems to me that there are two notions which may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject’s involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured...”

The recent Tribunal decision in *Harcup v Information Commissioner and Yorkshire Forward* (5 February 2008) follows the narrow definition of personal data espoused in *Durant*. The Tribunal ruled that *Yorkshire Forward* was not entitled to withhold the names of the individuals that had attended events or corporate hospitality organised by it as these did not constitute personal data. It rejected the Commissioner’s argument that, because the information identifies where the data subject was at a particular time, it is biographical information. It ruled that the information was not “**biographical in a significant sense**” (Act Now emphasis). Attendance at any event must always have personal connotations, if all that is required is attendance. Clearly, Auld LJ was suggesting something further was required.

The second limb of the *Durant* test is that of focus. In deciding on what is the focus of the information, the Tribunal ruled that consideration must be given to the subject matter of the request rather than looking at the constituent parts of the information sought. The focus of the request here were the events organised by and the corporate hospitality provided by *Yorkshire Forward*. It had no personal connotations and was not biographically significant.

In the light of the above, the Tribunal ruled that the requested information was not personal data and so the section 40 exemption was not engaged. It did though rule that releasing a person’s name and employer would be personal data. However, here the information could be disclosed in the form of two separate lists which could not be correlated.

This decision proves that the Information Commissioner’s interpretation of personal data is not the final word on the matter. It will be interesting to see whether he revises his Technical Guidance Note (“Determining what is personal data”) published in August 2007, on which most of his arguments before the Tribunal were based. More legal cases are on their way which will consider the *Durant* definition, including one before the House of Lords, so watch this space.

4. Release of ASBO Information

We previously discussed the Information Commissioner’s decision involving London Borough of Camden (Case Ref: FS50123489 Date: 13/02/2007). The complainant asked Camden Council to provide him with the identities of all residents who had been made the subject of Anti-Social Behaviour Orders (ASBOs). The council provided the complainant with an edited version of its ASBO database. Information that could identify individuals was withheld. The Commissioner decided that the council was wrong to rely on section 40 to redact the names of all the individual

recipients of ASBOs but that redaction could be justified in some cases. This decision has now been overturned by the Information Tribunal in

<http://www.informationtribunal.gov.uk/Documents/decisions/Camden%20Decision%20final.pdf>

For another older view look at R. (Stanley, Marshall and Kelly) v Metropolitan Police Commissioner, London Borough of Brent and Secretary of State for the Home Department, October 7, 2004 where the High Court decided that publication by the police and a local authority of details of anti-social behaviour orders obtained against youths in the form of posters, an article in a tenant's newsletter and a posting on the authority's website did not violate the youths' rights under Art.8 of the European Convention on Human Rights. Nothing new under the sun eh? This was referred to in the decision notice.

The Home Office has guidance on this. <http://tinyurl.com/2eunus>

5. FOI Update Articles and Workshops

Ibrahim Hasan writes a regular column in the Law Society Gazette reviewing recent FOI decisions. His latest article covers decisions in January and February 2008 See the link below:

<http://www.informationlaw.org.uk/page13.htm>

Act Now Training is also running a workshop series where these decisions will be discussed in detail by Ibrahim Hasan and Tim Turner.

Download the flyer here: <http://www.actnow.org.uk/media/flyers/foiex.pdf>

6. FOI and Contracts

The Campaign for Freedom of Information is calling for private contractors providing services to the public on behalf of public authorities to be made subject to the Freedom of Information Act in their own right.

The private bodies which should be brought under the Act include those providing treatment or diagnosis to NHS patients, private care home owners acting under contract to local authorities, contractors running schools for local education authorities or operating prisons or prisoner escort services. Private train, bus and tram operating companies and contractors responsible for the running of London underground lines should also be covered by the Act, the Campaign says.

The Campaign's director, Maurice Frankel, said: "These services were previously provided by public authorities directly and would otherwise have come under the Freedom of Information Act when it came into force in 2005. Contracting-out has led to a reduction in the public's rights to information, which should be restored."

The same principle should also apply to voluntary organisations providing services under contracts with public authorities, says the Campaign. Bodies representing the voluntary sector have recently argued that the Act should not extend to them. But the Campaign points out that public funding for the voluntary sector has risen from £5 billion annually in 1997 to £10 billion in 2007, much of it to enable the voluntary sector to take over the provision of services from public authorities. The Campaign points out that some of the large voluntary bodies receive more public funds than conventional public authorities.

The Campaign is also calling for private bodies with public functions to be brought under the

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Training for the information society

Act. These should include academy schools, housing associations, new deal communities partnerships and local strategic partnerships. Other candidates should include BAA which runs Heathrow and other airports, NATS (the body responsible for air traffic control), Network Rail, port authorities, self regulatory bodies like the Press Complaints Commission, the Advertising Standards Association and the Solicitors Regulation Authority and standard setting bodies like the British Standards Institute.

The Campaign's comments are made in response to a Ministry of Justice consultation about the possible extension of the FOI Act. The Campaign's full response can be found [here](#).

Ibrahim Hasan is re running his popular workshop on FOI, Contracts and Commercial Confidentiality. This highly practical workshop is designed to examine the key issues around giving access to commercially sensitive and contract information owned by public authorities or received from private sector partners through contracts and tenders. We will look at all the latest decisions from Information Commissioner and the Information Tribunal on this topic. This course is a must for FOI officers, lawyers and procurement staff.

See the flyer: <http://www.actnow.org.uk/media/flyers/foicc.pdf>



FREEDOM OF INFORMATION (SCOTLAND)

7. Scottish Information Commissioner's Annual Report

The Scottish Government and local authorities have been the subject of over two thirds of all applications to the Scottish Information Commissioner, Kevin Dunion, since the Act came into force in 2005, according to his fourth annual report published today (Monday 10 March 2008).

New figures released for the first time, show a breakdown of the 1,574 applications to the Commissioner by individual public authority from 2005 until 2007 – with central government accounting for the greatest amount (267), followed by Glasgow City Council (68), City of Edinburgh Council (60) and Strathclyde Police (50).

The high volume of appeals concerning central and local government is consistent with other countries that have Freedom of Information (FOI) legislation, and shows that Scots are keen to engage more directly with the government, on both a national and local level.

However the new breakdown illustrates that, of the 1,574 appeals made to the Scottish Information Commissioner since January 2005, local health boards (101 in total) and universities/colleges (46 in total) were responsible for a surprisingly low number.

"At the heart of Freedom of Information legislation is a commitment to providing people with the information necessary for them to understand the activities of public authorities, to help them participate in future decisions and to hold those same authorities to account for their decisions. It may well be that sectors such as health and education are responding well to many

information requests or they may be receiving far fewer requests than they expected. Whatever the reason we need to understand better why appeals from these sectors are so low", said Kevin Dunion.

Read the Full report at <http://www.itspublicknowledge.info/home/News/20080310.asp>

8. OSIC Newsletter

The January/February and March/April 2008 editions of Inform, the Scottish Information Commissioner's newsletter, have been published since our last newsletter.

In the latest edition Kevin Dunion announces the launch of his 2007 Annual Report, highlights the publication of the first in an ongoing series of updated FOI briefings, reports from an international conference on developing FOI rights, and flags up the availability of revised publication scheme guidance for Scottish public authorities.

9. New FOISA Guidance

The Scottish Information Commissioner has published new guidance on the 'Prejudice to effective conduct of public affairs' and 'Commercial interests' exemptions. These are available [here](#).

All these documents as well as the latest decisions of the Office of the Scottish Information Commissioner (OSIC) and the Court of Session under the Freedom of Information (Scotland) Act 2002 (FOISA) will be examined in our forthcoming update workshop on 8th May in Edinburgh.

This workshop examines all the latest guidance and decisions and helps you to apply them to real life scenarios. It is packed full of exercises designed to teach delegates the key factors to be considered when making decisions about exemptions. Time will also be devoted to the drafting of Refusal Notices, a subject which the Scottish Commissioner has drawn attention to in his decisions. Download flyer here: <http://www.actnow.org.uk/media/flyers/foisaupdate.pdf>



DATA PROTECTION

10. Celebrity Dipping

UCLA Medical Center is taking steps to fire at least 13 employees and has suspended at least six others for snooping in the confidential medical records of Britney Spears. See two different takes on the story.

<http://www.newsday.com/entertainment/news/celebrity/ny-etbrit0315,0,6245870.story>

<http://www.latimes.com/entertainment/news/celebrity/la-me-britney15mar15,1,3988878.story>

and while we're on the subject ... [...Presidential candidate snooping](#)



If you're up to date you should be able to name all three of these hopefuls. (answers at end of newsletter) but what do they have in common?

Their passport applications and details were snooped (or dipped) by people who shouldn't have done it.

See the story at <http://tinyurl.com/ywxu2e>

11. DP & HRA

Government report says Data Protection not being respected by parliament. See the report at

<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/72/7202.htm>

and the media version at http://news.bbc.co.uk/1/hi/uk_politics/7295467.stm

12. Data sharing

An influential think tank (it says here) responds to central government proposals about the difficult issue of data sharing

<http://scl.zehuti.co.uk/dbimg/2/DataSharingReviewSCLResponse.pdf>

We are re running our popular workshop, entitled "Multi Agency Information Sharing", which will guide you through the maze of legislation in this area. We will examine the Data Protection Act, the Human Rights Act and the latest cases and guidance in this area. With the introduction of Entitlement/Identity Cards, One Stop Shops, the Contact Point, Biometric Passports etc. information sharing will be even more of a hot topic.

See the flyer: <http://www.actnow.org.uk/media/flyers/multi.pdf>

13. Subject Access Made Easy as?

A recent High Court decision confirms the previous Court of Appeal ruling on the nature of the subject access right and also goes further in giving guidance on the scope of the search required to be done by the Data Controller. In *Ezsias v The Welsh Ministers* (2007) ALL ER (D) 65, the claimant was employed by the North Glamorgan NHS Trust (the trust) as a consultant. He was suspended and subsequently dismissed. He commenced proceedings in the Employment Tribunal for unfair dismissal.

The claimant had made a number of subject access requests to the Welsh Assembly for disclosure of personal data which related to his complaints of and treatment by the trust. Some of these were quite wide in their scope and asked for "all materials and documents whether in paper or electronic format...which are connected to me, any issue, decision, consideration etc. related to me..." The purpose of his requests was to try and obtain evidence for his Tribunal claim that he was a whistleblower and should not have been dismissed.

The High Court's decision sets out very useful guiding principles for those dealing with subject access requests especially where they are catch all requests e.g. "Give me everything you have about me."

To read the full decisions and commentary by Ibrahim Hasan click on the link below:

<http://www.informationlaw.org.uk/page14.htm>

Act Now is running a workshop on Handling Requests for Personal Data where this and other cases will be discussed in detail.

Please see <http://www.actnow.org.uk/courses/49>

14. Shop them

Sounds familiar? If you're a law abiding citizen (or someone with seriously bad neighbours) you can sprag on them. (NB sprag is south yorkshire dialect for grass). Just go to the web; fill in the form; the "authorities" will deal with it. <http://www.shopthem.com> Worth reading the confidentiality page...

15. Information Security Workshop

The lost Child Benefit discs story and other high profile security lapses has put the law and practice of Information Security in the spotlight. As result of the latest security breaches, the Information Commissioner is due to get tougher powers to enforce the Data Protection Act 1998 including carrying out "spot checks". Our revised Information Security workshop is a must for all data protection/IT professionals. Click below to read the flyer

<http://www.actnow.org.uk/courses/101>

This workshop is facilitated by legal and information security experts and is designed to cut through the jargon and media hype. It will give delegates the knowledge to write their own action plan for bringing information security into their organisation. The legal and regulatory regime will be discussed as well as the practical options to prevent loss, damage and destruction of confidential/personal information.

Multi Agency Information Sharing

We are re running our popular workshops, entitled "Multi Agency Information Sharing", which will guide you through the maze of legislation in this area. We will examine the Data Protection Act, the Human Rights Act and the latest cases and guidance in this area. With the introduction of Entitlement/Identity Cards, One Stop Shops, the Contact Point, Biometric Passports etc. information sharing will be even more of a hot topic. See the flyer:

<http://www.actnow.org.uk/media/flyers/multi.pdf>



16. Security and ID Theft

The British Security Industry Association is the trade association for the professional security industry in the UK. Identity fraud is an issue that has become increasingly prevalent in recent years. It costs the UK economy £1.7 billion and can have a huge effect on your business. Their website has many good links to look at

http://www.bsia.co.uk/MRXU5X91411_p;LY8M9N53879

17. Biometric control on smokers?

Idscan, which produces security, age-verification, data management, biometric and marketing solutions for the leisure, construction and security industries found its flagship product Clubscan under scrutiny after anti-ID card Conservative, Shadow Home Affairs Secretary, James Brokenshire MP, questioned its Data Protection compliance in a letter to the Information Commissioner.

Clubscan which is a high-speed software system that verifies an unprecedented range of personal ID including passports, driving licenses and national identity cards, is used to combat underage drinking, identify violent customers and stem the rise of the UK's emerging 'job-culture' in the licensed trade. 100% of clubscan customers have never failed an under-age test purchase test, whilst the national average sits above 35%.

As a result of a letter written by James Brokenshire MP to the Information Commissioner, Tam Thompson Managing Director of Idscan requested a meeting with the ICO and subsequently met the ICO on Wednesday the 8th August. As a result of that meeting Phil Jones, the Director of Data Protection Practice and the Assistant Commissioner wrote to Mr Thompson on the 9th August, confirming that there is nothing inherently illegal in venues using clubscan and that considerable attention has been paid to seeking to ensure the data captured is held securely. Mr Jones stated that it is certainly not the case that venues using the system will be in inevitably in breach of the data protection act.

Assistant Commissioner Phil Jones said "having had the equipment demonstrated to us and seen some of the literature users are provided with reminding them of their data protection responsibilities, we are satisfied that the company takes data protection and privacy considerations seriously. Considerable attention has been paid to seeking to ensure the data captured is held securely. In summary, we are satisfied that it is certainly not the case that anyone using the equipment will inevitably be in breach of the Data Protection Act 1998."

Tam Thompson said of the meeting "Meeting with the ICO has been a constructive process, when we first contacted the ICO in 2005 requesting guidance for our new technology there was none available, we will now work with the ICO, who over the next few weeks will visit a handful of venues to see if guidance is necessary and to ensure that any guidance which is issued to our customers is informed and relevant. We have been surprised and saddened that James Brokenshire MP has at no time attempted to contact us with any of his concerns"

The company does however have a few more products available – the biometric cloakroom scanner, the smokers control device and the Bluetooth marketing system. Worth a surf.

http://www.idscan.co.uk/uk_home.php

18. Information Overload Newsletter

As a lurker on an RM bulletin board I received this link to follow

<http://www.iea.com.au/getfile/394> and found a fascinating story on record keeping.

NEW : Data Protection Update Masterclass

London and Manchester

Have you attended one of our DPA workshops. Do you want to keep up-to-date with the latest developments in Data Protection law?

The Data Protection Act 1998 (DPA) should be at the heart of every organisation's legislative compliance program. The pace of change in this area has rapidly increased over the last few months with a number of high profile issues and cases which require detailed consideration by data protection lawyers and practitioners. We will explore and analyse the latest cases and the practical implications for compliance. The program is sufficiently fluid to take account of latest issues and cases at the time of the course and six months prior to it. Time will also be devoted to discussing issues important to delegates. This advanced workshop is suitable for those who know about the DPA but wish to develop and keep up to date their knowledge. It is also an ideal step up for those who have attended our basic DPA (A to Z) workshop. This workshop will consider the Collie case recently heard by the House of Lords

<http://www.actnow.org.uk/courses/137>



19. Have you googled your school recently?

Received a booking for a course from a school recently by fax and it was difficult to read but the name of the school was there so I googled it to get the correct address. First hit was the school but more worrying was the second hit. It was about the school but written by past pupils. They didn't mince their words. They posted class photographs, they named and commented on the teachers. They called the teachers and the school a variety of obscene names. They wrote in pseudo text and the whole site was in very bad taste and probably defamatory & libellous. Question is – what sites does the world see when they google your school? If they do find something distasteful can it be taken down? How do you go about this?

First google your school.

20. The Public Law Outline

Everyone working in the field of child protection needs at the very least a basic awareness of the fact that April 2008 brought with it the implementation of the new Public Law Outline. If you are a social worker, child care lawyer, Magistrate, or other professional directly involved in the

instigation and conduct of Care (Child Protection) Proceedings you will by now have a working knowledge of its requirements!

The Public Law Outline (PLO) is essentially a re-ordering of the way Care proceedings are instigated, structured and conducted. The PLO replaces the Protocol for Judicial Case Management of 2003.

Read the full article at www.actnow.org.uk/media/articles/public_law_outline.pdf

21. Use of Child data in schools

Recently published guidance on use of personal data of children in education. Heavy going but professionals should be reading up on this.

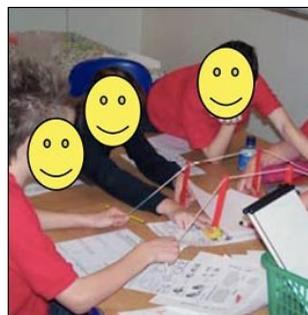
http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2008/wp147_en.pdf.

BECTA also has issued guidance on use of biometrics in schools. This is already on our website at <http://tinyurl.com/2dt2hx>

The ICO has also contributed to this debate. On his website it's difficult to find as it's not called anything relevant. In fact it's called draft 1. Here's the link. <http://tinyurl.com/ysouft>

22. Pupil privacy hits the headlines

A headteacher decided they would protect the children in their school from paedophiles so the website blanked out childrens faces and replaced them with smiley faces. Head Clare Reece explained: "The public nature of the internet is an issue we feel strongly about. Not all parents want their children's picture on there. You can't say what will happen to those pictures."



The website is an online version of a newsletter handed out to parents of the 420 pupils and the kids' faces are not obscured in the newsletter.

Ms Reece added: "We have no problem with the pictures going in the newsletter or the local paper as long as parents have given permission. The internet is much wider."

Read the media verdict.

<http://www.thesun.co.uk/sol/homepage/news/article881322.ece>

<http://tinyurl.com/2kmc6p>

And for a more balanced view read

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/03/06/nsmiley106.xml>

which has the luxury of much feedback, most of it critical.

Finally look on our articles page where there is a guidance note on use of images or attend one of our courses for schools.

23. Courses for Schools

Act Now is repeating its very successful DP/FOI seminars for schools throughout the UK. These have now been revised and updated. So far we have trained over 600 teachers and school staff. The feedback has been very positive. We have added new dates and venues:

- | | | |
|------------------------|-----------|------------------|
| • DP & FOI for schools | Coventry | 8th October pm |
| • DP & FOI for schools | Bradford | 14th October pm |
| • DP & FOI for schools | Belfast | 21st October pm |
| • DP & FOI for schools | Omagh | 23rd October am |
| • DP & FOI for schools | Newcastle | 11th November pm |

For more details see our website:

<http://www.actnow.org.uk/courses/Schools>

If you would like to make a block booking or you want the event to be held in your area let us know. We also run course for schools on child protection law for schools.

- | | | |
|---------------------------------------|-----------|----------------|
| • Child Protection and Child Care Law | Hull | 18th June |
| • Child Protection and Child Care Law | Truro | 30th September |
| • Child Protection and Child Care Law | Stoke | 24th November |
| • Child Protection and Child Care Law | Sheffield | 26th November |
| • Child Protection and Child Care Law | Newcastle | 8th December |

24. Auditing compliance with DP & FOI in schools

Act Now recently conducted a compliance audit of a school in middle England. Here's an extract from the Executive summary

- It is certain that there have been breaches of the law and that criminal acts may have been committed. The notification required by DPA lapsed for 3 years. The publication scheme required by FOI was not adopted until 2007. That no enforcement action or prosecution has been brought is due to the benevolence of the regulator and his acceptance that assurances given by the school will eventually result in full compliance.
- An individual within the school breached the Data Protection Act by publishing student performance data on a website with access by all students to all student results and when requested to remove it compounded the breach by moving it to another location. There is evidence that students were unhappy about this disclosure and this in itself may be a further breach of the Data Protection Act.
- There was no corporate lead from Governors or Senior Management who assigned the auditor an IT Technician to accompany him on the site visit when the issue is a management function. The profile of compliance with law needs raising.
- The staff questionnaire highlighted lack of awareness, lack of training and more worrying with a response rate of 15% a general complacency about the issues. The response rate from Headteacher, Assistant or Deputy Headteacher was 1 out of 20 (5%).
- CCTV is in use on the site but not complying with current good practice.
- A test Freedom of Information request sent to the school on 18th January was unanswered on the audit day ten days later.

Would your school audit produce similar results?



SURVEILLANCE LAW & RIPA

25. Email Monitoring

Monitoring and recording of employees' email, internet and telephone usage (with or without consent) is a legal minefield. This workshop provides a thorough examination of the law and practice in this area. We will look in detail at Part 1 of the Regulation of Investigatory Powers Act 2000 (RIPA) as well as the Lawful Business Practice Regulations, the Human Rights Act 1998 and the Data Protection Act 1998 and related codes.

We are re running our popular workshop on this topic. As well as the latest caselaw we will discuss the possibility of using written policies and procedures to guard against the legal problems. This course is a must for all employment lawyers and personnel advisers, whether in the public or the private sector, who are often called upon to advise on these issues.

See the flyer: <http://www.actnow.org.uk/media/flyers/email.pdf>

26. OSC Inspections

The Office of the Surveillance Commissioners (OSC) has now started doing much more rigorous inspections. Some councils have been inspected twice in one year. The key to a successful inspection is preparation. We have prepared a list of common OSC criticisms of local authorities to help you <http://www.informationlaw.org.uk/USERIMAGES/osccriticisms.pdf>

Are all your officers and managers up-to-date with the latest developments on Directed Surveillance and use of a CHIS? Act Now has won a tender to do surveillance law training of the Health care Commission.

If you would like refresher training in this area please contact us at info@actnow.org.uk tel: 01924 451054

27. Accessing Communications Data – Latest News

The RIPA Communications Data Code of Practice (final version) has now been approved by Parliament and came into force on 1st October 2007 – click below to read the final version.

<http://www.informationlaw.org.uk/USERIMAGES/commsfinalcode.pdf>

One Day Designated Person/ Investigator Workshop : 17th Jun - London

This is a practical workshop on how to access communications data under the Regulation of Investigatory Powers Act 2000 (RIPA). It is essential that those who are seeking to use these powers as well as those who are authorizing their use (Designated Persons), have a good understanding of the law and practice in this area. This workshop will examine the latest Code

of Practice and Home Office forms/guidance in this complex area and help your organisation prepare for inspections by the Interception of Communications Commissioners. This is an interactive course with plenty of opportunity for questions, discussion and for working through case studies and exercises.

Download the flyer <http://www.actnow.org.uk/media/flyers/spoc.pdf>

Answers

Barak Obama, John McCain, Hilary Clinton

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