

Welcome to our 5th newsletter on data protection and privacy issues in the public sector. Circulation now over 470. Please check the disclaimer, virus warning and copyright notice at the end of this newsletter. January 2002

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INFORMATION COMMISSIONER TO QUIT

Biggest story of the Christmas and New Year holiday was that the Information Commissioner has told her staff that when her job is advertised in January that she will not be applying for it. In both the Guardian and the Independent (see below) there were major stories speculating on the reasons for this - one reason being the Government decision on the implementation timetable for the Freedom of Information Act, another being the measures being brought in to counter terrorism. Whatever the reason we would like to thank Elizabeth France for being a powerful advocate in the world of Data Protection and privacy and wish her well in her new career. Let's hope the next Commissioner builds on the work done so far. Two features from the press to click on.

<http://politics.guardian.co.uk/westminster/story/0,9134,626196,00.html>

<http://www.independent.co.uk/story.jsp?story=112206>

DATA PROTECTION CONSULTANCY

Many councils still have not put together a compliance program to adequately deal with the Data Protection Act 1998 now coming fully into force. The best way to do this is to first carry out a data protection audit. This is where our new consultant, Andy Dickinson can help. Andy has been a full time data protection officer for 14 years specialising in the police sector and substantial experience of advising many public sector organisations. See his biography on our website. Andy can assist in the following ways:

- Carry out a full data protection audit
- Recommend a full compliance program
- Assist with a time critical action plan to ensure compliance
- Audit compliance procedures and manuals
- Produce and present a full written report

Please see our website for more details and contact us for an informal discussion. Andy will also contribute to the newsletter on issues within the Police sector. Here's a couple.

POLICE DATA PROTECTION CODE OF PRACTICE

The Association of Chief Police Officers recently submitted a draft of their Data Protection Code of Practice to the Information Commissioner for public consultation. The Code, which on completion will be freely available through Police web-sites, is aimed at maintaining public confidence in the way the Police handle and use their personal information whilst complying with the Data Protection Act. At the same time it will provide standards for every Police Officer, Support Staff and Special Constables when they handle personal information.

Several Police Data Protection Officers collaborated to produce the Code of Practice, which will be the third version since the introduction of the 1984 Act. The Police Service because of the significant role they have to play in the criminal justice system places a great deal of emphasis on the Code of Practice and they are keen to ensure information, particularly personal information, is fit for its purpose. It is expected the IC's consultation process will conclude in February 2002 with an anticipated launch shortly after, in Spring 2002.

POLICE INQUIRY INTO SEX REGISTER IS DROPPED

Lincolnshire Echo 13 December 2001

A Police inquiry into how a confidential list of 204 convicted sex offenders ended up in a supermarket car park has proved inconclusive.

Four months after the personal details of the sex offenders were found wrapped in newspaper in Lincoln's Wragby Road Tesco car park, Lincolnshire Police have ended its investigation. Superintendent Mark Marsden, head of the force's complaints and misconduct department, said the inquiry closed yesterday.

As revealed in the Lincolnshire Echo on August 13, the document was found and handed to a national newspaper. The information was a print-out of data held on computer files in the police criminal justice department at force headquarters in Nettleham.

Supt Marsden said: "We have been unable to establish how the document left the possession of Lincolnshire Police. This is largely due to the fact that the document was produced in October 2000, allegedly discovered in the car park in April this year, then not handed to the paper until August."

NEW EU DATA PROTECTION DIRECTIVE

The European Council of Ministers and European Parliament is currently debating the new EU Data Protection Directive which covers data retention. The proposed Directive covers "the processing of personal data and the protection of privacy in the electronic communications sector." The Council of Ministers is advocating a more hard-line approach to data retention. Experts charged with advising the Council have recommended greater powers for law enforcement agencies to access sensitive data. However, just last week, the Parliament voted to restrict access to information such as Internet traffic data.

EUROPEAN UNION BANS SPAM

The issue of unsolicited commercial e-mail, or spam, has also proved to be controversial. The Parliament favours leaving decisions on spam to the respective Member States, as at present. The majority of member states wish to see a ban on spam, but a few countries including the UK prefer a more relaxed approach. European telecommunications ministers voted on December 6th to prohibit unsolicited commercial e-mail, requiring that consumers opt-in to receive commercial e-mail. There is an exception allowing a business to send e-mails to a customer after a purchase, but the customer must be allowed to opt out at any time without charge. The ban is part of a draft law on privacy in electronic communications that is part of a broad revision of EU telecommunications law.

The ministers ratified an earlier decision to prohibit the transmission of unsolicited text to mobile phones. The questions of how to deal with Internet cookies and short message services (SMS) have also been addressed. Both bodies agreed that unsolicited SMS should be banned and are attempting to meet a compromise on the issue of cookies. The ministers refused requests by the U.S. government and European law enforcement authorities to require longer retention of European citizens' electronic data. The proposed law still requires the approval of the European Parliament. Further information may be found by clicking on this link

<http://www.zdnet.com/zdnn/stories/news/0,4586,2830908,00.html?chkpt=zdhnews01>>

CASE LAW ROUND UP

A v B PLC & ANOR (2001) QBD (Jack J) 10/9/2001

The defendant newspaper was restrained from publishing details of a professional footballer's extra-marital affairs. Both women had sold their stories to the newspaper. The claimant's main grounds for restraining publication were breach of confidence and breach of privacy.

HELD: (1) Section 12 Human Rights Act 1998 required the court to have particular regard to the right in Art.10 European Convention on Human Rights, the availability of the material to the public, the public interest in publication and any relevant privacy code (here the Press Complaints Commission Code of Practice). *Douglas & Ors v Hello! Ltd* (2001) 2 All ER 289 considered. (2) Where the public interest in the publication of a matter was great, any justification for suppressing that publication had to be very strong in order to prevail. Conversely, where the public interest in publication was very slight, or non-existent, a lesser justification might be sufficient. The court should however be cautious in restricting freedom of expression in any circumstances. (*Douglas* (supra) and *Venables & Anor v News Group Newspapers Ltd* (2001) 1 All ER 908 considered). (3) A right provided under national law which supported the right to respect for a person's private life might be a right to be considered in conjunction with Art.10(2). (4) The law should afford the protection of confidentiality to facts concerning sexual relations within marriage and in the context of modern sexual relations, it should be no different with relationships outside marriage. (5) The ambit of that protection was more difficult and consisted of two questions: what was to be protected by preventing communication of it, and to whom communication of it was to be prevented. These questions could not be given an absolute answer, nor should they be. Each case depended on its circumstances. (6) Here, it was a breach of confidence for the women to provide the information they had to the newspaper or to anyone else with a view to its publication in the media. It would be a breach of confidence for the paper to publish it and such publication could be restrained by injunction. The issue here was not whether the women were entitled to talk to their friends about their relationship with X or whether X was entitled to talk to his wife. There was likely to be and here was, a substantial distinction. (7) The information relating to the sexual aspects of the relationship (as opposed to meetings in public places) was not in the public domain and was capable of protection. (8) There was no public interest in the publication of the articles and the information they contained. Public interest meant being in the interests of the public and approximating to

public benefit. (9) X was likely to establish at trial that the interference with the right to freedom of expression was proportionate to the legitimate aim pursued.

Sale of the Electoral Role - R v (1) Wakefield Metropolitan Council (2) Secretary Of State For The Home Department, Ex Parte Brian Reid Beetson Robertson (2001)

The refusal of an Electoral Registration Officer to accede to the claimant's request that his name and address on the electoral register should not be supplied to commercial organisations was contrary to the Data Protection Directive and to Art.8 and Protocol 1 Art.3 European Convention on Human Rights. Full details of this case and its implications appear on our website under Resources.

However there are two extra viewpoints you may like to consider -

The Electoral Commissioners. <http://www.paulsimpkins.btinternet.co.uk/elcommview.doc>

The Information Commissioner's <http://www.paulsimpkins.btinternet.co.uk/commview.doc>

Norman Baker MP V Secretary Of State For The Home Department (2001)
Information Tribunal (Sir Anthony Evans P, Michael Beloff QC, James Goudie QC) 1/10/2001

Norman Baker used his rights under the Data Protection Act to successfully persuade the National Security Appeals panel to allow him access to information he believes the security service holds on him. Mr Baker has kindly written an article for us which appears on our website under Resources. This case makes it crystal clear that you should not apply an exemption in a blanket fashion, and you should only keep secret information which precisely fits within the exemption criteria and disclose the remaining data

SOCIAL SERVICES AND CONFIDENTIALITY

David Elliot, Principal solicitor at Worcestershire County Council, has received a barristers opinion on the impact of data protection, human rights and the law of confidentiality upon social services records and information. He is happy to talk to anyone about it. He can be contacted on 01905 766674.

COUNCIL TAX RECORDS

Many of you contributed to the opinion of Andrew Arden QC on the use of council tax data for other purposes within an authority. Thankfully Mr Arden took a common sense approach, contrary to the Commissioners own guidance, and advised that council tax information could generally be used to assist other legitimate functions or duties of a local authority or for the collection of its own debts. Please email ibrahim.hasan@calderdale.gov.uk for more information

DATAEDGE

Are you still struggling with your policies and procedures to comply with the Act? Help is available in the form of the DataEdge compliance tool kit. It has been produced by Hammond Suddards Edge a firm of solicitors with offices throughout the country. The kits are ideal for any organisation which wants a ready resource upon which to base a data protection compliance programme. Each kit contains very useful material such as a data protection policy, data processor agreement, security checklists and employment contract clauses. They are available for sale at the reduced rate for local authorities of £500 (no vat). The normal price is £750. Anyone interested should contact Hammond Suddards Edge on 0121 2002001 look at their website <http://www.hammondsuddardsedge.com/>

or email caroline.egan@hammondsuddardsedge.com

FREEDOM OF INFORMATION IN SCOTLAND

The Campaign for Freedom of Information in Scotland has published a Press release commenting on today's publication of the Freedom of Information (Scotland) Bill. While welcoming a number of positive elements in the Bill the campaign says it is largely unchanged from the draft version published six months ago and further improvements are still needed. See the press release at

<http://www.cfoi.org.uk/scotfoibill280901pr.html>

IT LAWYERS GROUP

Local government lawyers interested in IT Law (including data protection) can now join a web community. Clicking on the above will take you to the Local Government IT Lawyers Group website which has useful links and documents to view. It also allows lawyers to conduct discussions online and exchange queries etc. It's free to join so Act Now!

<http://communities.msn.co.uk/LocalGovernmentITLawyersGroup>

DATA MATCHING

The Department of Work and Pensions has issued a draft code of practice on data matching under the Social Security Fraud Act 2001, it can be viewed at <http://www.dss.gov.uk/consultation>.

SECTION 61 (PERSONAL LIABILITY) BITES

Just before Christmas two directors Andrew Cole and Paul Slocombe of Academy Credit Services Limited were successfully prosecuted at Chichester Crown Court for acts committed by their company. Academy had attempted to procure information in breach of the Data Protection Act 1998.

The investigation and prosecution of Academy and its directors came after the Inland Revenue told the Information Commissioner that Academy had been contacting the Inland Revenue in attempts to get information about individuals. Academy Credit Services Limited, based in Cardiff, went into liquidation on the 6th April 2000. The two directors who were prosecuted personally were given a conditional discharge but were ordered to pay costs of £1000 each.

The Information Commissioner says that new procedures have been put in place by the Inland Revenue and by other Government departments to try and crack down on attempts like this to get information and that similar prosecutions are likely.

CENSUS WEBSITE GETS A MILLION HITS AN HOUR

Launched on 2nd January and part of the Public Records office the 1901 Census went live at 9 am on 2nd January. Unfortunately demand was so great that the site was soon swamped and couldn't cope with the millions of visitors. When things settle down (or the company running it provides enough capacity) you too can look for Charlie Chaplin or the Queen Mother's details. Any personal data here I wonder? Or is it exempt because it is required under statute? Or because most of the people listed are dead? Have look at <http://www.pro.gov.uk/census/default.htm>

DIRECT MARKETING ASSOCIATION MOVES

DMA House, 70 Margaret Street, London, W1W 8SS

Phone 020 7291 3300

Fax 0207323 4165

Email dma@dma.org.uk

Website <http://www.dma.org.uk>

click on the About button for details of the Preference services

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ACT NOW - DATA PROTECTION TRAINING FOR THE PUBLIC SECTOR

The Seventh Data Protection Principle requires all data controllers to have adequate measures in place to ensure the reliability of employees who have access to personal data. This means training is absolutely essential for such staff.

So far most of delegates at our seminars who completed a feedback sheet have rated them good or excellent. Consequently we have received many requests to present the course in house. We have now improved it to incorporate FOI, HRA and RIP. If you would like us to deliver training please contact us. Organisations in an area may wish to club together so that they can share the costs and resources. The courses can be tailored for specific audiences. Our availability is limited therefore the sooner you contact us the better. Contact us or look at the website for details.

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