

Act Now January 2003 Newsletter

Welcome to our 9th newsletter on Data Protection, Privacy and Information Management issues for Local Government and the public sector. Circulation now 932. Please check the disclaimer and copyright notice at the end of this newsletter. You can unsubscribe via a form on our website www.actnow.org.uk Next newsletter April 2002
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Richard Thomas Information Commissioner

Richard Thomas has taken up the role of Information Commissioner from December 2002. Both the Freedom of Information Act and the Data Protection Act relate to information handling and his dual role will allow the Commissioner to provide an integrated and coherent approach.

The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a UK independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one.

In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

The Commissioner's Mission

"We shall develop respect for the private lives of individuals and encourage the openness and accountability of public authorities by promoting good information handling practice and

enforcing data protection and freedom of information legislation; and by seeking to influence national and international thinking on privacy and information access issues."

And he's started by putting forward his view on the consultation paper on Identity sorry Entitlement cards. Read what he has to say the BBC site http://news.bbc.co.uk/1/hi/uk_politics/2637927.stm Radio 4 had a feature on it and you can see feedback and some links here.

<http://www.bbc.co.uk/radio4/today/reports/politics/idcards.shtml>

Scottish Commissioner

Kevin Dunion, currently Chief Executive of Friends of the Earth, Scotland, has been nominated by the Scottish parliament as their first Information Commissioner. See this press release <http://www.foe-scotland.org.uk/press/pr20021202.html> If you're thinking who is Kevin Dunion a quick search through Google found 1,350 hits. Try it.

Inspection by the Surveillance Commissioner.

The letter was short and addressed to the chief Executive. It gave us six weeks notice of an inspection that would last 2 days. Although most public bodies know the Regulation of Investigatory Powers Act permits monitoring of email there is another important element - that of the authorisation of covert surveillance. You may say that your organisation does not carry out any covert operations but your internal audit, benefits fraud, tenancy enforcement teams will probably do such work.

RIPA permits such intrusions into individuals privacy and potential breaches of their human rights by having a system of authorisations which relate to any covert or directed surveillance.

Inspections are conducted by a team of 5 inspectors and the usual format is a series of interviews with those who have carried out surveillance, examination of the central register of authorisations, inspection of the training received by those involved. Weeks after the inspection a report is sent to your Chief Executive with findings and recommendations.

Do you know if you will be inspected in the next twelve months? Do you need training in RIP Act and how to undertake surveillance lawfully? Don't be caught by surprise when the letter drops on your Chief Executive's desk. Act Now is offering a course to help you understand Surveillance Law.

You can see more at the Surveillance Commissioner's website <http://www.surveillancecommissioners.gov.uk/index.html>

Act Now Training Spring 2003 programme

All courses 4.5 hrs CPD Law Society Reference CJP/ANTL

Records Management for Local Authorities **Manchester** 16th April 2003 [more...](#)

Data Protection Course **London** 7th May 2003 [more...](#)

Freedom of Information Course **Birmingham** 19th June 2003 [more...](#)

The Autumn programme will be posted in our July newsletter - or keep looking at www.actnowtraining.co.uk

Naomi Campbell Case

Campbell v Mirror Group Newspapers Ltd Court of Appeal 14 October 2002.

This was an appeal by Mirror Group Newspapers Limited (MGN) from the High Court decision on 27 March 2002 awarding damages in favour of Naomi Campbell. Miss Campbell was awarded damages because of a breach of confidentiality and compensation under section 13 of the Data Protection Act 1998 (DPA) arising from articles in 'The Mirror' newspaper about her attendance at meetings of Narcotics Anonymous to help her with drug-related problems.

The Court of Appeal allowed the appeal. The appeal and subsequent decision was mainly about the law of breach of confidence. The main points were:

1 The fact that an individual had achieved public prominence did not mean that the media could intrude upon his or her private life. It was not always in the public interest that an individual who had been adopted as a role model, without seeking this distinction, should be demonstrated to be less than perfect, but where such a figure made untrue statements about his or her private life, the press would normally be entitled to put the record straight;

2 The information published by MGN was justified because it was a factual account of Miss Campbell's drug addiction and had the detail necessary to carry credibility. Journalists should be given enough leeway in providing information to the public that was justifiable in the public interest, provided that publication of particular confidential information met this criteria. If this was not done, the journalist's right to freedom of expression under Article 10 of the European Convention on Human Rights would be limited too far;

3 Where the data controller was responsible for the publication of hard copies that reproduced data that had previously been processed by means of equipment operating automatically, the publication formed part of the processing and fell within the scope of the DPA. As such, sections 32(1)-(3) of the DPA applied both before and after publication, and were of general application. Section 32 applied to the publication as well as the 'processing' of data;

4 The details of Miss Campbell's visits to Narcotics Anonymous constituted information that it was reasonable to publish in the public interest. It would not have been reasonably practicable to comply with the provisions of the data protection principles while at the same time making the publications in question. The three conditions of exemption under section 32 of the DPA were satisfied. There was no infringement by MGN of the DPA.

Naomi Campbell is now appealing to the House of Lords.

Read the Independent's view at

<http://news.independent.co.uk/uk/legal/story.jsp?story=342656>

Don't be misled

Choose any combination of Data + Protection + Registration + Agency + Enforcement and compile an official looking document; Put Final Notice at the top and ask for a fee of £95. This is not a one-off scam. The perpetrators are setting up a different one every week. They are currently targeting Leisure Services and Sports Centres. The Office of Information Commissioner has an item on its front page called **Do not be misled** and there is a link to all the names and addresses used by these fraudsters. Click on <http://www.dataprotection.gov.uk/dnbmlist.html> to see the list and <http://www.oft.gov.uk/News/Press+releases/2002/PN+35->

[02+Misleading+data+protection+ads+stopped.htm](#) here to see how this was dealt with last May when the ASA and Ofcom caught up with one of them.

Direct marketing by voicemail - consumers complain 06/12/2002

A direct marketing campaign using voicemail messages to promote the DVD and video release in the UK of Steven Spielberg's *Minority Report* is currently being investigated by the country's advertising watchdog following consumer complaints. In what is believed to be the UK's first direct marketing campaign of its kind, Twentieth Century Fox has, according to *The Guardian* and the BBC, sent recorded messages to 27,000 consumers to promote the release.

Automated calls went to mobile and land lines with a clip of the film in which, according to the BBC, a breathless Tom Cruise asks, "Where is my minority report?," followed by a voiceover urging them not to miss out on the film.

The film studio, which is owned by Rupert Murdoch's News Corporation, points out that, contrary to what is reported in *The Guardian* and the BBC, the marketing was not unsolicited: all recipients of the messages disclosed their phone numbers to the company in previous promotions and agreed to receive further information about Fox productions. Fox also claims that the voiceover at the end of the message makes it clear that the message is an advertisement.

The UK's Advertising Standards Authority (ASA) said that it was receiving consumer complaints about the ad by Tuesday morning, finding Tom Cruise's tone of voice in the film clip "inappropriate and offensive" and suggesting that the ad could be mistaken for a nuisance call.

The Data Protection Act 1998 gives individuals a right to object to direct marketing. Do you know who has your phone number?

Inland Revenue Disclosures

LACORS have had a meeting with the Inland Revenue to discuss the legislative, policy and practical implications of disclosing information between local authorities and the Inland Revenue. The Anti-Terrorism, Crime and Security Act 2001 introduced provisions that enable the Inland Revenue to disclose information to law enforcement agencies for the purposes of assisting criminal investigations and proceedings. It came into force on 14 December 2001 and is supported by a Code of Practice for disclosing information.

Inland Revenue have drafted a Memorandum of Understanding to document the arrangements and obligations when Inland Revenue provide information to a law enforcement agency. This Memorandum of Understanding builds on the principles regarding the disclosure of personal information by the Inland Revenue to law enforcement agencies, as described in a Code of Practice. Information will be disclosed by the Inland Revenue only to law enforcement agencies that agree to abide by the principles outlined in the Code of Practice.

Copies of the Memorandum of Understanding, Code of Practice and form to request information from the inland revenue under the Anti-Terrorism Crime and Security Act 2001 are available on the LACORS web site (see <http://www.lacors.gov.uk> "Quality Service Delivery" section)

Councillors and Data Protection

The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 came into effect on Tuesday 17 December 2002.

An 'elected representative' includes Members of the House of Commons, Members of the devolved administrations in Wales, Scotland and Northern Ireland, Members of the European Parliament, elected members of local authorities and elected mayors. The Order allows processing of sensitive personal data to be carried out after a request is made by the data subject for action on behalf of the data subject or any other individual, and it must be an action reasonably taken by the elected representative pursuant to that request. See it on the web at <http://www.hms0.gov.uk/stat.htm> Use the search engine and search for data protection.

Information Commissioners Guidance on Publication Schemes

The Information Commissioner issued guidance on 11 December 2002 to public authorities on publication schemes made under the Freedom of Information Act 2000 (FOIA). This came very late in the day for local authorities who had to submit their scheme by 31st December 2002. Central Government schemes are now listed as approved. You can see the list (but not click and view) at <http://www.dataprotection.gov.uk/psfw.html>

It applies not only to local government but also to the police, police authorities, CPS, SFO, the Armed Forces, the NHS, schools universities, non-departmental public bodies and all other public authorities listed in FOIA or subsequent orders.

The Health sector has to submit its publication schemes by 31st August 2003. Health trusts, PCG's, PCT's etc should all have started work on this. Those who have already submitted their Publication schemes need to evaluate theirs after seeing the other local government schemes and if necessary improve on them and consider how to comply with the full right of access.

Act Now has arranged a special seminar on this on 19th June 2003 in Birmingham. Expert speakers will include Paul Couldrey, Chair of the West Midlands Data Protection Forum. <http://www.paulsimpkins.btinternet.co.uk/ACTNOWTRAINING/actnowtraining.htm>

Records Management

Public authorities were warned by the Lord Chancellor in his second report on the FOI Act implementation that good records management and administrative procedures are going to be necessary in order to achieve full implementation. He stated "the most important step to be taken is for there to be a clear acceptance of responsibility at senior level to ensure that these changes take place and that they are co-ordinated in the most effective manner. Freedom of information requires a fundamental re-examination of the ways in which authorities carry out their work and communicate what they do."

This is important too to deal with other legislation such as the Data Protection Act 1998, Regulation of Investigatory Powers Act 2000 etc. The Information Commissioners Guidance also emphasises this view. Public Authorities need to identify key members of staff to produce and implement the records management.

There needs to be a robust action plan for implementation, with clearly stated objectives and timescales, which needs the mandate of the appropriate managerial level with a properly

scoped and resourced project. An information audit needs to be done and a co ordinator appointed. This person should have good project management skills and a sound knowledge of the organisation and its culture.

To assist key staff in records management we have organised a special course on Records Management in Manchester on 16th April 2003. Speaker will be Phillip Jones. See <http://www.paulsimpkins.btinternet.co.uk/ACTNOWTRAINING/actnowtraining.htm>

New Website

<http://www.icstudent.com/> although it doesn't look like an official Information Commissioner site is in fact hosted by the Commissioner and is targetted at Students. Much easier to navigate than the 'official' site and has some interesting mini case studies. Worth a look.

FOI Newsletter

A company called Anite offers a FOI newsletter. They have conducted a survey called Ready to be free? and it's available by emailing them at info@aniteps.com.

If you missed our December FOI special click on <http://www.paulsimpkins.btinternet.co.uk/ACTNOWTRAINING/FOI011202.htm>

Telecomms Ombudsman Office on line from January 2nd.

Elizabeth France, former Information Commissioner, has taken up her position as Telecomms Ombudsman and the website went online at the beginning of the year. You can see it at <http://www.otelo.org.uk/index1.htm> There was a strange story on Ananova about how they forgot to put their phone number on their website so no-one could actually phone them but once this was pointed out they soon put it right. Look at http://www.ananova.com/news/story/sm_735713.html

Crime & Disorder Information Exchange protocol

Found on the Metropolitan Police site http://www.met.police.uk/publications/crime_disorder/cad2.htm is a useful document which could assist in writing information exchange protocols. Difficult to find unless you know where it is.

Parliamentary Ombudsman

Is there already access to official information? The Parliamentary Ombudsman has a little known website, <http://www.ombudsman.org.uk/pca/document/aoi02mo/index.htm> which lists investigations and the outcome where individuals have used the Code of Practice on Access to Government Information, forerunner of the FOI Act. You can read about the Ministry of Defence and its "Refusal to release a list of countries designated as priority markets for UK defence sales." (overturned under the code!)

Conferences in Scotland

The Scottish Executive will be running a conference on Modernising Government at the SECC, Glasgow on Monday 3 February. Transforming Scotland 2: From Theory to Practice, will focus on issues the public sector need to address to meet the Executive's targets for improved public services. Joan Borley, of the Lord Chancellor's Department, will provide an update on the implementation of the recommendations of the PIU Report on Privacy & Data Sharing and will highlight the importance of data sharing in delivering better public services. An agenda is available at www.openscotland.gov.uk If you are interested in attending Transforming Scotland 2 please email [Duncan Clark](mailto:Duncan.Clark@scotland.nhs.uk) at or telephone 0131 244 0532.

Act Now is also offering a Data Protection Update Course for the Public Sector in Glasgow on June 25th. Details at www.actnowtraining.co.uk

Case Note

Ealing, Hammersmith and West London College (1) Reaseheath College (2) v Unison (2002)

This was an application for an injunction made by the two colleges against the trade union, Unison. They claimed that a notice given by Unison under section 234 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) was defective. It did not properly specify the number and category of grades of staff to be balloted for industrial action.

The relevant part of the notice read: "Those members to be balloted are all Unison members on all grades at all locations within your employment. If there are any exclusions to the ballot, they are detailed on the attached sheet. All those to be balloted pay subscriptions via DOCAS". This is a reference to the payment records kept by the claimants, who deduct subscriptions to Unison from their employees' pay where requested to do so. It means that the claimants have a record of those employees who are a member of Unison.

The claimants contended that the notice failed to comply with section 234 of the Act because it did not specify the number and category of grades of staff to be balloted so that the employer could make plans and bring various matters to the attention of employees. In particular, the claimants stated that the list of members paying subscriptions is not something to which cross reference can be made without breaching of the Data Protection Act 1998 by the claimants, who hold the data for the purpose of deducting subscriptions.

Unison argued that the notice was a lawful notice and pointed to the decision in *The Lord Mayor and Citizens of Westminster City Council v Unison (2001)* in which the Court of Appeal ruled that "whilst not identified by name, information was provided by reference to the DOCAS system by which the individual identities could easily be ascertained by the employers."

The judge in the present case thought the above decision was wrong but was satisfied that he was bound by it. Consequently, although in retrieving the data held on the balloted employees the claimants would possibly breach the Data Protection Act 1998, the judge found that the notice served by Unison was a lawful notice, and accordingly he rejected the claimant's application for an injunction.

This case shows the importance of considering the effect of the Data Protection Act in terms of using data gathered for one purpose for another purpose. Employers and unions should consider carefully Principle 1 and the Fair Processing Code.

Privacy Laws & Business Services

Privacy Laws & Business, established in 1987, is the leading comprehensive Data Protection Act Information Service.

- UK and International Newsletters in both paper and PDF formats with e-mail updates
- Basic Training Workshops: London, February 26th; Glasgow, March 26th; Leeds, April 30th; London, May 28th Manchester, June 11th, 2003 – and in-house
- How to use the Information Commissioner's Audit Manual Workshops: Leeds, February 10-11th; London May 12th-13th; and Cambridge July 8th-9th, 2003 – and in-house
- Privacy Laws & Business 16th Annual International Conference, Cambridge, July 7-9th 2003
- Consultancy services

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Chief Executive: Stewart Dresner, Telephone: 0208-423-1300, Fax: 0208-423-4536, E-mail: info@privacylaws.com

The Freedom of Information (Additional Public Authorities) Order 2002

extends the application of the Act to the following bodies:

The Adjudication Panel for Wales
The All-Wales Medicines Strategy Group
The Care Council for Wales
The Certification Officer
The Children's Commissioner for Wales
The Commissioners of Northern Lighthouses
The Consumer Council for Postal Services
The Criminal Injuries Compensation Authority
The Criminal Injuries Compensation Appeals Panel, in relation to information held by it otherwise than as a tribunal
The Electoral Commission
The Gas and Electricity Consumer Council
The General Social Care Council
The General Teaching Council for Wales
The National Care Standards Commission
The National Council for Education and Training for Wales
Any Rail Passengers' Committee established under section 2(2) of the Railways Act 1993
The Standards Board for England
The Strategic Rail Authority
The Belfast Harbour Commissioners
The Certification Officer for Northern Ireland
The Londonderry Port and Harbour Commissioners
The Warrenpoint Harbour Authority
How many more have slipped through the net?

Hactivism

A new word to describe how organised action can cause denial of service attacks. Good background material with some excellent anecdotes to use in training courses. Why do email addresses use the @ character? Because the inventor of email thought it looked a 'bit underused'. Click for an interesting read.

<http://www.forumforthefuture.org.uk/uploadstore/openpolicy.pdf>

Kenyon Confronts

BBC's investigative reporter did a show on Identity theft.

http://news.bbc.co.uk/1/hi/programmes/kenyon_confronts/2625395.stm to see the article and on this page you can hear again and see again via real player the 30 minute show. Hurry up - it might change after wednesday's show.

Use of Council Tax Data

Regular readers will know that this topic become a standing item in our newsletter. To what extent can council tax data be used for other purposes? One view is in an article on our website resources page.

The matter is likely to be affected by information received by many Council Tax sections from the ODPM. In a recent newsletter, 19th November 2002, the OPDM indicated that specific legislation would be inserted in the next Local Government Bill to formally allow housing authorities to use Council Tax data for the purposes of meeting their targets for re-introducing empty properties back into the market - such a formal exception seems to suggest that in their view that such data use was not currently permitted.

Watch this space

Training in Information Management issues

Act Now offers a programme of high quality but low cost Training courses at city centre venues throughout the UK or can come to you and deliver training in-house. We can train 50 people at your premises for the price of 2 delegates at an expensive London course. Obtain best value for your organisation. Our speakers work in the public sector and bring up to date expertise to the training courses. Contact Act Now for details.

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