



Welcome to the 23rd issue of our quarterly Newsletter.

Next issue October 2006

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 Resources tab. Anyone who wishes to unsubscribe can do so on the same page. This newsletter contains links to other websites. We cannot be responsible for content or availability of other sites. Please read the disclaimer and copyright notice at the end of this newsletter. See a full privacy policy on our website.

Thank you for your continued support, testimonials and recommendations

Paul & Ibrahim

In this issue

### **Freedom of Information**

1. Commissioner questioned over FOI
2. Commissioner on Publication schemes.
3. Reimbursement of costs incurred under FOI (from our own correspondent)
4. The ultimate FOI flowchart?
5. DCA reports on FOI's first 18 months
6. Freedom of Information and schools.
7. Anonymous requestors
8. Checking Identity
9. FOI & Privacy – Recent ICO Decisions
10. Views from deepest Suffolk
11. Commissioner gets tough (1)
12. Commissioner gets tough (2) ..... And this time it's personal
13. Commissioner gets tough (3) ..... And this time it's cross-legislative
14. TNA & OPSI to merge

### **Freedom of Information in Scotland**

20. FOISA and Personal Privacy
21. Campaign for FOI in Scotland
22. FOISA Flowchart
23. Advanced FOISA workshop
24. Scottish Friends of the Earth.
25. Scottish Commissioner interview

### **Data Protection**

30. Data Protection hits the satirical press
31. The Shelagh Gaskell Scholarship
32. Data Protection - the next 21 years?
33. Deceased personal data
34. Destruction to avoid disclosure to a SAR
35. Connexions hits the dust
36. DVLA discloses your details for a fee?
37. CRB checks (1)
38. CRB checks (2)
39. CRB checks (3)
40. The Fake Sheikh and Anonymity
41. Commissioner talks tough
42. Commissioner acts tough
43. Child Database invades privacy

### **RIPA & Surveillance**

50. Communications Data New Code/Forms
51. New RIPA ICC Inspections
52. Electronic Data Code of Practice
53. Covert Policing Review
54. DPA, RIPA, HRA or all three?

## **New Courses from Act Now**

- Making the case of Electronic Records and Document Management Solutions (ERDMS)
- Freedom of Information Update, Decisions, Tribunals.
- Internet Law and Information Security

Autumn Programme is at <http://www.actnow.org.uk/aut06.htm>

## **Act Now Bulletin Board**

After years of subscribing to others Act Now has launched its own bulletin board (or discussion forum). It's free; 114 have signed up and there's many views and quite a few posts; It does have the first forum on RIPA, RIPSAs & SPOC issues and it also has a forum for Data Protection and another for the 3 interlinked subjects of FOI, RM and ROPSI. <http://www.actnowtraining.co.uk>

## **In house Training**

Act Now trainers also deliver in-house training at your site. In addition to the two principals we have a network of other trainers who can deliver in house training for you in a range of subjects. If you want us to deliver training at your site please contact us. At your site you control the numbers of delegates and can deliver training at £20 or £30 per delegate. You also provide the venue at little or no cost to your organisation and your staff don't incur travelling expenses. Obtain best value - bring the trainer to you! If you would like a quote to bring the trainer to you please email our in house co-ordinator at ([actnowtraining@yahoo.co.uk](mailto:actnowtraining@yahoo.co.uk))

## **Legal Advice from Ibrahim Hasan**

Ibrahim Hasan, a director of Act Now Training and a qualified solicitor, has for the past few years concentrated on training on information law including data protection, freedom of information law and surveillance law. Having built up an impressive public sector client base, Ibrahim has noticed a gap in the market as far as legal advice in these areas is concerned. Too often he has noticed that his clients have to take advice from solicitors or barristers who do not know how the public sector operates. Ibrahim is a leading authority on these areas of law with several years of experience as a local authority solicitor. Due to popular demand Ibrahim is about to re commence giving legal advice to public sector clients all aspects of information law.

To know more about Ibrahim go to <http://www.ibrahimhasan.com>

## **Awareness Training and Compliance Audits for your staff from Paul Simpkins**

Most staff don't need an intensive full day Act Now Training course, good as they are, but need a general awareness. Paul has developed a half day awareness course called Access to Information which covers all the relevant legislation (DP, FOI, HRA, RIP, EIR) and is targeted at staff who handle information and who need to understand the basics. This can be delivered at your premises enabling you to train large numbers at reasonable cost. Paul also offers a DP or FOI health check which includes a site visit, interviews with key staff and a report with an analysis of your organisation's compliance.

To see more about these services and courses see <http://www.paulsimpkins.com>

## FREEDOM OF INFORMATION

### 1. Commissioner questioned over FOI implementation

Oral evidence was presented to the Constitutional Affairs Committee of the House of Commons. The Information Commissioner, when challenged by MPs on 14th March. See the uncorrected oral transcript at



<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/uc991-i/uc99102.htm>

### 2. Commissioner decides on Publication schemes.

The press release

[http://www.ico.gov.uk/cms/DocumentUploads/Publication\\_scheme\\_policy.pdf](http://www.ico.gov.uk/cms/DocumentUploads/Publication_scheme_policy.pdf)

The new policy

[http://www.ico.gov.uk/cms/DocumentUploads/Publication\\_Schemes\\_Policy\\_Version\\_1.0.pdf](http://www.ico.gov.uk/cms/DocumentUploads/Publication_Schemes_Policy_Version_1.0.pdf)

### 3. Reimbursement of costs incurred under FOI (from our own correspondent)

I've had a reply from ODPM about the government reimbursing local authorities for the costs of FOI enquiries. An amount has been included in the RSG settlement to cover these costs and there will be no specific grant. In October 2004 Lord Falconer told the Society of Editors:

"I can reaffirm our commitment to what's known as the new burden doctrine. For local government, we will reimburse councils for any additional costs, in 2005-06 and beyond, falling on them as a result of the FOI Act."

ODPM has responded by adding an amount into revenue support grant, so there will be no separate claim, audit of actual costs, or matching of costs to grant. If you want to know what your council has done with the money, or how much it is, you'll need to consult your own accountants.

### 4. The ultimate FOI flowchart?

A visit to Suffolk County Council in May resulted in their IM team giving me their flowchart to read through. This is a very impressive document and covers virtually every aspect of receiving and servicing a request for information. The two men behind it are Ken Allen and Steven Howard. With a few minor modifications to reflect your organisation this could be a very useful document in your Information Management portfolio. Reproduced by permission of Suffolk County Council.

See <http://www.actnow.org.uk/foiflow.pdf>

Act Now also has flowcharts on our website.

## 5. DCA reports on FOI's first 18 months

See the Constitutional Affairs Committee's Press Notice

[http://www.parliament.uk/parliamentary\\_committees/conaffcom/cac260606pn31.cfm](http://www.parliament.uk/parliamentary_committees/conaffcom/cac260606pn31.cfm).

The Report is at

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/991/99102.htm>

The BBC's take is at

[http://news.bbc.co.uk/1/hi/uk\\_politics/5123462.stm](http://news.bbc.co.uk/1/hi/uk_politics/5123462.stm)

The Constitutional Affairs Committee this week published its report into the progress of FOI. the Committee expresses concerns over the time it has taken for some requesters to obtain information, with internal reviews in some organisations being delayed indefinitely and months taken to assess public interest factors. The Committee regards this as contrary to the spirit of the Act and welcomes a commitment from the Information Commissioner to adopt a firmer approach to enforcement, and put pressure on public authorities to deal with requests more quickly. The DCA must work with the Information Commissioner to raise standards so that authorities consistently provide a more timely response to requesters.

The Committee finds that the complaints resolution provided by the Information Commissioner's Office (ICO) during 2005 was unsatisfactory, with many requesters and public authorities having to wait months for the Commissioner to begin investigating their complaints and the quality of some investigations was inadequate. The Committee is surprised it took so long for the backlog of complaints to be addressed and is not convinced that enough resources have yet been allocated to clear this problem. The Commissioner is expected to publish a progress report in September of this year which the Committee will use to assess the success of the ICO's recovery action plan.

The Committee also expresses concern that there is apparent complacency in Government about preserving digital records, indicating a lack of leadership in improving records management in public authorities. There is a serious possibility that electronic records over 10 years old will essentially become irretrievable as data degrades and technology moves on, and no satisfactory long term strategy has been implemented to manage this problem.

[http://www.parliament.uk/parliamentary\\_committees/conaffcom.cfm](http://www.parliament.uk/parliamentary_committees/conaffcom.cfm)

## 6. Freedom of Information and schools.

Racism in schools. FOI act reveals figures. <http://digbig.com/4krmb>

Suffolk Evening News - Huge rise in children with drugs "Figures released under the Freedom of Information Act show that 125 under 18s were caught with drugs in 2005, compared with just 12 in 2002." <http://digbig.com/4krmc>

Hold the front page - 11+ exam figures uncovered in paper's FOI test "The Kentish Gazette in Canterbury has used the Freedom of Information Act to find out the 11-plus exam pass rates for schools in its circulation area." <http://digbig.com/4krmd>

Act Now is repeating its very successful DP/FOI seminars for schools throughout the UK. These have now been revised and updated to a full day. So far we have trained over 200 teachers and schools staff. The feedback has been very positive. [www.dpschools.info](http://www.dpschools.info) If you would like to make a block booking or you want the event to be held in your area let us know.

## 7. Anonymous requestors

The need to block out knowledge of the applicant and concentrate on the request is itself undermined by the Commissioner's decision on Birmingham Council. It proves that "who" made the request is relevant. Factors quoted by the Commissioner include the fact that the person had been found to be vexatious in a previous context, that they had refused to change their approach when told that they were being vexatious, and had been asked by a particular organisation not to use their membership as justification for making a request. In short, much of the decision is about the applicant, not the requests they made. Admittedly, the applicant made a lot of requests, but the decision focuses on the individual, rather than the content of the requests. Bearing in mind that this was the Commissioner's first decision on a vexatious refusal, some assumptions about how vexatious works may not be right.

In my view, if it is easier to hand information out, that's what you do, even if the punter might be vexatious. On the other hand, if you need to send a message to the punter, if the effect of their behaviour is sufficiently distracting, harassing or unreasonable to be an issue, then it's appropriate to refuse them. I wouldn't shy away from looking at the person if they give you no alternative.

The Scottish Information Commissioner has taken the opposite position. At <http://www.itspublicknowledge.info/yourrights/yourrights5.htm>, he says

"You must give your real name, as the public authority does not have to answer your request if you have used a false name or pseudonym. The Commissioner will not be able to carry out an investigation if he finds out that you have used a false name.

If you have particular reasons for not wanting to reveal your identity to the public authority, you should ask a friend or family member to make the request for information."

There's another view in the Scottish Commissioner's December newsletter. Here's the extract.

"Do I have to deal with a request which comes in from someone who has obviously given me a false name, such as Mickey Mouse?

FOISA states that an information request must include the name of the applicant. This must be the real name of the applicant. So, if a request comes in from someone who has obviously given a false name, the application is invalid and the public authority does not have to deal with it. However, FOISA does not allow public authorities to enquire into the circumstances of the applicant or to ask for information in order to verify identities. As a result, unless you know for sure that the applicant has used a pseudonym, it will be difficult to refuse to deal with an information request on that ground.

A better starting point is the assumption built into FOISA that public authorities must generally discount the identity and circumstances of the applicant and must regard any release of information as if it were a release to the world at large. This approach recognises that applicants cannot gain any advantage by using a pseudonym.

You should also remember your duty to provide advice and assistance to an applicant under section 15 of FOISA. So, if it is obvious that a pseudonym has been used, you should tell the applicant that if they make the request under their own name then you will deal with the request. It may be that the applicant has particular reasons for not revealing their identity but rather than using a false name it is open to them to ask a friend or relative to make the request instead."

## 8. Checking Identity

It's well known that you can get anything on the internet and this site <http://www.foolthem.com/> confirms this feeling. A contributor to a bulletin board took this a step further by doing a whois search on the domain name foolthem.com, and comparing the address of the administrative contact listed: Mary Smith, 193 market street, cheshire, sk111hf, GB. (her email address is supportinspain@hotmail.com) with addresses from

<http://www.ico.gov.uk/eventual.aspx?id=4016> which is the list of bogus agencies.

This is data matching at its benevolent best. The address that owned the foolthem website ran Crown Data Collection Enforcement and Data Protection Agency Services both of which generated complaints to the Information Commissioner.

One could also question the validity of the domain name registrant address. sharron wass, 221 Baker Street, London, london sw1 1aa, GB (email address is bigbanana62@hotmail.com)

The London A-Z shows only one Baker Street, and as far as I recall, 221 Baker Street was the head office of Abbey National, and is now the address of the Sherlock Holmes Museum (and it's in NW1). Interestingly, if the data in the whois entry is by some misfortune incorrect, the registrant or the administrative contact is in breach of their agreement with their domain name registrar. Not, I guess, that this really matters given the state of domain registration these days.

What is worrying is that these people are obviously in the sector and have considerable knowledge of DP. Is there a rogue DP officer roaming cyberspace. I think we should be told.

## 9. FOI and Privacy – Recent ICO Decisions

How do you treat a request for personal data under FOI? A number of recent decisions of the Information Commissioner have shed light on the application of the section 40 exemption (personal data).

Ibrahim Hasan has written an article reviewing these decisions for the Solicitors Journal.

Read it <http://www.actnow.org.uk/foipd.pdf>

## 10. Views from deepest Suffolk on anonymity

I think we are in danger of losing the plot here!

When we receive an FOI request we decide if the information is available to the public or not. We do not decide if the information is available to this specific individual, whoever they are. So, identity is irrelevant.

It is quite clear from the Act and Guidance that the name and address are for the purpose of communicating the information and for no other stated purpose. FOIA Section 8(b).

In England individuals do not as yet have an official identity. We can and do call ourselves what we want and for now this is perfectly legal. So if I choose to call myself Horatio Nelson today, that is my name today. We may not like this but until we have an official identity (and card no doubt) we are who we say we are.

So we can make and request using any name we choose and the Scottish Information Commissioner is wrong if he says anything else, under English law anyway.

## Act Now says

Disclosure under FOI means putting information in the public domain. A name is not required to do so. Just for information I once caused a scene in an Orange shop (don't ask) and requested the name of the assistant so I could write to their head office and complain about him. He told me his name was PJ. Everyone called him that and there was no way he was going to give me any other name. Does it invalidate his rights in law?

There is no requirement for an individual to have a name that conforms to our cultural values. Whatever anyone says is their name is their name. Whatever language, style, symbol is used is not open to question.

While we're here whatever address a requestor supplies for a public body to reply to is their address. Same argument.

Complaining to a commissioner is different. We can accept that a plaintiff may have to provide a 'real' name. One day someone may have to test this out in law to find out the real answer.

### 11. Commissioner gets tough (1)

The Information Commissioner has issued an Enforcement Notice under the Freedom of Information Act which forces the Attorney General's Office to reveal information regarding the military intervention in Iraq.

Following the denial of requests for access to information on the Attorney General's advice regarding the decision to go to war in Iraq, the Commissioner is not satisfied that the exemptions cited by the Government are sufficient to merit the refusal of access to all the information requested.

[http://www.ico.gov.uk/cms/DocumentUploads/Enforcment\\_Notice\\_22nd\\_May\\_2006.pdf](http://www.ico.gov.uk/cms/DocumentUploads/Enforcment_Notice_22nd_May_2006.pdf)

The Press release - For immediate release Date: 25 May 2006

Information Commissioner issues Enforcement Notice concerning information on the legality of military intervention in Iraq

The Information Commissioner has served a single Enforcement Notice to resolve the issues arising from a number of similar complaints relating to disclosure of advice given by the Attorney General on the legality of military intervention in Iraq in 2003.

After very careful consideration of all the available evidence, the Information Commissioner has served the Legal Secretariat to the Law Officers (LSLO) with an Enforcement Notice. The Notice requires the disclosure of some - but not all - of the information which had been requested under the Freedom of Information Act.

The Information Commissioner has ordered that a Disclosure Statement is published containing the substance of information which led to, or supported the views, which were made public by the Attorney General in his statement to Parliament on 17 March 2003. The Notice does not require the publication of information which was preliminary, provisional or tentative or which may reveal legal risks, reservations or possible counter-argument.

Richard Thomas, Information Commissioner, said:

“This is an exceptional, complex and sensitive case which has raised many issues. The Freedom of Information Act creates a presumption of disclosure, but the Act also creates important and separate exemptions relating to advice from the Attorney General, ministerial communications, the development of government policy, legal professional privilege, and prejudice to international relations. I was satisfied that at least one of the exemptions applied to all the requested information. I was then required to balance competing public interest considerations. The Notice sets out my reasoning in full.

“My conclusion is that the balance of the competing public interest tests calls for disclosure of the recorded information which led to, or supported, the concluded views which were made public by the Attorney General in his 17 March Statement. As the government chose to outline an unequivocal legal position, on such a critical issue at such a critical time, the balance of the public interest calls for disclosure of the recorded information which lay behind those views. By this means the public can better understand the background and rationale behind that published Statement and the extent to which reliance upon those final conclusions was in fact justified. “But I have also concluded that the arguments for maintaining the exemptions are sufficiently powerful that the balance of the competing public interests does not require the disclosure of those parts of the requested information which were of a preliminary, provisional or tentative nature or which may reveal legal risks, reservations or possible counter-argument. Nor is disclosure needed where it would prejudice the UK’s relations with other countries.”

The Commissioner has recognised that the nature of the documentation in this case makes it impossible or extremely difficult to publish redacted text to meet the requirements of the Freedom of Information Act. The Enforcement Notice therefore requires a Disclosure Statement to be published meeting specified parameters. The Disclosure Statement has to include the substance of those parts of certain documents, as notified to the LSLO, which fall within these parameters.

The Commissioner is satisfied that the Disclosure Statement prepared by the LSLO and attached to the Enforcement Notice meets his requirements.

## **12. Commissioner gets tough (2) ..... And this time it’s personal**

Richard Thomas managed to serve a decision notice on himself!

<http://news.bbc.co.uk/1/hi/uk/5054376.stm>

## **13. Commissioner gets tough (3) ..... And this time it’s cross-legislative**

Anyone renewing their DP notification who is a public body is being told that a data controller who is a public authority must declare this fact within its Data Protection Notification. Upon doing so the following statement will be added to your notification.

“This data controller states that it is a public authority under the Freedom of Information Act 2000 or a Scottish public authority under the Freedom of Information (Scotland) Act 2002”

This is the amendment

71. In section 16(1) of the Data Protection Act 1998 (the registrable particulars), before the word "and" at the end of paragraph (f) there is inserted-

"(ff) where the data controller is a public authority, a statement of that fact,"

## 14. The National Archives and the Office of Public Sector Information (OPSI) are to merge



The merger was announced on 21 June 2006 by Hilary Armstrong, chancellor of the Duchy of Lancaster, and Baroness Ashton, parliamentary under-secretary at the Department for Constitutional Affairs - <http://digbig.com/4krme>

### FREEDOM OF INFORMATION IN SCOTLAND

## 20. FOISA and Personal Privacy

There have been many decisions by the Scottish Information Commissioner on the application of the section 38 exemption (personal data). These set out various factors which should be considered when considering request for personal data under FOISA.

- The nature of the information
- The capacity of the subject
- The reasonable expectation of the subject

These decisions have been examined in an article by Ibrahim Hasan. See <http://www.actnow.org.uk/foisadp.pdf>

## 21. Campaign for Freedom of Information in Scotland

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

## 22. FOISA Flowchart

How do you deal with a FOISA request? What factors do you have to consider? Click on our flowchart here or see our website <http://www.actnow.org.uk/Pages/FOIScotlandFlowchart.pdf>

## 23. Advance FOISA workshop

We have successfully delivered this workshop in the last six months in Edinburgh. Our experts consider the latest FOISA decisions from the Scottish Commissioner as well as the latest guidance from the Scottish Executive. We also consider the mechanics of a Refusal Notice and delegates receive valuable checklists to take away. The next course is in Edinburgh in Autumn.

See <http://www.actnow.org.uk/newexemptions.pdf>

## 24. Scottish Friends of the Earth.

<http://www.foe-scotland.org.uk/nation/foi.html>

## 25. Scottish Commissioner interview

Earlier in the year Kevin Dunion gave a lengthy interview to BBC newsnight. You can only view it online so set aside 20 minutes. Some good points.

<http://www.itspublicknowledge.info/news/newsnight.htm>



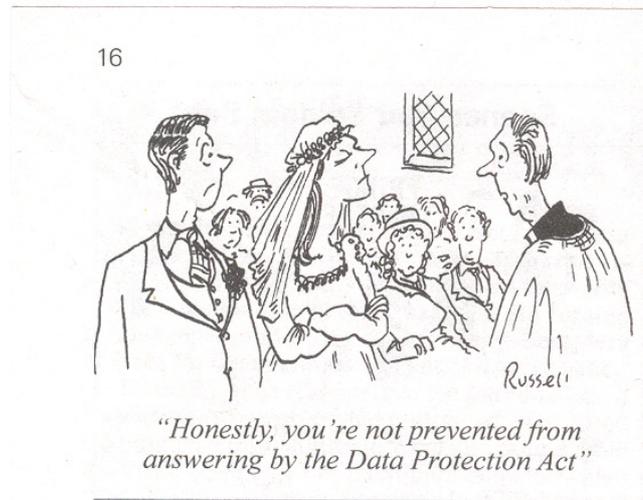
## DATA PROTECTION

### 30. Data Protection hits the satirical press

Issue 1160 of a month ago featured a cartoon. Jiscmail readers highlighted it and wondered if they could publish it for others to enjoy. The answer is of course yes if you are prepared to pay a licensing fee. We did. Here it is.

You, of course, can't re-use it.

"Reproduced by kind permission of PRIVATE EYE/S J Russell"



### 31. The Shelagh Gaskell Scholarship

Data Protection people were shocked to hear in April of the sudden death of one of the great experts in the field. Shelagh Gaskell had for years championed the rights of individuals and pointed out the absurdities in Data Protection law and also been on the ISEB panel helping to develop the certificate. I remember being at a major international event in Cambridge when she and I rose together after a speaker had been going about 5 minutes and as we left the room together she whispered "I see you have the same low boredom threshold as I have". We had a cup of coffee and did the telegraph crossword together. Read the Obituary at

<http://www.yorkshiretoday.co.uk/ViewArticle2.aspx?SectionID=100&ArticleID=1486856>

In her memory a Scholarship has been launched to offer training in Information Law to organisations in the community or voluntary sector who may not be able to afford it. Basically Pinsent Masons will subsidise entrants from this sector through their training programmes which lead to ISEB exams.

See more at <http://www.pinsentmasons.com/expertise/business/scholarship.aspx>

Act Now Training supports this venture and will assist in any way we can. Your job as DP practitioners is to spread the word about the scholarship.

### 32. Data Protection: the next 21 years?

In November 2005, the ICO held a one-day conference in Manchester which brought together data protection experts from a variety of sectors and countries.

The aim of the day was to celebrate our achievements over the last 21 years of data protection legislation, and to look forward to the future and the challenges facing data protection. It was also an opportunity to celebrate Deputy Commissioner Francis Aldhouse's retirement and all that he has achieved and contributed over the last 21 years. There's a wealth of information here to download. Set aside a whole day.

<http://www.ico.gov.uk/eventual.aspx?id=16537>

### **33. Deceased personal data**

My personal opinion being that in England (in Scotland personal health record information is specifically exempt as personal, even when the person is dead) there is no exemption for any personal information to be withheld from disclosure after death in response to an FOI request. I'm not necessarily happy with that. BUT see this 'Human Rights Article 8' case.

"In R (on the application of Addinell) v Sheffield City Council QBD unreported 27 Oct. 2000.....Sullivan J. upheld the decision of Sheffield City Council to refuse the father of a dead teenager access to his son's social service records on the grounds that the boy had a right to privacy. If art.8(1) allows the disclosure of information about a deceased minor to be refused to a close relative then, arguably, close relatives should have standing to enforce an obligation of confidentiality owed to the deceased during his lifetime (assuming that art.8(2) does not justify disclosure), particularly if the disclosure is threatened by a public authority."

Taken from UEA's law resources page on confidentiality.

### **34. Destruction to prevent disclosure under a SAR**

Does FOI modify DPA to make this a criminal offence? Read section 77.

“ (1) Where-

(a) a request for information has been made to a public authority, and  
(b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section, any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled."

### **35. Connexions hits the dust**

After years of public money being thrown at teenagers (and ending up in Capita's bank account) this funny old intrusion into the personal data of youngsters is being withdrawn. Colleges reported take up as low as one student out of an entire college and the administration proved too difficult. Read the story here <http://digbig.com/4krmh>

### **36. DVLA disclose your details to anyone for a fee?**

There is a current consultation by the Dept for Transport "Release of vehicle keeper data from the UK vehicle registers"

[http://www.dft.gov.uk/stellent/groups/dft\\_roads/documents/pdf/dft\\_roads\\_pdf\\_611202.pdf](http://www.dft.gov.uk/stellent/groups/dft_roads/documents/pdf/dft_roads_pdf_611202.pdf)

The current situation is stated that individuals can obtain the information as follows (the Regulation is regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 (S.I. 2002/2742)):

"8. In addition, the regulation specifically allows the release of information from the vehicle register to "any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him."

In fact, this was the subject of a Parliamentary Question by Quentin Davies MP on 30.1.06.

## "DVLA (Date Protection)

Mr. Quentin Davies: To ask the Secretary of State for Transport what assessment he has made of whether the making available to third parties against payment by the Driver and Vehicle Licensing Agency of data relating to the owners of vehicles is consistent with the Data Protection Act 1998; and if he will make a statement. [46274]

Dr. Ladyman: The Data Protection Act exempts from its non-disclosure provisions the release of information where the law allows it. Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002, permits the release of information from the Driver and Vehicle Licensing Agency's vehicle register to the police, to local authorities and to those who can demonstrate 'reasonable cause' for receiving the information. 'Reasonable cause' is not defined in legislation and requests are considered on their merits. DVLA works closely with the Information Commissioner to ensure that disclosure is fair and lawful. The Information Commissioner has published guidance on his website (see below). I recently announced a review of these regulations (see above) and this will commence shortly."

The Information Commissioner's view on "Release of Vehicle Keeper Data from the UK Vehicle Registers: Department for Transport Consultation" in response to the Consultation (not Guidance) is at <http://digbig.com/4krmg>

This includes the following:

"11. There should also be an option for the DVLA/DVLNI to contact a vehicle keeper to inform them that their details have been passed on to a third party by virtue of 'reasonable cause/proportionality' disclosure. This would be appropriate as it is in this area where the level of oversight may be weakest and putting individuals on notice may help ensure that inappropriate accesses come to light and can be investigated.

12. The Information Commissioner also feels it is important that any specified recipients of vehicle keeper information sign an agreement with the DVLA/DVLNI which includes reference to the fact that they will be committing an offence under Section 55 of the Data Protection Act 1998 (DPA98) should they misuse the information they receive. " The following scan from the Sunday Times is worth noting.

### **The size of the problem...**

In a feature in the Sunday times Stephen Ladyman revealed how much the DVLA had charged for selling motorists home addresses to companies who use the information to threaten them with court action if they don't pay. The figures are astonishing. Each enquiry is £2-50 and the total income from this activity was



In 2003 - 04 it was £4,854,000

In 2004 - 05 it reached £5,007,000

Predictions for April 2005 to March 2006 are £6,364,000

### **37. CRB checks (1)**

Some people are subject to 'standard' CRB checks because the nature of their work brings them into regular contact with children or vulnerable adults or other 'at risk' individuals, to reduce risk of abuse (whether physical, sexual, by defrauding them, etc.).

Depending on the nature of the job, may include a POCA (child protection) or POVA (adult protection) element of check as well

The 'enhanced' checks (including 'soft intelligence' held by local constabulary) are for people whose job or voluntary activity involves substantial contact caring for, supervising or being in sole charge of children or vulnerable adults - care worker, teacher, scout or guide leader, prospective adoptive parent, etc.

Some people are subject to CRB checks at one or other level because their job (or professional body or licencing authority) requires proof of a higher than average level of trustworthiness & probity - accountants, lawyers, croupiers, taxi drivers, etc.

Simply having access to confidential / sensitive information is not a reason for your employer to request a CRB check and discover all your spent & unspent convictions. There must be a statutory requirement for the check or your job must be covered by the exceptions order to the Rehabilitation of Offenders Act 1974.

The old CRB website was a nightmare to navigate, but their sparkly new one is much more user-friendly – <http://www.crb.gov.uk>

### **38. CRB checks (2)**

Schools and the DFeS are still struggling with the issue of CRB checks on staff. This followed all the controversy around Ruth Kelly's decision to allow convicted paedophiles to work in schools :

<http://www.timesonline.co.uk/articl...1988729,00.html>

When you like behind the headlines of the Gibson case, the matter does not seem entirely black and white!

Act Now deliver training to schools (see <http://www.dpschools.info>) and one question we ask is "How many Headteachers can state that 100% of the staff and Governors in their school are currently CRB checked?" Surprisingly very few can put up their hand and say so. There is a rump of 50 and 60 year old teachers still teaching without any check. The justification given by many LEAs or audit teams or inspectors is that "they've been in the job so long..." Does this mean that old people don't commit crimes?

Are School Governors required to be CRB checked? A local newspaper highlighted this recently and research shows that the DFES has issued guidance.

Child Protection: Revised Guidance on Pre-Appointment Checks for School Governors

In November 2002 the formal requirement for all governors to obtain a Disclosure from the CRB prior to appointment or election was suspended. Ministers have decided that this requirement will not be re-introduced. Appointing bodies should follow the current procedures on pre appointment checks.

Appointing bodies are reminded that, subject to Schedule 6.11 of the School Governance (Constitution)(England) Regulations 2003, clerks can request a serving governor to obtain a Disclosure from the CRB if a governor is giving cause for concern. Failure to obtain a Disclosure will result in disqualification.

Are you a Chair of Governors? Are you a headteacher? Can you reassure the parents whose children who attend your school that 100% of the people who work with them are CRB checked?

What's more worrying – Are you a parent?

What's very worrying – Are you a reporter looking for a story to fill a sleepy summer paper?

### **39. CRB (3)**

The BBC has a feature on this

<http://news.bbc.co.uk/1/hi/uk/5001624.stm>

but neglects to mention that anyone doing CRB checks should adopt the CRB code of practice

[http://www.crb.gov.uk/PDF/code\\_of\\_practice.pdf](http://www.crb.gov.uk/PDF/code_of_practice.pdf)

If the government can get one piece of information so wrong, what will happen when we have ID cards which will store lots more information about people?

Ibrahim Hasan spoke on surveillance law at the North West DP Group Conference a couple of weeks ago. They also had a speaker from the No To ID Cards group who had lots of interesting things to say. I would urge all DP officers to look at their website:

<http://www.no2id.net>

Did you know that, from October of this year, as preparation for the ID scheme, ALL first-time passport applicants will have background checks and be interviewed by officials at one of the government's 69 new 'enrolment centres'? They are asking us to renew our passports now to avoid having to give excessive data to the government.

### **40. The Fake Sheikh and the Right to Anonymity**

You may have seen this story in the media recently.

<http://news.bbc.co.uk/1/hi/uk/4882578.stm>

The News of the World lost a case to try and continue an injunction preventing George Galloway MP from publishing pictures of its reporter Mazhar Mahmood (aka the Fake Sheikh).

Listen to Galloway's Radio 4 interview here:

<http://newssearch.bbc.co.uk/cgi-bin...go.x=30&go.y=14>

Apparently the News of the World cited legal cases involving Mary Bell and Thompson and Venables to argue that Mahmood had a right to anonymity since his life would be in danger. It will be interesting to see how this develops as it is an example of the overlap between DPA and Human Rights.

## 41. Commissioner talks tough

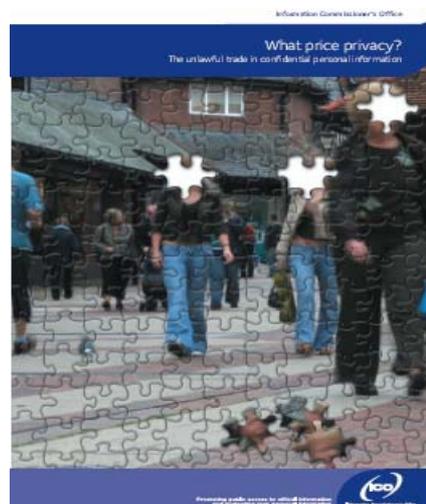
A new publication is available from Commissioner. What price Privacy? Concentrates on the trade in Personal data and bemoans the fact that the penalties for those caught is not high enough. The report is available from the Stationery Office for £13-50 or alternatively I rang and asked for one and received one with their compliments.

Personal information includes:

- current addresses
- details of car ownership
- ex-directory telephone numbers
- mobile phone numbers
- records of calls made
- criminal records
- bank account details

Buyers include:

- local authorities wishing to trace debtors
- journalists
- financial institutions
- estranged spouses seeking details of their ex partner's whereabouts or finances
- criminals intent on fraud or witness or juror intimidation



BBC ran a story on it

[http://news.bbc.co.uk/1/hi/uk\\_politics/4762937.stm](http://news.bbc.co.uk/1/hi/uk_politics/4762937.stm)

On the subject on ID theft, is your council putting planning information on line? If so click below. Concerns have been raised about fraudsters using such information:

<http://news.bbc.co.uk/1/hi/uk/5039546.stm>

It makes you wonder! What would happen if someone had their identity stolen as a direct result of a local authority putting their signature on the web?

## 42. Commissioner acts tough

SNP tried a major telephone campaign during the last election and the Commissioner objected to it serving an enforcement notice. SNP appealed it to the Information Tribunal and the commissioner won the day.

The Tribunal upheld the Information Commissioner's use of an enforcement notice on the Scottish National Party for use of automated telephone calls that breached the Privacy and Electronic Communications (EC Directive) Regulations 2003. The SNP failed to argue interference to rights to freedom of expression under the Human Rights Act. The ICO enforcement notice served under Section of the Data Protection Act 1998 required the SNP to "cease using an automated calling system to transmit communications comprising recorded matter for direct marketing purposes to subscribers who have not previously notified the Scottish National Party that they consent to such communications being sent to them

[http://www.informationtribunal.gov.uk/our\\_decisions/documents/scottish\\_national\\_party.pdf](http://www.informationtribunal.gov.uk/our_decisions/documents/scottish_national_party.pdf)

### 43. Child database invades privacy

This was reported by GCWeekly on 30.6.06: "Child database 'invades privacy'"

An academic has said government plans to compile more databases on children are not needed. Eileen Munro from the Department of Social Policy at the London School of Economics (LSE) claimed the Children's Act of 2004, which has laid the ground for the Children's Index, is creating a major change in the relationship between parents and the state.

She was speaking at a conference on the subject, organised by the LSE, on 27 June 2006.

Munro said that, in the wake of cases such as the death of Victoria Climbié, the government is convinced that the key to providing better protection for children at risk is more information sharing between professionals. I find this surprisingly lacking in any empirical evidence she said.

Whatever evidence there is suggests that when there is information sharing it quickly becomes passing the buck. She claimed that the government is removing all the barriers to information sharing at the expense of privacy, even though they have already been removed for cases when there was abuse or neglect of a child. The Children's Act allows people in public bodies to share information when there is simply a concern about abuse.

The government response to criticism is that it will reassure families they are still protected by the Data Protection Act, she said. But this can be ignored if there is a statutory duty to share information, and this duty is provided by the 2004 act. See <http://digbig.com/4ktcr>

## SURVEILLANCE LAW

### 50. Communications Data : New Code and Forms

The Regulation of Investigatory Powers Act 2000 (RIPA) now gives local authorities and other public sector organisations, including fire and ambulance services, access to communications data e.g. mobile phone, postal and website data. There is an article on our website about this issue.

The Revised Code of Practice (CoP) is now on the Home Office website for consultation :

<http://www.homeoffice.gov.uk/documents/cons-2006-ripa-part1/?version=1>

The closing data for comments is 30 August 2006. Changes to the CoP from the previous version include:

- A requirement to have a Senior Responsible Officer
- Changes to the Home Office standard forms
- More guidance on roles and responsibilities
- Further guidance on cancellations, renewals and record keeping
- More guidance on 999 and dropped calls for emergency services

The Home Office have also revised the forms for applications, notices and authorisations. The number of forms have been reduced and made simpler. There is also a new form for reporting errors to the Interception of Communications Commissioner. You can download them from our website under Resources>Articles.

See also our new course for Designates Persons, Investigators and Senior Responsible Officers. This practical course will discuss the law and practice in this area. It is suitable for all public authority officers at all levels; from those with no knowledge, to SPOC's who wish to refresh their knowledge and understanding. Don't forget we are still running our ever popular How Office Accredited SPoC Course. Full details on our website.

### **51. New RIPA ICC Inspections**

The Interception of Communications Commissioner (ICC) has now commenced his inspection regime. The ICC inspectors will soon come round to audit your compliance with RIPA's Access to Communications Data provisions. They will read through all the forms and interview your key staff who access data. They will also wish to speak to the organisation's SPoCs to ensure they have a good understanding of the Act. Many delegates attending our training courses have now been inspected by the ICC. Common ICC criticisms seem to be:

- Failing to complete the forms correctly
- Not using up to date forms
- A lack of understanding of necessity and proportionality
- Not cross referencing notices and applications
- Failing to report errors

If you would like any advice or training prior to an inspection please let us know.

### **52. Electronic Data Code of Practice**

The Home Office recently launched a public consultation on the investigation of protected electronic data under Part 3 of the Regulation of Investigatory Powers Act 2000 (RIPA). The consultation includes a draft Code of Practice for the disclosure of protected electronic data. The closing date for comments is 30 August 2006.

The consultation paper is at: <http://www.homeoffice.gov.uk/documents/cons-2006-ripa-part3/>

### **53. Covert Policing Review**

We have often said that there is a lack of books and journals on the subject of surveillance law.

McKay Law publishes a quarterly journal titled 'Covert Policing Review' which "has every prospect not merely of establishing a reputation as a credible journal but of becoming a classic of its kind." - The Rt. Hon. Sir Andrew Leggatt, Chief Surveillance Commissioner.

The aim of the Covert Policing Review is to assist practitioners, judges and academics to unravel some of the complexities of RIPA and will thus appeal to all those working in this complex area including designated RIPA Co-ordinators/Authorised Officers.

For more information: McKay Law Solicitors & Advocates 41 St Paul's Street, Leeds, LS1 2JG  
Tel: 0845 123 5571 Fax: 0845 123 5572 [www.mckaylaw.co.uk](http://www.mckaylaw.co.uk) Please mention Act Now when enquiring.

### **54. DPA, RIPA, HRA or all three ?**

Feel free to post your views on our surveillance law bulletin board where you can discuss all issues regarding RIPA <http://www.actnowtraining.co.uk/forum/>

## Disclaimer.

The contents of this newsletter are meant for you to consider on the basis of general discussion and not as advice or expert opinion (legal or otherwise).

You are advised to obtain professional legal advice on specific issues. Any liability (in negligence or otherwise) arising from you acting or refraining from acting on any information contained in this newsletter is excluded.

## Copyright

This belongs to Act Now Training and we ask that anyone who wishes to subscribe does so via a form on our website. Your personal information will only be used for the purposes of sending you this newsletter and information about our training course programme.

Public sector organisations can re-use material within their own organisation if they acknowledge our contribution by linking to <http://www.actnow.org.uk>

Act Now Training Ltd, 64 Bradford Road, Dewsbury, WF13 2DU  
Tel 01924 451054, Fax 01924 451129, [info@actnow.org.uk](mailto:info@actnow.org.uk)