

Information Law Newsletter July 2008

Welcome to the 31st issue of our quarterly Newsletter.

Next issue October 2008

The very first issue was October 2000 and since then we have acquired over 5,000 subscribers and published every quarter. 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.

2008 Course Programme - New Courses

Due to popular demand Act Now has just added more courses to its 2008 program.

RIPA/Covert Surveillance Law for Investigators with Bryan Lewin
RIP(S)A and Covert Surveillance with Sharon Heels
Redrafting FOI Publication Schemes with Tim Turner
Schools Exclusions Training with Sarah Bell
FOI Update workshop with Ibrahim Hasan
Islam and Muslims: Dispelling Myths and Misunderstandings with Sulaiman Kazi

All our courses are available to be delivered at your premises and tailored to your needs. See our website (<http://www.actnow.org.uk>) for details.

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 many clients including British Dental Trade Association, Ulster Wild Life Trust, Trinity & All Saints College Leeds, Scottish Youth Parliament, General Medical Council, Blackburn with Darwen Council, South Tyneside Council, North Yorkshire Fire and Rescue, Oswestry Council, Association of Greater Manchester Authorities, Mendip Council, SH Group, Hertsmere Council, Harrogate Council, York Council, Cambridge City Council, Edinburgh City Council, East Devon 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. New Publication Schemes

Richard Thomas has written to public authority Chief Executives urging them to adopt the ICO's new model publication scheme. Every public authority subject to the Freedom of Information Act is required to adopt and maintain a publication scheme. A publication scheme is a commitment to routinely and proactively provide information to the public. The Information Commissioner will also make clear the ICO commitment to spot checks from February 2009, to ensure compliance with the requirements. Details about the new scheme can be found on the ICO website

http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx

Act Now is holding a series of workshops around the country on the new model publication scheme. The workshops will inform delegates how to get the best out of a scheme, what information should be included and how it should be presented to the public.

For details: http://www.actnow.org.uk/courses/Freedom_of_Information

We are also thinking of running this course in Belfast and Edinburgh. Please email info@actnow.org.uk if you are interested.

2. Latest Commissioner and Tribunal Decisions

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

- How to decide which regime applies to an information request (FOI or EIR)
- Information available on websites
- Disclosure of correspondence with councillors
- The section 38 exemption for health and safety
- Disclosure of names of employees and those attending meetings
- More guidance as to when legal advice should be disclosed
- MPs expenses and addresses
- AND When price information can be withheld under section 43

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 twelve episodes are now on Ibrahim's personal website. You can also read the full transcripts.

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

3. FOI and Legal Advice – More Guidance

In the last issue we discussed, the Information Tribunal decision in

http://www.informationtribunal.gov.uk/Documents/decisions/MerseyTunnelDecision_website.pdf

where it's ruled, for the first time, legal advice should be disclosed on grounds of public interest.

More guidance on this topic has been issued by the Tribunal.

http://www.informationtribunal.gov.uk/Documents/decisions/FCOvICDecision_web29May08.pdf

the request concerned the legal advice received by the FCO about the non payment of pensions by the Zimbabwe government to its former employees resident in the UK. The critical issue was whether the UK government might have a legal responsibility for the payment of such pensions or might be liable in tort for losses suffered by unpaid pensioners.

The Tribunal decided that, on the facts of this case, it was not in the public interest to disclose the legal advice. It went on to state that there can be no hard and fast rules as to when legal advice should be disclosed. The reason for disclosure must amount to more than satisfying curiosity as to what advice the public authority has received. The most obvious cases would be those where there is reason to believe that the authority is misrepresenting the advice which it has received, where it is pursuing a policy which appears to be unlawful or where there are clear indications that it has ignored unequivocal advice which it obtained.

The public interest in disclosure is weak where it simply enables the requester to understand better the legal arguments relevant to the issue concerned. It is weaker still where there is the possibility of future litigation in which those arguments will be deployed. It further stated that disclosure of privileged opinions is not a substitute for legal aid.

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.

4. FOI, Names and Meetings

Another difficult issue is whether the names of those public sector employees attending a meeting should be disclosed pursuant to an FOI request. The tension again is between the individual's right to privacy and the public's right to know how those employed by the public sector are carrying out their official roles. The Information Tribunal decision in

http://www.informationtribunal.gov.uk/Documents/decisions/DBERRvIC_FOEFinaldecision_web0408.pdf

gives further guidance on this point including whether the names of private sector employees should be disclosed.

The request was for information about meetings and correspondence there had been between Ministers and/or Senior civil servants in the Department of Business, Enterprise and Regulatory Reform's (BERR) and employees from the Confederation of British Industry (CBI). Some of the documents relevant to the request included references to individuals who had attended such meetings as spokesman or as note takers or bystanders. The Tribunal had to consider to what extent such names were personal data and so exempt under section 40. At paragraph 101 it summarised the position as follows:

- a. Senior officials of both the government departments and lobbyist attending meetings and communicating with each other can have no expectation of privacy;
- b. The officials to whom this principle applies should not be restricted to the senior spokesperson for the organisation. It should also relate to any spokesperson.
- c. Recorded comments attributed to such officials at meetings should similarly have no expectation of privacy or secrecy.
- d. In contrast junior officials, who are not spokespersons for their organisations or merely attend meetings as observers or stand-ins for more senior officials, should have an expectation of privacy. This means that there may be circumstances where junior officials who act as spokespersons for their organisations are unable to rely on an expectation of privacy;
- e. The question as to whether a person is acting in a senior or junior capacity or as a spokesperson is one to be determined on the facts of each case.
- f. The extent of the disclosure of information in relation to the named official will be subject to usual test i.e. is disclosure necessary for the applicant to pursue a legitimate interest, and, even if it is, is the disclosure unwarranted due to the harm caused to the individuals by disclosure? This will largely depend on whether the additional information relates to the person's business or professional capacity or is of a personal nature unrelated to business.

5. Commercial Interests and Disclosure of Prices Paid

Over the years there have been many decisions of the Information Commissioner and the Information Tribunal on the section 43 exemption. They have espoused the general rule that the price paid for goods or services by a public authority should be disclosed as being in the public interest.

It may therefore come as a surprise to hear that the BBC (Case Ref: FS50086077 Date: 17/03/2008) was recently successful in withholding the cost of its new weather graphics system on the grounds that disclosure would prejudice its and its suppliers (a company called Metra's) commercial interests.

On the face of it this decision seems to fly in the face of the general principle that the public have a right to know how their money is being spent. But in agreeing with the BBC the Commissioner gave weight to the fact that the system under discussion does not have an off-the-shelf price that is generally available, rather in each case purchasers are likely to enter into detailed discussions about which features of the current system are required together with any additional new features. This together with a number of other factors will affect the price at which Metra offers the system.

The Commissioner agreed with the BBC that disclosure of the price paid in isolation, is likely to place Metra at a disadvantage when negotiating other contracts. Potential customers will try to use this price as a bargaining tool, without being aware of the other factors taken into account when the BBC selected Metra as its supplier.

The Commissioner was also satisfied that disclosure of the information would, or would be likely to prejudice the BBC's commercial interests. In reaching this decision the Commissioner considered the fact that it is not a one off contract; indeed it is due to expire in less than 3 years time when it may be extended or a new system procured. If the price the BBC paid for this

system was known to rival suppliers they would then be in a position to artificially inflate the winning bid.

In considering the public interest in transparency, the Commissioner's view was that it is not clear that disclosure in this case would be of significance to the public. In order for information of this nature to be of great value to the public they would require access to information about the costs to other broadcasters of commissioning similar systems. Other Public Service Broadcasters are subject to the Act, specifically S4C and Channel 4, but the remainder of the broadcasting industry is not. Without information about other broadcasters' programme costs the requested information is of less value to the public as a whole; however it would have particular value within the industry potentially exposing the BBC to commercial prejudice.

In short the Commissioner felt that the BBC should not be placed at a disadvantage against its commercial rivals not subject to FOI by having to disclose information about costs especially where such costs would not add to the public understanding significantly and where value for money controls and information is already available through other mechanisms.

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>

6. FOI Update Articles and Workshops

Ibrahim Hasan writes a regular column in the Law Society Gazette reviewing recent FOI decisions. <http://www.informationlaw.org.uk/page13.htm>

Act Now Training is also running a workshop series where these decisions will be discussed in detail. http://www.actnow.org.uk/courses/Freedom_of_Information

The Ministry of Justice has also updated some of its FOI guidance - see <http://www.justice.gov.uk/guidance/guidancefoi.htm>

It is aimed at central government but might be of use to other parts of the public sector.

7. NEW Records Management Code Consultation

The National Archives has been leading work to revise the code of practice on records management, first issued in 2002 by the Lord Chancellor under s 46 of the FOI Act. This consultation paper which contains the revised code of practice has now been published

This is an e-consultation and the consultation paper is available here

<http://www.nationalarchives.gov.uk/recordsmanagement/code/review.htm>

There is also a comments form that you can download, complete, and email as an attachment to a dedicated email address set up for this purpose codeconsultation@nationalarchives.gov.uk.

The consultation period lasts for 12 weeks, which means that the deadline for responses is 2 September 2008. Act Now is running the very popular Records Management S.46 FOI code

workshop. Our speaker Philip Jones will be examining the revised code in detail: Click on the link below:

[http://www.actnow.org.uk/courses/Records Management](http://www.actnow.org.uk/courses/Records_Management)

8. High Court ruling on MPs Expenses

http://www.bbc.co.uk/blogs/opensecrets/2008/05/update_on_mps_expenses_and_the.html

The ICO has welcomed the decision:

http://www.ico.gov.uk/upload/documents/pressreleases/2008/high_court_ruling_on_mps_160508.pdf

The Information Commissioner's Office (ICO) has released a further statement following the High Court's ruling that MPs must disclose details of their expenses.

http://www.ico.gov.uk/upload/documents/pressreleases/2008/ico_statement_second_mps_expenses.pdf

He has also produced more guidance on addresses:

In most cases data protection requirements will prevent the disclosure of home addresses to third parties in response to freedom of information requests. As a general rule the ICO would not order disclosure of address information beyond the first three digits of a postcode; we take a cautious approach because there is a recognised intrusion into private life. It is not always possible to predict all possible risks and any disclosure cannot be recalled.

http://www.ico.gov.uk/upload/documents/pressreleases/2008/ico_position_mp_addresses.pdf

9. FOI and 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 1000 teachers and school staff. The feedback has been very positive. We have added new dates and venues:

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. All our schools courses can be delivered in house as briefing sessions, conferences and in set days.

10. FOI and EIR

A booklet, 'Hints for Practitioners handling FOI and EIR requests', has been produced by the Ministry of Defence, the Department for Environment, Food and Rural Affairs the Ministry of Justice and the ICO. The guidance provides practitioners with advice on best practice in responding to requests for information. It will also help to ensure that freedom of information requests are handled consistently across the public sector. The booklet can be downloaded from the ICO website or ordered by contacting the ICO on 08456 306 060.

The definition of environmental information is very wide under EIR and that has led to many public authorities concluding that if the subject matter of a request relates to the environment then the request has to be treated as an EIR request.

A recent Information Commissioner decision involving Department for Environment Food and Rural Affairs (DEFRA) (09/04/2008) (Case Ref: FS50105954) shows that the issue is not as straightforward.

The complainant requested, amongst other things, the release of briefing notes, background evidence and advice in relation to the issue of redress for farmers whose non-Genetically Modified crops were contaminated by Genetically Modified crops. The Commissioner agreed with DEFRA that this was an FOI request even though the subject matter seemed environmental.

He ruled that, in order to be considered environmental information, the requested information must be definable as 'information on' any of the subjects Regulations 2(1) (a) – (f)) of the EIR. Given that the subject matter of this request dealt with issues relating to GM crops, this would seem at first glance to put the request fairly comfortably within the confines of the EIR. However, in this case, the subject matter of the information sought was essentially about how farmers of non-GM crops might be compensated if their crops become contaminated above the threshold at which, for example, a farmer of organic crops would no longer be able to market his produce as organic and might suffer a financial loss as a result. In a sense, the documents with which this request was concerned did not constitute information on the state of the environment: they were documents dealing with alternative forms of redress in relation to a situation that has arisen that happens to be an environmental one.

The Commissioner decided that information had been correctly withheld under section 35, of FOI. DEFRA was criticized for failing to issue a Refusal Notice under the correct legislation.

http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50105954.pdf

To keep up to date with the latest EIR decisions please see our EIR Update workshop:

http://www.actnow.org.uk/courses/Freedom_of_Information

By popular demand, we are running an Environmental Information Regulations workshop in Belfast on 12th November 2008.

This workshop re examines the basics as well as the latest guidance from DEFRA and decisions from the Information Commissioner and Information Tribunal. It is packed with exercises and case studies designed to teach delegates the key factors to consider (and the mistakes to avoid) when making decisions about EIR exceptions. This practical workshop is essential for those with responsibility for information requests who want to keep up to speed with FOI's lesser known cousin. This course is suitable for beginners as well as those who have some knowledge of this area. For full details: <http://www.actnow.org.uk/courses/161>

11. FOI and DPA IN SCOTLAND

DPA and Community Councils

Ken Macdonald, Assistant Commissioner for Scotland at the ICO, has written to every Community Council Liaison Officer in Scotland to remind them of their obligations under the Act and to explain why most community councils should notify their processing with the ICO.

12. OSIC Newsletter

Read Kevin Dunion's latest FOIA newsletter here: <http://www.itspublicknowledge.info>

We have a programme of course in Scotland http://www.actnow.org.uk/courses/city_Edinburgh

13. Written requests for Environmental Information

This web page has a flowchart to assist Scottish public authorities in processing written requests for information, where those requests involve environmental information. It's from the Scottish Commissioner but should translate easily to areas outside West Lothian.

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2593&SID=87>

DATA PROTECTION

14. NEW ICO Power to Fine

The Information Commissioner has welcomed his new powers to fine organisations for Data Protection breaches:

http://www.ico.gov.uk/upload/documents/pressreleases/2008/criminal_justice_and_immigration_act.pdf

The Criminal Justice and Immigration Act received Royal Assent in May creating tough new sanctions for the privacy watchdog, the Information Commissioner's Office (ICO). This new legislation gives the ICO the power to impose substantial fines on organisations that deliberately or recklessly commit serious breaches of the Data Protection Act.

The Information Commissioner now has the ability to serve a "monetary penalty notice" on a data controller. The power will be exercisable in circumstances where the Information Commissioner is satisfied that a data controller has committed a serious contravention of the data protection principles.

However, the Commissioner has to be satisfied that the contravention was either deliberate or that the data controller knew, or ought to have known, of the contravention risk, and that the contravention would be likely to cause substantial damage or substantial distress, but he failed to take reasonable steps to prevent that contravention.

The Commissioner will be able to determine the amount of the monetary penalty in accordance with guidelines that he will make, albeit the maximum penalty will be set out in regulations yet to be published by the Secretary of State. The power will not apply retrospectively. Sums recovered by the Information Commissioner by monetary penalties will be payable into the Consolidated Fund, so the Commissioner will not have a budgetary incentive to pursue those who might have breached the data protection principles. There will be an Appeal process involving the Tribunal.

15. More Security Breaches

Please see this link to data lost from the back of a lorry, which also links to another story about a second breach:

http://www.theregister.co.uk/2008/01/14/document_breach_brace/

Richard Thomas, Information Commissioner, said

'I will be taking formal enforcement action against HMRC and MOD following the serious data breaches that have occurred. The reports that have been published today show deplorable failures at both HMRC and MOD.

Whilst these breaches have been highly publicised and involve big numbers, sadly they are not isolated cases. It is deeply worrying that many other incidents have been reported, some involving even more sensitive data. It is of fundamental importance that lessons are learned from these breaches. Information security and other aspects of data protection must be taken a great deal more seriously by those in charge of organisations. No chief executive can now say that data protection doesn't matter.

'It is beyond doubt that both Departments have breached Data Protection requirements and we intend to use the powers currently available to us to serve formal Enforcement Notices on them. To comply with the terms of the Enforcement Notices we will require HMRC and the MOD to use their best endeavours to implement all the recommendations outlined in the reports. We will also be monitoring the situation closely. We will require progress reports to be published after 12, 24 and 36 months documenting in detail how the recommendations have been, or are being, implemented to improve Data Protection compliance. Failure to comply with an Enforcement Notice is a criminal offence.

'I welcome the seriousness of the requirements and guidance for central government in the Cabinet Secretary's Data Handling Report; this material should help chief executives across the whole of the public, private and third sectors achieve better compliance with the Data Protection Act and keep people's personal details more secure.'

A few useful links are

Kieran Poynter's Review of information security at HM Revenue and Customs

http://www.hm-treasury.gov.uk/media/0/1/poynter_review250608.pdf

IPCC report into loss of data at HMRC

http://www.ipcc.gov.uk/final_hmrc_report_25062008.pdf

Sir Gus O'Donnell's report on Data Handling Procedures in government

<http://www.cabinetoffice.gov.uk/~media/assets/www.cabinetoffice.gov.uk/csia/dhr/dhr080625%20pdf.ashx>

Sir Edmund Burton's report into the Loss of MOD Personal Data

http://www.mod.uk/NR/rdonlyres/3E756D20-E762-4FC1-BAB0-08C68FDC2383/0/burton_review_rpt20080430.pdf

MOD Action Plan in response to Burton Report

http://www.mod.uk/NR/rdonlyres/F0437ECE-F5E6-4246-B4A8-8E63B789C915/0/burton_action_plan20080625.pdf

Data Handling Procedures in Government: Interim Progress Report

http://www.cabinetoffice.gov.uk/reports/~media/assets/www.cabinetoffice.gov.uk/publications/reports/data/data_handling%20pdf.ashx

More recent stories include laptops stolen from government departments and sensitive documents being left on a train! Our revised Information Security workshop is a must for all data protection/IT professionals. 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. See <http://www.actnow.org.uk/courses/102>

16. Photographs of Children and Harry Potter

<http://news.bbc.co.uk/1/hi/entertainment/7387490.stm>

JK Rowling yesterday won a landmark privacy ruling over the publication of a photograph of her son David when he was 18 months old.

Appeal judges ruled on a renewed bid by the Harry Potter author to ban further publication of a photograph taken in an Edinburgh street. What is interesting is the following quote from the Master of the Rolls.

Sir Anthony Clarke, said: "If a child of parents who are not in the public eye could reasonably expect not to have photographs of him published in the media, so too should the child of a famous parent."

I have not been able to find the full judgment yet. Does it now mean that parents of children have had their rights strengthened? I always thought that there was no automatic right to privacy, it depended on context and the use made of the photo.

Ibrahim Hasan's previous article on this subject covered the Newham Council case:

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

17. Misuse of Personal Data by the Police : Radio 5 Live

Donal MacIntyre Programme, 6th April 2008 (7.45pm)

Ibrahim Hasan was interviewed on this program

This followed an FOI request by the BBC to all police forces in the UK which revealed that: There were 500 incidents across the UK of police and support staff accessing the police national database and records. The figures cover 2005 to Jan 2007.

All levels of people are making illegal searches - support staff, constables, sergeants. For a whole range of reasons. Domestic reasons....searching for info on ex partners, family members e.g. Checking crime complaint record about son. Right through to officers handing over info to criminals. e.g. a Police Constable was sentenced to 10 months after passing on info to criminals.

Some forces have a lot of information on violations whereas others have nothing. This could be because some have a bad problem and others are whiter than white. But quite likely that it's because some forces don't record violations or even conduct regular spot checks.

To listen again click on the link: <http://www.informationlaw.org.uk/page18.htm>

18. DP Guidance for the Education Sector

JISC Legal has published the updated DP Code of Practice for the FE and HE communities authored by Andrew Charlesworth, Senior Research Fellow & Director, Centre for IT & Law at the University of Bristol.

It is available to download from the publications page of our website at

<http://www.jisclegal.ac.uk/publicationspage.htm>

It is intended to provide guidance to the FE and HE sectors on issues of specific relevance to their day-to-day operations. It is not an in-depth examination of the general principles of the Data Protection Act 1998, as this is widely available elsewhere, but concentrates on key issues of concern and relevance to FE and HE institutions.

19. Home Affairs Select Committee Report

http://news.bbc.co.uk/1/hi/uk_politics/7441693.stm

"The government should limit the data it collects on citizens for its ID card scheme to avoid creating a surveillance society, a group of MPs has warned.

The home affairs select committee called for proper safeguards on the plans for compulsory ID cards to stop "function creep" threatening privacy.

It wants a guarantee the scheme will not be expanded without MPs' approval. "

This report will increase the public's awareness of the surveillance society. It will lead to many more FOI requests to local authorities about the extent of their covert surveillance operations. Read the ICO's view of the report:

http://www.ico.gov.uk/upload/documents/pressreleases/2008/statement_home_affairs_committee.pdf

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>

20. Where do those phone calls come from?

This is a user supplied database of phone numbers of telemarketers, non-profit organizations, charities, political surveyors, SCAM artists, and other companies that don't leave messages, disconnect once you answer, ignore the Do-Not-Call List regulations, and simply interrupt your day.

If you received a strange call, most likely you are not the only one. Search for this phone number to see the reports of others. If there are no reports yet, leave your comment to start a conversation. <http://whocallsme.com/>

21. Spammers

If you are fed up with increasing amounts of Spam email in your mailbox then make a legal claim now and make the spammers pay for their actions. There have been cases both in England and Scotland under the UK implementation of the European Anti-spam laws. The courts are sensitive to putting right these misdemeanors and the small claims procedures are ideally suited for individuals to take low cost legal action

<http://www.scotchspam.co.uk/>

22. Live data for testing and training?

The BSI have produced a booklet; "Guidelines for the use of personal data in systems testing". It has the endorsement of Richard Thomas. ISBN 0 580 424723. It's £75 and available from

<http://www.bsi-global.com/en/Shop/Publication-Detail/?pid=000000000030100005>

23. Google attracts criticism over Streetview.

<http://news.bbc.co.uk/1/hi/technology/7488524.stm> links to a BBC article on Google's new product which may show images of people on city streets.

As always in these areas the question has to be asked – Are we talking about personal data? It is doubtful that Google knows the identity of every individual featured on Streetview (and it's data controllers who need to know) so DPA doesn't apply. Or does it? Does an individual know via a fair processing notice that Google might be recording them and putting the image on the web?

Find out more and see the funny video at <http://maps.google.com/help/maps/streetview/>

24. Register of dismissed persons

Workers accused of theft or damage could soon find themselves blacklisted on a register to be shared among employers. It will be good for profits but campaigners say innocent people could find it impossible to get another job. <http://news.bbc.co.uk/1/hi/magazine/7389547.stm>

The data protection issues are tricky here. But faced with a choice between being prosecuted and the individual having his details on this database the individual might choose a database which not many people might know about. This seems to produce a consent but not an unambiguous freely given one. The individual could also later exercise his right to object to the processing but bearing in mind the circumstances in which he consented this is open to argument.

25. DP breach in Higher Education

A professor has been told he breached data protection laws because of the way he replied to a complaint from a concerned parent. See <http://news.bbc.co.uk/1/hi/education/7402627.stm>

I can sympathise having put 3 children adults through the education system (in fact adult No. 3 didn't come home until 0730 this morning) but they are still adults.

And at the other end of the scale fingerprint scanners are being used at two Kent nursery schools to check the identity of parents. <http://news.bbc.co.uk/1/hi/england/kent/7430709.stm>

The owner of the nursery said the measures were for the "safety and security" of the children. There is no actual information recorded, only the information that we've already got," she said. So that's OK then...

SURVEILLANCE LAW & RIPA

26. LGA Surveillance Letter

Many councils have recently received the much publicised letter from the Local Government Association chair, Sir Simon Milton, encouraging them to review the way you use surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA) to investigate suspected crime. Please see the link to the LGA press release below:

<http://www.lga.gov.uk/lga/core/page.do?pagelId=740231>

This has been widely reported in the media especially by the BBC

<http://news.bbc.co.uk/1/hi/uk/7468430.stm>

Sir Simon has urged local authorities to "review existing permissions to ensure that their continuance meets the "necessary and proportionate" test." He also recommends having an annual review of the use of these powers. With the increasing media controversy around local authority surveillance, now is the time to consider what needs to be done to ensure that RIPA is used lawfully and in a way which does not bring your council into disrepute. Act Now Training is one of the leading providers of training and consultancy in this area. We cover all aspects of RIPA including accessing communications data, covert investigations and e mail and internet monitoring.

http://www.actnow.org.uk/courses/RIPA/Surveillance_Law

Our trainers are well known experts in this field. They can also come to your venue to do in house training. See <http://www.actnow.org.uk/content/12>

Finally one of our directors Ibrahim Hasan is also available to give legal advice on specific surveillance issues, review authorisations and the use to which RIPA powers are put. His personal website has more details of past and future projects he has been involved in:

www.informationlaw.org.uk

This is a difficult time for those who are doing surveillance governed by RIPA. Increasingly the media and consequently the public are scrutinising what is being done. If Act Now can assist in any way with your RIPA compliance program please do not hesitate to get in touch.

27. Covert Surveillance and Poole Council

According to the website below, Poole Council is to be investigated by the Information Commissioner in respect of its surveillance activities.

http://www.24dash.com/news/local_government/2008-05-28-Privacy-watchdog-investigates-Poole-Council-over-use-of-covert-surveillance

This stems from a story in April, when the Council admitted to carrying out directed surveillance on parents wanting to send their child to a particular school

<http://news.bbc.co.uk/1/hi/england/dorset/7341179.stm>

www.actnow.org.uk

Training for the information society

This case shows the importance of getting it right when it comes to surveillance under Part 2 of RIPA. It's not just a matter for the OSC inspectors, it now seems that the ICO want to get involved as well. I have previously expressed my doubts as to whether surveillance of parents comes under RIPA in the light of the IPT case of C v The Police:

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

The question now should be is the surveillance being carried out in relation to a core/regulatory activity of the public authority ?

It will be interesting to see what ICO says. Perhaps the reason why they are getting involved is because it is not a RIPA issue!

28. ICO Guidance

Following the ICO's privacy impact assessment handbook launch in December, the National Police Improvement agency has become the first organisation to commit to using it to help develop the new Police National Database.

[Privacy Impact Assessment Handbook](#)

29. Accessing Communications Data – Latest News

Part 1 Chapter 2 of RIPA allows local authorities and others to access communications data. The Home office has revised the standard forms and has produced new guidance on how to complete them.

<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/application-comms-data/>

At present local authorities and others have to ask communications service providers to disclose communication information. However all could change if government proposals see the light of day.

Ministers are to consider plans for a database of electronic information holding details of every phone call and e-mail sent in the UK, it has emerged. The plans, reported in the Times, are at an early stage and may be included in the draft Communications Bill later this year, the Home Office confirmed.

A Home Office spokesman said the data was a "crucial tool" for protecting national security and preventing crime. Ministers have not seen the plans which were drawn up by Home Office officials. A Home Office spokesman said: "The Communications Data Bill will help ensure that crucial capabilities in the use of communications data for counter-terrorism and investigation of crime continue to be available. These powers will continue to be subject to strict safeguards to ensure the right balance between privacy and protecting the public."

<http://news.bbc.co.uk/1/hi/technology/7410885.stm>

The Information Commissioners office has expressed concerns about this new database:

http://www.ico.gov.uk/upload/documents/pressreleases/2008/proposed_government_database.pdf

Watch this space!

www.actnow.org.uk

Training for the information society

One Day Designated Person/ Investigator Workshop

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.

We are also running the two day SPoC accreditation workshop:

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

30. Email disclaimers again.

Been done many times even in this newsletter. There are still some good links to try.

<http://www.goldmark.org/jeff/stupid-disclaimers/>

http://www.weblaw.co.uk/articles/faqs_on_emails_disclaimers_and_the_law/

A web based lawyer said

I would guess (and I don't think anyone knows the definitive answer at this point) that an email disclaimer is probably not binding. Most senders include a disclaimer for their own protection, to be able to argue that they took reasonable steps to restrict the free dissemination of confidential or other sensitive information (which often belongs to the client). But as a simple matter of contract law, no one has asked you in advance if you agree to the terms of the disclaimer before you open and access the message. Ironically, you have to open the message and read its contents, before you get down to the disclaimer which is often found at the bottom. Where someone sends you an unsolicited email this applies with greater force. You have no relationship to the sender, no course of conduct regarding treatment of information and emails - it's tough to argue that you as the recipient have an obligation to obey the terms of the disclaimer. There may be other laws which apply which may prevent you from forwarding an email or otherwise exploiting its contents, but generally speaking, the disclaimer alone could probably not be used to preclude you from discussing the email or its contents. A disclaimer may put you on notice that you have encountered third party confidential information and should proceed with caution, but honestly disclaimers are so ubiquitous that it would be tough to take this argument seriously. Still, it's something the recipient should keep in mind.

31. Spotlight on Council Surveillance

On the Today programme on Radio 4 Ibrahim Hasan was interviewed following the story in February 2008 about the police bugging conversations between Sadiq Khan MP and a constituent charged with terrorist offences. It raised the profile of surveillance carried out under the Regulation of Investigatory Powers Act 2000.

To listen again click on the link: <http://www.informationlaw.org.uk/page18.htm>

The stories below continue to ensure that local authority surveillance remains in the limelight. Many councils have received FOI requests from the media. For ideas on how to handle these (especially the ones from the News of the World and Channel 4) see below:

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

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