

October 2000

ACTNOW - A data protection newsletter for the public sector

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1. CCTV

CCTV is now used increasingly by local authorities for the purpose of detecting and preventing crime. On average a person is caught on 36 cameras a day. With the increased usage comes increased risk of legal liability. Factors to bear in mind are Human Rights (Article 8 - Right of Privacy) and Data Protection. A guidance note and a legally enforceable Code of Practice have been produced by the Data Protection Commissioner on this. Both are available on her website ([www.dataprotection.gov.uk](http://www.dataprotection.gov.uk))

2. Use of Council Tax Data

All Councils use council tax data for other purposes. For example the debt collection department will ring council tax to check addresses before issuing a summons and environmental health might ask the council tax department who owns an offending property. According to the Commissioner's guidance note on this topic this is illegal. There is an alternative view - see the IRRV Insight Magazine (July 2000 edition) article entitled "No Chinese Walls" by Ibrahim Hasan. This contends that there is no bar in the Local Government and Finance Act 1992 to councils using council tax data for other legitimate statutory purposes or for collecting their own debts.

Some of you may have seen the recent circular 611 from the LGA, which is asking local authorities to give examples of how legislation, including the Data Protection Act 1998, is hindering e-government. The idea is to persuade the government to change the law. Ibrahim has spoken to the author of the circular who advises that there is no guarantee that the law relating to council tax will be changed and, in any event, this is not likely to be done until after the next election.

It seems that the quickest way forward is to commission an expert legal opinion on the permitted uses of council tax data. Ibrahim Hasan has prepared a brief to Andrew Arden QC, a leading barrister on public law matters. The fee is £1750 plus vat. Clearly this is a question which all of us are interested in. So far six authorities are willing to share the cost. If anyone else is interested please contact Ibrahim Hasan on [ibrahim.hasan@calderdale.gov.uk](mailto:ibrahim.hasan@calderdale.gov.uk) as soon as possible.

3. Freedom of Information Bill

This Act is due to receive Royal Assent in the Autumn. It will have a great impact on the public sector's role as managers of information. It contains a general right of access to information held by public authorities. It will also require authorities to publish schemes to show how they will make more information available. See Solicitors Journal 21st July 2000 and the October issue of IRRV Insight Magazine for articles setting out the key features of the Bill. Useful websites include:

[www.homeoffice.gov.uk/foi](http://www.homeoffice.gov.uk/foi) and [www.cfoi.org](http://www.cfoi.org).

## DataEdge

We have received a number of queries about the DataEdge kits, which you will have seen, at our seminars. They have been produced by Hammond Suddards Edge a firm of solicitors with offices throughout the country (see [www.hammondsuddardsedge.com](http://www.hammondsuddardsedge.com)). The kits are ideal for any organization which wants a ready resource upon which to base a data protection compliance programme. Each kit contains very useful material such as a data protection policy, data processor agreement, security checklists and sections for inclusion in employee manuals. They are available for sale at the reduced rate for local authorities of £500 (no vat). The normal price is £750. Anyone interested should contact Caroline Egan or Jennifer Van Tiggelen at Hammond Suddards Edge on 0121 2223000 or by email: [caroline.egan@hammondsuddardsedge.com](mailto:caroline.egan@hammondsuddardsedge.com). Please mention ActNow.

## 4. Data Sharing

The DSS have produced a consultation paper entitled "Safeguarding Social Security: Getting the information we need." This proposes much greater powers for the DSS to force all organisations (including private companies financial institutions, colleges, utilities and universities) to disclose personal data so that it can be used to detect fraud. The paper is available at [www.dss.gov.uk](http://www.dss.gov.uk). The deadline for responses is 21st October 2000.

## 5. Data Protection Commissioner's Annual Report

This is now available and provides good ammunition for those who still need to convince their organisations that data protection is a serious issue. Useful information includes:

- The number of complaints is increasing steadily every year.
- Most prosecutions relate to registration (now notification) and procuring an unlawful disclosure. The courts have levied fines of up to £2000 and costs have been awarded.
- Some very well known organisations have been prosecuted.

## 6. E Mail and Legal Dangers

A) As more authorities give their employees access to e-mail and Internet they are exposing themselves to massive legal risks. Nabarro Nathanson solicitors have produced a report entitled "Hidden Legal Dangers of Email". This is available from their website (<http://www.nabarros.com>).

B) Email also has implications for data protection. The Commissioner has just produced some guidance which is available on her website. It is entitled "subject access and emails".

C) The Godfrey Case - This is where an ISP was held liable for the contents of a defamatory posting on one of its bulletin boards. The nail in the coffin was that the complainant Mr. Godfrey drew it to the ISP's attention but they refused to do anything about it. With mass access to the Internet in some Councils this is a potentially big problem. A clearly worded policy is needed backed up by sanctions. Also guidelines need to be produced setting out who can post items on the Intranet site and who is responsible for removing offending material.

#### Useful Articles

- Email policies - Local Government Chronicle 24/9/99
- Email and Human Rights - The Times Law Supplement 12/9/00
- Internet Legal Risks - Government Computing Magazine September issue

Silicon.com has launched its "Back the Act" campaign to put pressure on the government to better fund the Data Protection Commissioner's office. It argues that the Data Protection Act 1998 is a strong law, but without a well funded and experienced team of enforcers behind it, it is worthless. The DPC should fulfill this role but it lacks the resources and political strength to do so. E Commerce is being damaged and public confidence lost every day the Commissioner fails to investigate the consumer's complaints. For more information visit [www.silicon.com/a39102](http://www.silicon.com/a39102).

#### 7. Regulation of Investigatory Powers Act 2000

This is now on the statute books. As you will know it contains quite draconian powers for the State in terms of surveillance of Email and Internet. It also has implications for those conducting such activities on their own private networks. See: -

E-Commerce Law and Policy Newsletter - This is a newsletter, written by IT and Internet Law experts, which is aimed at all those interested in e - commerce, e-government and related issues. It has very useful articles on email, Internet, data protection etc. Monitoring of email and internet is discussed in the August edition with particular reference to the Regulation of Investigatory Powers Act 2000. Subscription is available at a reduced rate which also includes free access to the website where subscribers can look at past issues. To receive a free sample copy ring 0208 3744242 or e-mail: [lindsey.greig@e-comlaw.com](mailto:lindsey.greig@e-comlaw.com). Please mention ActNow.

#### 8. Name and Address CDs

We were asked in one of our courses about the use of CD's which contain names and addresses of, amongst others, directors of companies. We advised that where this data was publicly available (e.g. through Companies House) it could be used without breaching the Act. However the user of the data would become a data controller and so would have to comply with other provisions such as notification, subject access etc.

Now the government is considering tighter controls on the use of such information following a plea from pharmaceutical companies who are involved in laboratory

experiments on animals. Such companies regularly find their employees are targeted by animal rights activists using information obtained from such sources. See The Times 30/8/00 page 1

## 9. Digital Television

Some local authorities are looking at digital television as a means of providing services such as the payment of council tax. This obviously has data protection implications. Ibrahim Hasan has contributed to a book called "Spy TV". It examines the information gathering and privacy issues around interactive digital television. The book is edited by David Burke of the organisation WhiteDot. For more information visit [www.whitedot.org](http://www.whitedot.org) or [mail@slab-o-concrete.demon.co.uk](mailto:mail@slab-o-concrete.demon.co.uk). Please mention ActNow

## NADPO Conference

Ibrahim Hasan and Paul Simpkins will be both be speaking at this year's conference to be held on 7th & 8th November at Warwick University Conference Centre. Other speakers will be from the Home Office, the Office of the Data Protection Commissioner and the Dublin Corporation. For more information visit [www.nadpo.org.uk](http://www.nadpo.org.uk)

## Resources/Books

- Data Protection in the UK: Blackstone Press has just published this book by Peter Carey who is a solicitor in specialist media law firm Charles Russell. It offers practical solutions to real problems, with specific chapters dedicated to the Internet, telecommunications, CCTV and the obligations of employers. It contains the full text of the Act as well as the European Directive and relevant statutory instruments the cost is £29.50. It is available at all good legal bookshops or directly from Blackstones (£3.50 inc P&P) on 0208 740227 or e-mail: [sales@blackstone.demon.co.uk](mailto:sales@blackstone.demon.co.uk).

- Experian have produced a simplified guide to the Data Protection Act 1998. Free copies are available. Ring - 0115 9922555

- The Department of Health has produced a final version of its Guidance on the Act and its implementation in social services departments. Copies are available from Dept. of Health PO Box 410 Wetherby LS23 7LN

- Forthcoming Publications from the Commissioner's Office include:

Guidance on use of employees' personal data by employers

Guidance on Councillors and access to personal data

A data audit manual - this will allow organizations to check how will they comply with the 1998 Act.

Guidance Note on the use of the electoral register

## BIG BROTHER NEWS

According to Websense, the Big Brother television programme was costing British business almost £300,000 per day. About 100,000 people logged on to the website to watch the live video streams daily for an average of 15 minutes. This cost business £2.71 per employee in lost productivity.

### Snippets

#### Notification

The one notification regime proposed by the Commissioner is now looking strained. A large local authority must have its own notification but it's looking like the Electoral Registration Officer will need their own; the Superintendent Registrar (B,M,D) will need one and probably the Youth Offending Team will need one. That's 4 so far. watch this space.

#### Yellow pages

We were asked at one seminar if an individual could extract names and addresses from the yellow pages to compile a mailing list. After some deliberation we consider this not to be a DP question but a waste of the individual's time. (and something that you cannot police)

#### Elected members

If working for the Council they are covered by the Council's Registration/Notification; If working for a political party they are covered by that party's Reg/Not. Who covers Independents? Who covers candidates who are standing as independents or who are hoping to be selected by a major party as a candidate? Who is the data Controller? It has to be the individual who is therefore required to notify.

#### Your Questions

If you feel you have an issue that would interest the subscribers to this newsletter please email us and we'll use it.

## ACT NOW - DATA PROTECTION TRAINING

So far 86% of delegates at our seminars have rated them good or excellent. Consequently we have we have received many requests to present the course in house. We have now improved it. If you would like us to deliver training to your organisation please contact us. Organisations in an area may wish to club together so that they can share the costs and resources. Our availability is limited therefore the sooner you contact us the better.

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