



Welcome to the 24th issue of our quarterly Newsletter.

Next issue January 2007

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### **3<sup>rd</sup> Annual FOI Conference - Manchester**

We have organised our third annual conference on Freedom of Information in the public sector. This year's event will take place in Manchester on 13th December 2006 in association with the North West Information Managers' Group and the Yorkshire and Humber Data Protection Group.

The theme this year is "Examining the impact of FOI and the decisions of the Information Commissioner and the Information Tribunal." The speakers include Gerrard Tracey (Assistant Information Commissioner), Maurice Frankel (Campaign for Freedom of Information) Kelvin Smith (National Archives) as well as experts from local government, the NHS and journalism. Places are limited and this is an event not to be missed. More details at <http://digbig.com/4nfft>

### **October courses**

Date	Course & Venue
9th Oct	Freedom of Information (Scotland) from A to Z, Edinburgh
11th Oct	Freedom of Information from A to Z, Belfast
19th Oct	Data Protection from A to Z, London
23rd Oct	Records Management with Philip Jones, London
24th Oct	Data Protection from A to Z, Belfast
26th Oct	Conducting an Information Audit with Steve Wood, Manchester
31st Oct	FOI Update (Scotland) Exemptions, Refusals and Cases, Edinburgh

Places are still available for late bookings. We recommend you phone 01924 451054

### **Act Now Bulletin Board**

Over 120 members 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.

Click on <http://www.actnowtraining.co.uk> to have a look and join in

### **Our Autumn program is now on our website.**

For a one page download of our Autumn 2006 programme

<http://www.actnow.org.uk/2006/Autumn%202006%20Course%20Programme.pdf>

### **Legal Advice, Training and Consultancy**

Our public sector experts can now assist you to practically implement FOI, DPA and Records Management. We can also give you legal advice in these areas. Why pay expensive lawyers and consultants who have little public sector experience?

For Consultancy and training see Paul Simpkins website : <http://www.paulsimpkins.com>

For Legal Advice and training see Ibrahim Hasan's website : <http://www.informationlaw.org.uk>

## FREEDOM OF INFORMATION

### 1. FOI & Empty homes

Case Ref: FS50082890, Date: 04/05/06, Public Authority: Mid Devon District Council

The complainant's request for a list of council houses was refused on the basis that, combined with other information which the complainant might possess or have access to (such as the Electoral Roll), the requested information was personal data of which the complainant was not the subject. It was argued by the council that disclosure would breach the data protection principles.

The Commissioner agreed that the requested information constituted personal information but found that providing the list of properties was not sorted by the characteristics of tenants (such as 'asylum seeker' or 'ex-offender') there would be unlikely to be any unfairness to those tenants. The Commissioner therefore upheld the complaint.

[Full transcript of Decision Notice FS50082890](#)

The Empty Homes Agency also has a view on this.

<http://www.emptyhomes.com/resources/articles/freedomofinformation.doc>

### 2. Q and A from Manchester University on Fol.

Spotlighting good practice wherever we see it. This is quite a good example in the Education Sector.

<http://www.campus.manchester.ac.uk/recordsmanagement/freedomofinformation/foifaqs/>

### 3. New SI

A draft statutory instrument was debated in the commons recently: This Order specifies that information about a criminal conviction or caution may be processed for the purpose of administering an account relating to the payment card (or for cancelling the payment card) used in the commission of one of the listed offences relating to indecent images of children. See the full text here <http://www.opsi.gov.uk/si/si2006/draft/20064712.htm>

### 4. Commissioner's website updated

The Information Commissioner's Office have relaunched their much improved website. It seems much clearer than the previous version. There is a new decision notice database.

[http://www.ico.gov.uk/tools\\_and\\_resources/decision\\_notices.aspx](http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx)

You can now browse and search for decisions by name of authority, date and section of the Act. The Scottish Commissioner had this very early on. Nice to see the UK commissioner catching up. 276 Decisions in Scotland. No figures for Wilmslow but estimates are around 350. Plenty of cases to assist you in refusal notices. See Scottish decisions database at

<http://www.itspublicknowledge.info/appealsdecisions/decisions/index.php>

## 5. FOI & the Media

The media continues to make the vast majority of FOI requests. Some interesting information has recently appeared in the press which the public may not have learned in the days before FOI. For example:

We now know that lots of police officers in England and Wales have convictions for offences including assault, theft, possession of an offensive weapon and actual bodily harm.

Also, lots of property has been stolen from police in Cambridgeshire over the last two years. This includes a £2,000 alarm system, a £1,000 laptop computer, and crime-fighting kit which included handcuffs and a police baton.

Finally, Figures released to the BBC suggest that a prisoner escapes from Lincolnshire's only open prison almost every week. 339 prisoners have absconded from the camp since 1996.

You can read many more FOI news stories on Steve Wood's excellent FOI Blog <http://foia.blogspot.com/>

## 6. 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).

See Pembrokeshire Council 8/6/06,  
Calderdale Council 24/11/05,  
Denbighshire County Council 27/7/06,  
Home Office 12/6/06,  
Waveney District Council 5/6/06,  
A v Information Commissioner 11/7/06(Tribunal Decision),  
BBC 27/7/06,  
House of Commons decisions (Feb and Sep 2006),  
Mid Devon District Council 4/5/06

Ibrahim Hasan has written an article reviewing these decisions for Open Government: a journal on freedom of Information <http://www.opengovjournal.org>

In Autumn Paul Simpkins will again be facilitating our very successful workshop on accessing personal data under DPA and FOI where a number of these decisions will be discussed.

## 7. New FOI Podcast Service

Want to keep up-to-date with the latest FOI decisions from the Information Commissioner and Tribunal? Ibrahim Hasan has launched a free FOI pod cast service. Every month he will be discussing the latest legal cases and giving his personal views as to how they affect FOI practice. This is the first service of its kind and it's completely free.

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

## 8. FOI journal

The August edition of Open Government, the Freedom of Information Journal, is now available online <http://www.opengovjournal.org>.

## 9. DCA journal

Issue three and four of the DCA's FOI journal has also just been published.

You can read this at <http://www.foi.gov.uk>

## 10. FOI and Schools

Freedom of Information continues to have a big impact on schools.

Schools battle against Racism <http://digbig.com/4krmb>

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>

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://www.holdthefrontpage.co.uk/day/foi/060503gaz.shtml>

Act Now is repeating its very successful DP/FOI seminars for schools throughout the UK. These have now been revised and updated to last a full day. So far we have trained over 200 teachers and schools staff. The feedback has been very positive. 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, Handling Exclusions and understanding Islam and Muslims.

<http://www.actnowschoools.info>

## 11. Publication Schemes.

The Commissioner is rethinking these. Lots of information is to be found on his website at [http://www.ico.gov.uk/what\\_we\\_cover/freedom\\_of\\_information/publication\\_schemes.aspx](http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes.aspx) but basically he is undertaking consultation on what these schemes should look like. He has set up a Development and Maintenance Initiative and invited experts in a range of sectors to contribute to the project. There is also an advisory panel. This will all lead to new and better publication schemes being submitted in the last half of the year 2008

## 12. International Right to Know Day

Since 2003, 28 September each year has been designated International Right to Know Day. The aim of Right to Know Day is to raise awareness of access to information rights and to promote open and transparent government around the world. More information on Right to Know Day 2006 is available online here: <http://www.foiadvocates.net/rkd06.php>

The Scottish Commissioner celebrated this by putting out a press release.

On International Right to Know Day (28 September 2006) the Scottish Information Commissioner reported that the number of freedom of information appeals he has received has now reached 1000. With 287 decisions so far that's only 713 to go.

## DATA PROTECTION

### 12. Release of sensitive Data

Release of personal data by a judge. A ruling on Michael Stone who was found guilty of a murder in Kent. <http://news.bbc.co.uk/1/hi/england/kent/5169776.stm>

### 13. They ought to know better

We've only just started this but we are beginning a collection of organisations who get the date of the DPA wrong. So far

[https://www.supply2.gov.uk/cgi-bin/error.cgi?action=404\\_error](https://www.supply2.gov.uk/cgi-bin/error.cgi?action=404_error) is a government site where you can find about upcoming contracts. As part of the registration process they quote the Data Protection Act 1984

<http://www.savetheprh.com/> is a link from an MP's website which quotes the Data Protection Act 1988

Finally browsing through my VAT return recently I noticed that on the reverse it refers to the Data Protection Act 1988. The form is dated September 2004. Does this mean that all VAT collected in the last 24 months has been done so unlawfully?

Do you have any more for our collection?

### 14. Paedophiles

<http://www.guardian.co.uk/crime/article/0,,1823019,00.html>

<http://news.bbc.co.uk/1/hi/business/5194150.stm>

### 15. DCA Consultation

The DCA is currently consulting on proposals to increase penalties for deliberate and wilful misuse of personal data. This follows from a recent report commissioned by the Information Commissioner's Office which highlighted the fraudulent practices taking place to harvest and sell on peoples personal data. The proposal is to allow for custodial sanctions for those convicted of offences under section 55 of the Act. The consultation ends on 30 October 2006.

More details are on the DCA website [www.dca.gov.uk](http://www.dca.gov.uk)

### 16. Commissioner is getting tough.

Since our last newsletter there has been a flood of press releases from the Commissioner.

28 Sep 06 - Welsh Language Scheme <http://digbig.com/4nfnw>

26 Sep 06 - RFID - advice on tagging <http://digbig.com/4nfnx>

25 Sep 06 - ICO launches publication scheme initiative <http://digbig.com/4nfnv>

13 Sep 06 - Commissioner rules against Ofcom on mobile base stations <http://digbig.com/4nfpa>

12 Sep 06 - Commissioner orders disclosure of MPs' travel expenses <http://digbig.com/4nfpb>

07 Sep 06 - Nine out of ten organisations say data protection is needed <http://digbig.com/4nfpd>

23 Aug 06 - Direct marketing - advice for individuals and organisations <http://digbig.com/4nfpd>

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04 Aug 06 - Commissioner rules: Network Rail subject to EIR <http://digbig.com/4nfpe>  
03 Aug 06 - Gateway Reviews on ID cards should be made public <http://digbig.com/4nfpf>  
28 Jul 06 - ICO orders release of information on government inquiry into smuggling allegations by British American Tobacco <http://digbig.com/4nfpq>  
27 Jul 06 - Holidaymaker wins right to information on Legionnaire's <http://digbig.com/4nfpj>  
13 Jul 06 - Insurance firm fined for data protection offence <http://digbig.com/4nfpk>  
13 Jul 06 - Share data properly or risk losing public confidence <http://digbig.com/4nfpk>  
11 Jul 06 - 'Bogus caller' guilty of data protection offences <http://digbig.com/4nfpm>  
10 Jul 06 - Guidance issued on transferring personal information overseas  
<http://digbig.com/4nfpn>  
04 Jul 06 - Commissioner finds website in data protection breach <http://digbig.com/4nfpp>

## 17. Data Sharing Proposals

In August this year, the government was warned, by a leading expert on international law, that it could face legal problems over a proposal to change the rules on data sharing.

Douwe Korff, professor of international law at London Metropolitan University said it could violate the European Convention on Human Rights. The [Information Commissioner's Office](#) (ICO) has also questioned the need for changes. It said there is already considerable scope for sharing under existing legal conditions.

The statements follow a report in The Guardian that the MISC31 committee, which was set up to examine data sharing issues, has decided a change is needed in the regulations for data sharing around government.

Under current policy public bodies and departments must provide a legal justification and specify the purpose each time they want to share data about individuals. The new policy would enable officials to assume personal data can be shared unless there are pressing reasons not to disclose it. See the links below for more information :

<http://www.dca.gov.uk/foi/sharing/information-sharing.pdf>

[http://www.cabinetoffice.gov.uk/newsroom/news\\_releases/2006/060913\\_dca.asp](http://www.cabinetoffice.gov.uk/newsroom/news_releases/2006/060913_dca.asp)

We are also running our popular course on information sharing: the law and practice click here for details:<http://www.actnow.org.uk/information.pdf>

## 18. DPA and Schools

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>

We run courses on data protection law for schools as well as child protection law. See <http://www.actnowschoools.info>

## 19. Channel 4 documentary on Data Theft.

Surprised at the lack of comment on this. It showed several Indian operators offering significant financial data for sale and spent an hour pointing out that Indian call centres and comms companies in the UK were very cavalier about passing on personal data. The forum offered by Channel 4 to discuss this is sparsely populated as well

<http://community.channel4.com/eve/forums/a/tpcf/7070069631/m/9890091746>

Click on How safe is you data in Britain (sic). If you want more also click further down the forum on Stealing Freedom which was shown earlier in the year.

## SURVEILLANCE LAW

## 20. RIPA News

The RIPA continues to make an impact on all parts of the public sector which do surveillance of people, their movements and communications. The Home Office recently launched consultations on RIPA parts I and III. The Revised Draft Statutory Code of Practice on the Acquisition and Disclosure of Communications Data

This relates to the exercise and performance of the powers and duties to access communications data such as mobilephone, internet and postal usage. Since the 5<sup>th</sup> January 2004, lots of organisations, including local authorities, have had access to this data.

The revised code of Practice includes lots of changes from the previous code and so is well worth a read.

Draft Statutory code of Practice on the Investigation of Protected electronic Data

Both consultations have now closed but are still worth reading as they are unlikely to be much different to the final versions to be laid before Parliament.

See the Home office website for more details

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

## 21. Access to Data Forms

The Home Office have issued yet another set of forms for use when accessing communications data under RIPA. These can be downloaded from the Act Now training website([www.actnow.org.uk](http://www.actnow.org.uk)). Click on Resources>Articles.

## 22. New ICO Guidance :RFID Tags

New guidelines has been produced by the Information Commissioner's Office (ICO) on the use of RFID tags. These are used for inventory management in many shops but are increasingly used on shop shelves to identify products. The ICO document states.

"Where personal data is collected, generated or disclosed using RFID either directly or indirectly, the Act will apply," says the guidance. "Those collecting personal data with RFID will have to give notice of the presence of RFID tags on products and of readers, and explain the implications. They will have to tell consumers what personal information is being collected, by

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whom, and for what purpose. It might also be necessary to tell customers how to disable or remove tags, for example if a tag has been left on a product after purchase."

The ICO's guidance warns of skimming, cloning and eavesdropping on tags and the transmission of data between tags and readers. "The simplest way of addressing privacy concerns about RFID is to ensure that any tags on individual items are removed or disabled at the point of purchase," it said.

See and download: (7-page / 44KB PDF) <http://digbig.com/4nfpq>

### **23. New Surveillance Books**

We have often said that there is a lack of books and journals on the subject of surveillance law. Well here are two new publications:

#### **Surveillance and Intelligence Law Handbook by Dr Victoria Williams (£49.95)**

This is an excellent book for all those doing covert investigations where surveillance is being used. It focuses on the Regulation of Investigatory Powers Act 2000 (RIPA) but also includes an explanation of the law relating to entering and interfering with property. It provides detailed guidance on each aspect of RIPA including interception of communications, directed surveillance, acquisition of communications data and the use of a CHIS (Covert Human Intelligence Source). Each section provides useful interpretation of RIPA together with references to case law and the relevant parts of the requisite code of practice. There is ample use of footnotes and cross-references to make it easier for the reader to understand. All the relevant statutory instruments and codes of practice are contained at the back of the book. However rather than putting the full text of RIPA at the back, like many books of this type, this one puts each relevant part of RIPA at the back of the corresponding chapter so that readers can remind themselves of the law whilst reading the discussion. The book also contains printouts of all the standard RIPA forms although the reader should consult the Home Office website as these are updated from time to time.

Whilst this book will be most useful to law enforcement officers and lawyers others who do regular surveillance will find it invaluable too. It is quite bulky running to over six hundred pages but as an all in one ready reference book, there is nothing like it on the market at present.

#### **Covert Investigation by Clive and Karen Harfield (£29.95)**

This is an excellent practical manual ideal for all those carrying out covert investigations. Whilst it is primarily written with the police in mind, I think it makes an excellent reference work for local authority investigators. It discusses all the key provisions of RIPA as mentioned above, but also has some useful practical chapters e.g. on examining mobile phones and risk management. These will be particularly useful for trading standards and benefit fraud investigators. It includes the RIPA 2000 Codes of Practice and all other relevant legislation allowing easy access to key source material. This book's strength lies in its practical approach to surveillance and monitoring. It discusses investigation methods and examines the issues that investigators need to consider when deploying such investigative tools. It makes ample use of real life scenarios to explain key points. There are also a number of extremely useful flowcharts and checklists which will aid to investigation planning and decision making. Whether you are a frontline investigator or a key decision maker this book should be on your bookshelf and at £29.95 it's good value.

More details on both books: Oxford University Press : <http://www.oup.co.uk/law/>  
Philippa Bandurek Tel: +44 (0)1865 353372 [philippa.bandurek@oup.com](mailto:philippa.bandurek@oup.com)

## 24. Corporate Surveillance

This has been in the news lately. This article suggests that bugging offices is not a crime. However where public sector organisations are doing this they may fall foul of RIPA. Please see our list of courses on surveillance and monitoring for more details.

[http://www.theregister.co.uk/2006/10/05/bugging\\_not\\_a\\_crime\\_in\\_uk/](http://www.theregister.co.uk/2006/10/05/bugging_not_a_crime_in_uk/)

### Other stories of note

## 25. New records management website.

Don't be put off by the hostile acronym UN ARMS. It stands for Archives and Record Management Service. A lovely archive of old photos and some though provoking stuff here.

<http://archives.un.org/unarms/>

## 26. Seven Deadly Sins (of Records management)

It's an australian site but makes some pertinent remarks about how not to do it.

<http://www.csoonline.com.au/index.php/id;1906801805;fp;16;fpid;0>

## 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 North West Leicestershire District Council, Cambridge City Council, London Borough of Westminster, Rotherham Council, Burnley Council, Cheshire Fire & Rescue, Department for Agriculture and Rural Development, Northern Ireland and English Partnerships

If you want us to deliver training at your site please contact us. Both Directors regularly do in house work and we have a number of associates who can also deliver in house training. 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!

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