



Welcome to the 28th issue of our quarterly Newsletter.

Next issue January 2008

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 menu. 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.

Autumn 2007 Program

We have some new courses:

CCTV and the Law with Tim Turner

Train the Trainer with Paul Simpkins

Multi Agency Information Sharing with Ibrahim Hasan

Environmental Information Law Update with Tim Turner

Records Management: Complying with the Section 46 FOI Code with Philip Jones

And we have some old favourites. Don't forget that all our courses are available to be delivered at your premises and tailored to your needs. Please see our website (www.actnow.org.uk) for further details or click on this link to download the full Autumn 2007 flyer.

<http://www.actnow.org.uk/Aut07/FULL.pdf>

In house Training

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 need travelling expenses. Obtain best value - bring the trainer to you!

In the last three months we have done in house training for London Borough of Lewisham, South Lanarkshire Council, Manchester City Council, Access to Benefits Northern Ireland, Wigan Council, Passenger Focus, Birmingham City Council, Association of Greater Manchester Authorities, Sevenoaks District Council, East Hampshire District Council, Stockton on Tees, and many more

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

In this issue

FREEDOM OF INFORMATION

1. Latest ICO and Tribunal Decisions
2. Staff Names and Contact Details
3. FOI and Schools
4. First Decision involving GPs
5. Deceased Persons' Records
6. FOI Journal
7. SIC making waves

DATA PROTECTION

7. Definition of Personal Data
8. Information Sharing
9. Register article
10. Monster cock up
11. Wish upon a Tsar
12. Definition of Personal Data
13. Face book & Privacy
14. Cert Ed (from a bulletin Board)

RECORDS MANAGEMENT & RIPA

15. The summer 2007 edition of RecordKeeping
16. Latest news on RIPA/RIP Review
17. OSC Inspections
18. Accessing Communications Data – Latest News
19. Email and Internet Monitoring Workshop.
20. Cybercrime article

FREEDOM OF INFORMATION

1. Latest ICO and Tribunal Decisions

The Freedom of Information Act 2000 continues to have a big impact on all aspects of the public sector. Lots of interesting appeal decisions have come out in the last few months, from both the Information Commissioner's Office and also the Information Tribunal. These have dealt with difficult issues such as :

The first appeal against an Information Notice
Disclosure of staff names and contact details
The first Commissioner decisions involving GPs
Disclosure of bids received for the purchase of council land
Whether statistics can still be personal data
Disclosure of dead peoples' information
AND when retrieval of information amounts to the creation of new information

If you would like a full explanation of all these decisions then download 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 seven episodes are now on Ibrahim's personal website. You can also read the full transcripts.

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

Read Ibrahim Hasan's latest article in the Law Society Gazette reviewing recent FOI decisions - <http://www.informationlaw.org.uk/userimages/LSGJuly07final.pdf>

Act Now Training is running a workshop series where these decisions will be discussed in detail.

Full details at <http://www.actnow.org.uk/aut07.htm>

2. Staff Names and Contact Details

Does FOI require the names of staff and their contact details to be disclosed? This question is often the subject of debate (and worry) amongst public sector professionals, especially in local authorities, who regularly receive requests to disclose the contents of the internal staff directory. A Tribunal decision dated 20th July 2007 involving the Ministry of Defence v Information Commissioner and Rob Evans clarifies the situation. It involved a request made by a journalist for a staff directory which included the names and contact details of individuals working for the Defence Exports Services Organisation (DESO).

The MoD refused to disclose the information citing the exemptions under section 36 (prejudice to effective conduct of public affairs), section 38 (health and safety) and section 40 (personal information).

The Tribunal ruled that that the MoD could only withhold names of staff if they are particularly junior (below Civil Service B2 Level), not immediately responsible for the requested information and their name is not already available elsewhere (or would be expected to be through their performing a public-facing duty); or there is a clear and demonstrable threat to that individual's health and safety if their name is made public.

The Tribunal was not minded, however, to sanction the disclosure of all telephone and email contact details of staff, save for those contact details which appear in the Civil Service Year Book and similar publications. If there is a public interest inherent in the public's ability to contact anyone, even those above B2 level directly by email, the same is outweighed by countervailing risks of disclosure such as the speed of disruption, the fact that there is likely to be continuous interruption and the risk of inadvertent loss or leakage of information. This decision provides welcome clarification for many local authorities having had similar requests. There is no absolute rule that names should never be disclosed. The seniority of the persons involved, the availability of the information elsewhere and any credible risks to the subject are relevant considerations when deciding whether to release the names. With regard to contact details, it seems that unless the details have been made publicly available, they can be withheld if there is a likelihood of possible disruption that could be caused from staff being e mailed and telephone directly as opposed to going through normal contact channels such as switch boards etc.

Another interesting decision involves NHS Direct (30th July 2007 FS500108885) where the Commissioner agreed that disclosure of geographic telephone numbers for NHS Direct contact

centres, as opposed to the usual 0845 number, would be exempt under section 38 (health and safety). It was in the public interest to ensure that calls were routed to the most efficient call centres managed by trained staff appropriate to the medical need. This could only be done by use of the central 0845 number.

I doubt though whether the same decision would be made where a local authority received a request for a geographic number for one of its call centres. The issue of health and safety would probably not be relevant. If you are interested in access to personal data under FOI, please see Ibrahim Hasan's article in the March issue of World Data Protection Report

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

3. FOI and Schools

With the introduction of VLE and Learning Platforms schools have significant DP issues to address. . So far we have trained over 500 teachers and school staff. The feedback has been very positive. This autumn we are offering a half day briefing in DP & FOI for schools in Bradford, Manchester, Newcastle and London

See <http://www.actnowschoools.info>

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.

4. First Decision involving GPs

August saw the first decisions by the Information Commissioner involving GPs who are, of course, public authorities in their own right. Two of these decisions concerned vexatious requests.

In a decision dated 9th August 2007 (Ref: FS50170171) Dr A R Daitz refused to answer a request for information on the basis that it was vexatious. The Commissioner was satisfied that the request was vexatious because, when taken in the context of the complainant's previous correspondence and other actions, it imposed a significant burden on the GP and also had the effect of harassing him. A similar the decision was reached in the case of Dr Tessa Buckman (09/08/2007 Ref: FS50170245).

Unfortunately these are all the facts we have of both cases. The Commissioner decided that, due to the nature of the information requested, it is not possible to publish the full decision notices on his website as to do so would involve the disclosure of personal data about the parties involved.

The Commissioner has published an updated version of his Guidance No 22 on vexatious and repeated requests. It's available on his website or click on <http://digbig.com/4trxs>

5. Deceased Persons' Records

Another recent GP decision involving Dr IM Gilmour (08/08/2007 FS50143838), shows the importance of PCTs raising awareness and knowledge of FOI amongst GPs.

The complainant made a request for a copy of the complete medical records of a patient of his surgery now deceased. This request was originally made by reference to the Access to Health Records Act. The GP refused the request on the basis that the information was confidential and the complainant had not provided evidence that the personal representatives or executors of the

deceased patient had given consent for the information to be disclosed to him. It also pointed out that the family of the deceased had expressly refused consent to disclosure of the information.

The Commissioner ruled, as in other cases involving deceased persons' records, that there was a duty of confidentiality owed to the deceased which was enforceable by his personal representatives. This in turn meant that the information was exempt under section 41 of the Act (Breach of Confidence).

http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs_50143838001.pdf

The Commissioner recently published a guidance note on access to deceased persons' records which is available on his website www.ico.gov.uk.

See also the latest case from the Information Tribunal on this issue: <http://digbig.com/4trxt>

Here the Tribunal seems to have agreed with the ICO approach to such cases. We will carry a full article on this issue in the next edition of this newsletter.

6. FOI Journal

Steve Wood writes to Editorial Board Members,

I had alerted you to the fact that I formally resigned as editor of Open Government: a journal on freedom of information in March when I left to start my new job at the UK ICO. I'm delighted to announce that Marc-Aurèle Racicot based at the University of Alberta will be taking over as editor from early September. Marc plans to keep the editorial board as it currently stands, he will be on contact with you all shortly about his plans for his first issue as editor. The OSI have agreed to continue to support the journal under the same terms. I will also continue to remain on the editorial board. I'm sure you will all welcome Marc as the new editor.

7. SIC making waves

The Scottish Commissioner blows his own trumpet in his recent September newsletter

“At the time of writing, I have issued a total of 485 formal decisions. This figure compares favourably with the 680 decisions issued by the UK Information Commissioner, particularly when you consider that, on a broadly pro-rata basis, we might expect activity under the UK legislation to be around ten times that under the Scottish Act”

Inform is a newsletter from the Scottish Information Commissioner.

You can subscribe by getting in touch at Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS. Telephone: 01334 464610,

Website: www.itspublicknowledge.info

Email: enquiries@itspublicknowledge.info



DATA PROTECTION

8. Information Sharing

Useful Documents

Guidance on data sharing for emergency planners and responders.

<http://www.ukresilience.info/preparedness/informationsharing.aspx>

Commissioner's recent press release <http://digbig.com/4trxw>

Data Sharing Protocol for the Sharing of Data between the Learning and Skills Council and other Third Parties" <http://digbig.com/4trxx>

http://www.connexionslondon.org.uk/septguarantee/downloads/Toolkit_0305.pdf

which contains 10 references to data sharing

Data Sharing in the health Sector – Cabinet Office Guidance

9. Register article

The UK's Data Protection Act (DPA) does not implement European law properly, according to the European Commission which is investigating problems in the UK's implementation of 11 of the Data Protection Directive's articles, almost a third of the entire directive. This article in the Register

http://www.theregister.co.uk/2007/09/18/ec_data_protection_act_objections/

10. Monster cock up

US job website Monster.com has suffered an online attack with the personal data of hundreds of thousands of users stolen, says a security firm.

<http://news.bbc.co.uk/1/hi/technology/6956349.stm>

11. Wish upon a Tsar

Several articles on the appointment (proposed) of a czar or tsar to work on identity theft.

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/06/nidfraud106.xml>

<http://www.guardian.co.uk/technology/2007/oct/06/1>

<http://news.bbc.co.uk/1/hi/business/7031137.stm>

12. Definition of Personal Data

ICO has published a new technical guidance note on personal data: <http://digbig.com/4trxy>

It makes interesting reading especially as they seem to be backtracking on their previous views.

13. Face book & Privacy



"There no point in being anonymous on Facebook," Owen Van Natta, the company's chief revenue officer, told *Times Online* yesterday.

Fair enough – but do the 40 million users of the site have a choice?

<http://digbig.com/4trya>

14. Cert Ed (from a bulletin Board)

You my remember the story a month or so ago about the Certificate signed by the Home Secretary exempting police from the Data Protection Act when accessing information from TfL's congestion charging cameras. Having never seen a certificate such as this before, I looked around and couldn't find a copy, so I made an FOI request to the Home Office for one, and I received it yesterday.

I remain convinced that they could have done the same job within the DP framework, but that's an argument for another time. The certificate I have is a hard copy, but they should be putting it into the Home Office disclosure log (the letter says that the certificate will be published simultaneously with the release to me), so if you want to have a look at it, keep your eye on the Home Office website. This probably won't be the last time such a certificate is obtained, so watch that space.

Records Management & RIPA

15. The summer 2007 edition of RecordKeeping

is now available to read online at:

<http://www.nationalarchives.gov.uk/services/recordkeeping.htm>

RecordKeeping is a quarterly publication produced by The National Archives, aimed at archivists, records managers and all those involved and interested in archives and records.

This edition brings you case studies from the Alpine Club, the Archdiocese of Westminster and the 'Explore North Devon' project. In addition we hear a volunteer's perspective on the Community Archives website and learn about the conservation of Herald's Visitation of Essex at Barking and Dagenham Borough Archive Services.

Elsewhere Heather Boyns explains the latest developments of the Archives in Museums Subject Specialist Network and we hear the latest news on digital preservation at The National Archives.

16. Latest news on RIPA/RIP Review

For those of you who have to manage RIPA there have been important developments in the last few months. Read our summary in this document. <http://www.actnow.org.uk/RIPAreview.pdf>

Click on <http://www.informationlaw.org.uk/USERIMAGES/cvpoliceripa.pdf>

to read Ibrahim Hasan's article on employee monitoring first published in Solicitors Journal.

We are running a course on e mail and internet surveillance. See our website for details.

17. OSC Inspections

The Office of the Surveillance Commissioners (OSC) has now started doing much more rigorous inspections. Some councils have been inspected twice in one year. The key to a successful inspection is preparation. We have prepared a list of common OSC criticisms of local authorities to help you prepare-

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

Are all your officers and managers up-to-date with the latest developments on Directed Surveillance and use of a CHIS? Act Now has won a tender to do surveillance law training for the Health care Commission.

If you would like refresher training in this area contact us at info@actnow.org.uk 01924 451054

18. Accessing Communications Data – Latest News

The RIPA Communications Data Code of Practice (final version) is shortly to be laid before Parliament. - Click here to read the final version.

We have two courses in this area:

1. One Day Designated Person/ Investigator Workshop York – 6th November 2007

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.

2. Two Day Home Office SPoC Accreditation Course Manchester - 10th & 11th December

All organisations using RIPA powers to access communications data must have a named Single Point of Contact (SPoC) who should have attended a Home Office approved training course by 31st March 2005. Many have still not done this. This is one of the few courses still running. It is suitable for Scottish delegates too as the law is the same.

At the end of the two days delegates will sit a one hour multiple choice exam. So far we have trained almost 200 delegates. All have passed the exam with flying colours (Note: This course carries 8 CPD Hours.)

19. Email and Internet Monitoring Workshop

Monitoring and recording of employees' e mail, internet and telephone usage, whether with or without consent, is a legal minefield. This is a thorough examination of the law and practice in this area. We will look at Part 1 of the Regulation of Investigatory Powers Act 2000 (RIPA) as well as the Lawful Business Practice Regulations, the Human Rights Act and the Data Protection Act and related codes.

This is an interactive workshop full of exercises and case studies. As well as the latest caselaw we will discuss the possibility of using written policies and procedures to guard against the legal problems. This course is a must for all employment lawyers and personnel advisers, whether in the public or the private sector, who are often called upon to advise on these issues.

20. Cybercrime article



More than three hundred cybercrimes are committed every hour in the UK according to a report published recently

http://www.net4now.com/isp_news/news_article.asp?News_ID=4821

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