Welcome to our 7th newsletter on data protection, privacy and information issues in the public sector. Circulation 622. Please check the disclaimer, virus warning and copyright notice at the end of this newsletter. Subscribe and Unsubscribe is available via a form on our website www.actnow.org.uk. Previous newsletters are archived on the website.

In this issue

PUBLISH AND BE DAMNED
FOI TRAINING
FOI FORUM
FOI MANUAL
AMENDMENT TO DATA PROTECTION ACT
ELIZABETH FRANCE TO BE NEW TELECOMMS COMMISSIONER
HUMAN RIGHTS - ANOTHER PERSPECTIVE
CASE LAW ROUNDUP
ASHWORTH SECURITY HOSPITAL v MGN LTD (2002)
INFORMATION COMMISSIONER v ISLINGTON LONDON BOROUGH COUNCIL (2002)
REGULATION OF INVESTIGATORY POWERS ACT 2000
RE C (SEXUAL ABUSE: DISCLOSURE) (2002)
SALE OF THE ELECTORAL ROLL
MORE WEIGHTY OPINIONS ON USE OF COUNCIL TAX DATA
LATEST FROM INFORMATION COMMISSIONER WEBSITE
USEFUL WEBSITES

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PUBLISH AND BE DAMNED

There is turmoil in the minds of Data Protection officers throughout the land. Having just worked out what the 1998 act means to their organisation they are now faced with another equally daunting prospect - preparing for freedom of information.

There are three main areas to address. The general right to access on request of information of a non personal nature held by public bodies starting in January 2005. The production by the end of the year of a publication scheme and the intriguing question of what to do in between these two apparently unconnected items.

If at this point you are asking yourself ‘What’s a publication scheme?’ you would not be alone. Hundreds if not thousands of local government officers are asking themselves the same question. They’ve been doing it for some time hoping that repeating the invocation will somehow cause such a publication to fall from the sky (in Word format) so they can do a global Find and Replace and suddenly at the eleventh hour have their publication scheme ready to be printed in corporate covers.

No such luck! Look at the front page of our website for a full lengtharticle on this - www.actnow.org.uk

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ACT NOW - FREEDOM OF INFORMATION TRAINING FOR THE PUBLIC SECTOR

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A full day course has been developed by ActNow which examines the Freedom of Information Act and its impact on Local Government. With 2 trainers the course looks at the general right to access, fee structure, deadlines, publication schemes, exemptions, codes of practice, case studies relevant to local government and offers delegates an action plan to take away.

This course was recently delivered at a venue in the midlands to a group of local authorities. The following testimonial was received.

"All delegates found the content and the way in which the material was presented well worth a day out of the office, it was an informative and enjoyable day; the facilitators even being given a resounding round of applause at the end!"

Marion Christy Business Analyst/Operations Manager, Melton Borough Council

If you would like us to deliver such training 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. Contact us or look at the website for details. A half day awareness course on Freedom of Information is also available.

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FOI FORUM - THE ONLINE DISCUSSION GROUP

Announced late in May this was planned to be an online discussion forum where individuals could exchange ideas. Several chats were planned and everyone was invited to sign up. Limits were set for each forum and people started signing up. ActNow of course signed up in the name of one of our consultants. After failing to see our name appear in any waiting list we rang the OIC to find out there was an approval process (sound familiar?) and until you were approved you could not join any lists. Time passed then late in June we received an email saying that due to technical difficulties the FOI forum was being suspended and we would be contacted later.

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FOI MANUAL

For those of you who have yet to start work on FOI there is a manual available that contains everything you need to know about Freedom of Information Act. Published by Masons solicitors it contains 160 pages and costs £165. ActNow has seen a review copy.

It's quite a useful document as it takes the provisions of the Act and explains them in plain English. There's a powerpoint presentation which you can re-use within your organisation; briefing papers for your top management, self assessment quizzes, a project plan and much more. It's been written by Rosemary Jay and others and looks like a useful tool in bringing compliance into your organisation. Even though it is comprehensive and detailed even Masons admit that attending some form of training would be beneficial and that the manual alone may not be enough.

Several solicitors have brought out guidance to explain the Data Protection Act. We think Masons are the first to produce a manual for the FOI Act.

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FREEDOM OF INFORMATION ACT SCOTLAND

The final stage of the Freedom of Information (Scotland) Bill took place in the Scottish Parliament on Wednesday 24 April 2002. Although the Scottish Bill is an improvement on the UK Act, it still contains important loopholes according to The Campaign For Freedom of Information. It has produced a leaflet which can be read at http://www.cfoi.org.uk/scotstage3leaflet.html

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AMENDMENT TO DATA PROTECTION ACT

Not as dramatic as you might think but its being sneaked through on the quiet. The Act is being amended to allow MPs to request information held about their constituents. Look at http://www.publications.parliament.uk/pa/cm200102/cmbills/146/2002146.htm but it's not really very exciting. We considered that with the consent of a constituent (i.e. they had asked the MP to work on their behalf) that MPs could do this anyway. It doesn't extend to Councillors however or does it?

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INTERNATIONAL CONFERENCE

Privacy Laws & Business 15th Annual International Conference, St. John's College, Cambridge, July 1st-3rd, 2002
Celebrating its 15th year as Europe's largest international data protection and FOI event. PL&B's conference programme focuses on developing and managing privacy relationships. Managing privacy relationships successfully can help your organisation build value through better management of your relationships with customers, prospects and employees, all of whom have different privacy expectations. By attending this event you are sure to gain professionally, hear and meet world class speakers, scan the horizon for new issues and enjoy the unique summer school atmosphere. Over the coming months, you can follow the development of the conference programme and these events on our website: www.privacylaws.com. Alternatively, please contact Kevin Considine on 020 8423 1300 for further information.

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ELIZABETH FRANCE TO BE NEW TELECOMMS COMMISSIONER

Elizabeth France, the current Information Commissioner, will begin a new role in October as the country's first Telecoms Ombudsman, heading a new industry-funded consumer body. The Telecoms Ombudsman will investigate complaints from consumers against their telecommunications company and can order companies to provide compensation if they are found to be at fault. The aim is for a fair, impartial, speedy and effective service. The new Telecoms Ombudsman Elizabeth France is currently the Information Commissioner, responsible for the enforcement of the Data Protection Act 1998 and the Freedom of Information Act 2000. Elizabeth France announced earlier this year that she did not wish to renew her current contract as Information Commissioner, which is set to expire in November. A recruitment exercise started in January and the new Information Commissioner will probably take up the post in autumn. David Edmonds, Director General of Telecommunications, said yesterday that major telecommunications

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companies have agreed to fund the new body. He added: "I have written to the Chief Executives of the telecoms companies which have refused to give their support asking them to reconsider. I look forward to working closely with Elizabeth France and the Telecoms Ombudsman Council to ensure that consumers have access to a fair and impartial service to investigate their complaints."

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HUMAN RIGHTS - ANOTHER PERSPECTIVE

Andrew Oswald is a professor in economics at Warwick University. Among his many interest are Wage determination, Job Satisfaction, Unions, Unemployment and Happiness data. Reading through some of the papers on his website we came across this critique of the Human Rights Act and the right to privacy. You can see more at www.andrewoswald.com and read the article (linked with permission) called "Will the New Human Rights Legislation Do More Harm than Good? in PDF at http://www.warwick.ac.uk/fac/soc/Economics/oswald/commonwealthlawyerHR2001.pdf

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CASE LAW ROUNDUP

ASHWORTH SECURITY HOSPITAL v MGN LTD (2002)

The House of Lords ruled that The Mirror must reveal the source who supplied the paper with the medical records of Moors Murderer Ian Brady. The Mirror published verbatim extracts from Brady's medical records in an article in December 1999, when the killer was on hunger strike in protest at being moved to another ward. Lord Woolf said: "Any disclosure of a journalist's sources does have a chilling effect on the freedom of the press." However, he added that medical records must always be kept confidential and this was even more important in the case of Ashworth secure hospital, where Brady is being treated. This case, together with others, shows the seriousness with which the courts view the disclosure of medical information (see Naomi Campbell case in last newsletter and on the website).

INFORMATION COMMISSIONER v ISLINGTON LONDON BOROUGH COUNCIL (2002)

The High Court held that where a local authority failed to renew its registration under the Data Protection Act 1984, notwithstanding reminders to do so, it could reasonably be inferred that the body was aware of its omission so that its continued holding and use of personal data "knowingly" or "recklessly" contravened s.5 of the 1984 Act. Have you notified under the 1998 Act?

One of the requirements of the Data Protection Act 1998 is the process of Notification (formerly known as Registration under the 1984 Act). This is where a Data Controller informs the Information Commissioner (IC) of, amongst other things, what information it is holding and what it is intending to do with it. All this is common knowledge amongst local authorities and it would be very surprising if any have not notified. However, as a recent case has shown, it is very import that notifications are kept up to date. There are two articles on our Links page - www.actnow.org.uk

RE C (SEXUAL ABUSE: DISCLOSURE) (2002)

This case held that it was permissible for findings in care proceedings that the child's father constituted a considerable risk to children to be disclosed to the father's housing association

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landlord where there was "real and cogent evidence of a pressing need" for such disclosure. The disclosure had to be limited to what was necessary to achieve the legitimate aim of preventing crime and assisting in the protection of children. The judge in this case has carefully analysed the factors to be taken into consideration when matters of disclosure of information to third parties is being considered. It contains useful 'checklists' for agencies to consider when in the same situation.

REGULATION OF INVESTIGATORY POWERS ACT 2000

David Blunkett has shelved plans to hand a host of public bodies, including local authorities, the right to demand access to the communications records of telephone and internet users. The draft order extending the reach of the Regulation of Investigatory Powers Act has been withdrawn until the autumn at the earliest. It would have given a host of government departments, local councils and quangos the power to demand, on their own authority, access to detailed communications logs, including individuals' email records and mobile phone location data. Current legislation gives only the police, the intelligence services, customs and excise and the Inland Revenue these powers. The Regulation of Investigatory Powers Act 2000 regulates the surveillance and monitoring of communications, individuals, staff and premises. It also governs the use of informants, professional witnesses and test purchases. Failure to comply with it may render evidence inadmissible or mean that your council faces action under the Human Rights Act 1998. There is also an appeal, authorisation, record keeping and inspection regime under the Act. The Act applies to all departments of the council especially audit, personnel, planning, environmental health and trading standards. Do you know when the Act applies? Have your staff been trained? Do you have policy & Procedures in place? Have you a authorisations register that will survive scrutiny by the Surveillance Commissioner? We have developed a course that has already been sucessfully delivered. Look on our Training page on our website.

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E-GOVERNMENT BULLETIN

The inside track on 'e-government' - modern public services using the Internet and other new technologies - for free! All public sector managers and staff are invited to register to receive 'e-government bulletin', the leading independent email publication from Headstar that is and will always remain entirely free to receive. Every fortnight you will receive the latest on key issues relating to online public services such as security, e-democracy, online learning, and access to internet services by all parts of society. Simply send a blank email to: egovbulletin-subscribe@headstar.com or for more information see: http://www.headstar.com/egb

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SALE OF THE ELECTORAL ROLL

In the last issue we covered the case of Robertson v Wakefield Council. The Government has now issued draft regulations which address the concerns of privacy and data protection highlighted in that case. The case of R v Wakefield MDC and Secretary of State for the Home Department, ex parte Robertson [2001] has had a massive impact on the work of Electoral Registration Officers(ERO's). Check out the article on our links page - www.actnow.org.uk

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USE OF COUNCIL TAX DATA

We have discussed this issue on may occasions in Act Now. For those who are still struggling see the article on our website. But heavyweight opinions are lining up in favour of re-use of Council tax data. See the following article : E- Government and Sharing Data in House lawyer magazine (April 2002 page 17). The Corporation of London Council has also received an opinion from Michael Beloff QC. To discuss please contact Anne Pietsch, Comptroller and City Solicitor 020 - 7332 1633 Anne.Pietsch@corpoflondon.gov.uk

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LATEST FROM INFORMATION COMMISSIONER WEBSITE

A new online newsletter
A cartoon about the implications of data protection for primary & Secondary schools on CDRom. 1 copy per school.
Free online seminars on data protection.
A Report detailing the level of compliance with the Data Protection Act 1998 by UK based websites. This reveals a startling amount of non-compliance. 42% of 170 sites did not post any form of privacy information and of those that did, only 5% were intelligible to the average reader. click on www.dataprotection.gov.uk for more details

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USEFUL WEBSITES

http://groups.msn.com/LGGCommercialLaw

Readers who are local government lawyers may wish to join this web community. The LGG Commercial lawyers Group run it. It has been set up as a networking tool for all areas of commercial law particularly contract, data protection, IT law, intellectual property and PFI/PPP. The site has useful links, documents and details of regular meetings. All this is free so click on the above link.

http://www.e-envoy.gov.uk/publications/guidelines_index.htm

The Office of E envoy produced documents entitles Electronic Communications at Work: What you need to know (2nd edition) free to download.

http://www.dwp.gov.uk/consultations/2002/index.htm

Department of work and Pensions is consulting on draft codes on information gathering powers of those investigating benefit fraud under the Social Security Fraud Act 2001

http://www.dpp.org.uk/campaigns.asp?section=current&cmp=cmp00028

Very good website detailing how to get access to patient medical records

http://www.doughtystreet.co.uk

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Doughty Street Chambers' Defamation and Media Team held a seminar recently on Privacy. Expert barristers led a discussion on the developing law of privacy. Topics included, Breach of confidence, The impact of the Human Rights Act 1998, Harassment and Data protection. Download the papers from this site

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ACT NOW - TRAINING FOR LOCAL GOVERNMENT IN INFORMATION MANAGEMENT

A series of new courses has been developed over the first few months of 2002. Full day on FOI, Full day on DP, Half day awareness courses on FOI, DP and RIP. If you would like us to deliver training please contact us. Our availability is limited therefore the sooner you contact us the better. Look at the Training page on our website for details.

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