Now that we have a “CONLIB Love In” it is interesting to note what the parties have agreed within the Coalition Agreement about information/surveillance law:

http://tiny.cc/anj3b

Proposals include the scrapping of:
• the ID card scheme
• the National Identity Register
• the next generation of biometric passports
• the ContactPoint Database

Also the Coalition will:
• outlaw the fingerprinting of children at school without parental permission
• adopt the protections of the Scottish model for the DNA database
• extend the scope of the Freedom of Information Act
• review libel laws to protect freedom of speech
• introduce safeguards against the misuse of anti-terrorism legislation
• introduce regulation of CCTV
• end storage of internet and email records without good reason

Some of these proposals have already made it into the first Queen’s Speech, although the devil is in the detail which is yet to be released. Act Now will endeavour to keep you informed through this newsletter, articles and our webcasts. Please see our website for more details.

Timothy Pitt-Payne QC of 11KBW has written an excellent paper on the proposals and their implications. It can be downloaded from: http://tiny.cc/hh4by

All change for iLaw

We are please to announce our latest results for the ISEB Certificates in Data Protection and Freedom of Information.

Once again Act Now candidates achieved excellent results with 29 passes out of the 35 candidates who sat the January and April exams. Please see the summary of all our results so far. On FOI we are achieving a success rate of 91%. This is well above the rate for all other providers for 2009/10 which stands at 67% (according to figures from ISEB).

Our next courses are both in Manchester (DP in September and FOI in November). Please see our website for full details of venues, dates and candidate testimonials:

http://tiny.cc/d2u0i
The outcome of the election will have a big impact on freedom of information law and practice. The Conservative plan to cut the financial deficit quickly will mean massive cuts in public sector spending. This will no doubt lead to many more FOI requests to public authorities from interested parties including the media, unions and disgruntled employees. As we know already FOI is likely to be extended, perhaps by way of a section 5 order, to private sector organisations that deliver services on behalf of the public sector.

Prime Minister David Cameron has set out plans to make more government data accessible to the public. Mr Cameron said he wanted to rip off the “cloak of secrecy” around government & public services - and extend transparency as far as possible.

- For a detailed view on this please read the article by Dr Lawrence Serewicz of Durham County Council on page 3
- All future government spending above £25,000 is due to become available from November: http://tiny.cc/ozv1j
- Hospitals will start publishing data on infection rates online from this week - initially releasing three months of information before producing weekly statistics from July.
- Details of large government contracts will be published from September, items of central government spending from November and local government spending over £500 from next January.
- The first two tranches of data (from 2008/09 and 2009/10) on the COINS Database have been published. The Combined Online Information System (Coins) includes what departments were authorised to spend, what they actually spent and what they are forecast to spend in future. Experts are now poring over the complex files to decipher their contents.

The prime minister also believes it will add to economic growth as the private sector collates the new information and offers it in different ways to the public. Ministers quote research from Cambridge University that suggests such information could add £6bn to the economy. No doubt more measures will be announced soon involving more information on schools, the police and local government. The new Government’s mantra seems to be “Secrecy out, transparency in.”
Disclosure of Statistics

Over the past two years there have been many decisions of the Commissioner, the Tribunal and the courts on disclosure of anonymised personal information. The Commissioner previously argued that such information, where the individual cannot be identified by the recipient, is not personal data and so the section 40(2) exemption (third party personal data) cannot be used to refuse disclosure. This was until the Tribunal examined this point in detail in various cases including Department of Health v IC and the Pro Life Alliance EA/2008/0074 (15th October 2009).

Here the Tribunal ruled that anonymised personal information could still be personal data in the hands of the data controller if there is further information in the hands of the data controller which would allow the subjects to be indentified.

This reasoning was applied recently in Magherafelt District Council v IC EA/2009/0047 (3rd February 2010). Following an FOI request the council disclosed the numbers of staff disciplined and dismissed over a four year period. However it would not disclose the penalty issued or the reason for the action against those disciplined. It also refused to disclose the reasons for dismissal. The Tribunal ruled that this was personal data and went on to consider whether disclosure would be fair and lawful in accordance with the First Data Protection Principle as required by section 40(2). It accepted that the council’s employees had a reasonable expectation of privacy. Integral to the question whether disclosure (despite this expectation) was fair, was the related question of whether there was a real risk of identification by the public if the information were to be disclosed.

It was argued by the Council that it would be easy for a journalist, speaking to other members of the Council’s staff, to identify the individuals referred to in the information. The Tribunal, whilst clear that, read on its own, the information would not identify particular individuals, did accept (given the small size of the authority and indeed the local population) that it would not be hard for a journalist to take steps to identify the individuals in question. This could then lead to wide spread publication of the names of the individuals, the disciplinary offences they had committed and the sanctions received. This was not the same as concluding that the information on its own enabled identification. Further investigative steps would need to be taken, but given that these did not appear to be onerous or unlikely, it would be artificial for the Tribunal to ignore what appeared to be a very real risk. The Tribunal concluded therefore that public disclosure of the information would be unfair to the data subjects (the employees in question) such that disclosure would be a breach of the First Data Protection Principle.

For the sake of completeness it also went onto consider that whether disclosure could be justified on one of the grounds in Schedule 2 of the Data Protection Act. The Tribunal concluded that it was not “necessary” within the terms of paragraph 6 of Schedule 2 for there to be disclosure of the information. The legitimate interests in disclosure of information about disciplinary offences, such as they were, had already been met by a means that interfered less with the data subjects’ interests, that is, by the previous release of information about numbers and types of offences and sanctions. In light of the above, the Tribunal concluded that disclosure of the remaining information would be in breach of the First Data Protection Principle and that the absolute exemption under section 40(2) FOI applied.

Civil Servants’ Salaries Exposed

Dr Lawrence Serewicz of Durham County Council writes:

Recently the Government published the salaries of the civil servants who are paid more than Prime Minister David Cameron’s £142,500-a-year salary. The government released the figures to “help win back people’s trust.”

While the move is welcome and well intentioned in this time of austerity, it raises several secondary questions that need to be considered.

1. What does the disclosure tell us, if anything, about the government and the public morality it is trying to promote?
2. Is this a departure from previous administrations regarding salary information?
3. How does publishing salary information or financial information add to transparency?
4. Does this transparency make the government accountable and therefore more trustworthy?
5. Is the prime minister’s salary a useful benchmark?
6. Finally, does financial transparency lead to budget savings, which is different from budget cuts?

The argument that is being used is that transparency leads to accountability and accountability leads to trust. However, the implicit question is whether this information really creates transparency.

READ MORE: http://tiny.cc/q4cm6

Dr Lawrence Serewicz is a Principal Information Management Officer at Durham County Council. The views expressed in this article are his own and do not represent the views of the Council.
Section 38 of the Freedom of Information Act 2000 (FOI) exempts public authority information from the general right of access if its disclosure would, or would be likely to, endanger the physical or mental health of any individual and/or the safety of any individual. The term ‘endanger’ is the same as the term “prejudice” used in other FOI exemptions.

Section 38 is a qualified exemption and so requires consideration of the public interest test. It was recently relied upon successfully in an appeal to the First Tier Tribunal (Information Rights), formerly the Information Tribunal. People for the Ethical Treatment of Animals Europe (PETA) v IC & Oxford University, EA/2009/0076 (13th April 2010) concerning experiments performed on a macaque by an Oxford University Professor which were the subject of a BBC documentary in November 2006 entitled “Monkey Rats and Me”.

The appellant, an animal rights pressure group, sought extracts from the relevant Home Office project licence concerning, amongst other things, the work plan and purposes behind those experiments. The Tribunal applied its decision in Hogan and Oxford City Council v IC (EA2005/0026 and EA2005/0030) where it ruled that the application of the prejudice test involved a number of steps; namely:

i. The Tribunal needs to identify the applicable interest(s) within the relevant exemption

ii. The nature of the endangerment being claimed must be considered

iii. Some causal relationship must exist between the potential disclosure and the endangerment

iv. The endangerment must be “real, actual or of substance”. There is therefore effectively a de minimis threshold which must be met.

v. Where a public authority is relying upon the “would be likely to endanger” limb of section 38, the Tribunal must be satisfied that there is a real and significant risk of endangerment even if it cannot be said that the occurrence of endangerment is more probable than not.

The Tribunal in the present case found that section 38 was engaged, given the indiscriminate nature of the violence tending to accompany the publication of information about animal experiments at Oxford University. It gave weight to the evidence submitted by the university of attacks and incidents which took place following the showing of the BBC documentary. This satisfied the Tribunal that disclosure of the information would increase the risk of endangerment to its staff as well as anyone visiting or associated with the University.

The Tribunal also identified the fact that private sector organisations applying for the same Home Office license were not subject to the FOI regime. In the light of the risk of endangerment, the Tribunal was satisfied that it was in the public interest that there should be a “level playing field” so that those working for public bodies engaged in this type of work were not exposed to a greater risk than their counterparts in the private sector.

For the latest news analysis and comment on Freedom of Information please have a look at the following resources on our websites:

www.actnow.org.uk
www.informationlaw.org.uk
Can a public authority rely on exemptions for the first time before the Commissioner or the Tribunal? In Crown Prosecution Service v IC EA/2009/0077 (25th March 2010), the CPS initially relied on section 35(1)(a) (formulation and development of government policy) to refuse disclosure of information. When appealing to the Tribunal, it invoked section 35(1)(b) (ministerial communications) and section 42 (legal professional privilege). Finally, during the Tribunal proceedings, it also raised section 40(2) (personal data) for the first time.

The Tribunal did not accept the CPS’s contention that it was obliged to accept the claiming of late exemptions. It said that it could only do so in exceptional circumstances on a case-by-case basis. The Tribunal decided to allow late reliance on sections 40(2) and 42, but not section 35(1)(b). In so doing, it endorsed the principles set out in Home Office & Ministry of Justice v IC EA/2008/0062 (20th November 2008) and approved the quotation cited in that case from yet another Tribunal decision in Department of Business and Regulatory Reform v IC & CBI EA/2007/0072 (paragraph 72):

“... The Tribunal may decide on a case-by-case basis whether an exemption can be claimed outside the time limits set by ss.10 and 17 depending on the circumstances of the particular case. Moreover the Tribunal considers that it was not the intention of Parliament that public authorities should be able to claim late and/or new exemptions without reasonable justification otherwise there is a risk that the complaint or appeal process could become cumbersome, uncertain and could lead public authorities to take a cavalier attitude to their obligations under ss.10 and 17. This is a public policy issue which goes to the underlying purpose of FOIA.”

The Tribunal in the CPS case also considered whether the Information Commissioner is under a duty to consider exemptions himself that are not raised by a public authority during an appeal. Here, following the approach in Bowbrick v. Nottingham City Council EA/2005/0006 (28th September 2006), it said in exceptional cases the Commissioner is “entitled” to look for an appropriate exemption but there was no positive duty for him to do so. At paragraph 46 of the judgment the Tribunal stated:

“... the IC does not have a positive duty to look for exemptions that might have been claimed by the public authority, but have not been claimed by the authority. If a public authority fails to invoke a particular exemption before the IC, and the Commissioner orders disclosure of the information, the public authority cannot then come to this Tribunal and say it was an error of law for the Commissioner to fail to put forward on our behalf a particular exemption which we did not put forward on our own behalf. If the public authority raises an exemption, the Commissioner needs to consider whether that exemption is applicable, but if the public authority does not raise an exemption, the Commissioner does not have a positive duty to look for exemptions on which the public authority might rely.”

Public authorities should think very carefully and take legal advice before citing exemptions in their Refusal Notice. If any exemptions are missed, it is by no means certain that they can still be invoked for the first time before the Commissioner or Tribunal or that the Commissioner will look for appropriate exemptions of his own accord.
In an interesting recent decision involving William Thackeray v IC and The General Medical Council EA/2009/0063 (23rd February 2010), the Tribunal ruled that the GMC should have disclosed internal correspondence about a Fitness to Practice Panel member’s links with the Church of Scientology. The GMC had argued that this was personal data disclosure of which would breach the First Data Protection principle and so exempt under section 40(2).

It was the appellant’s case, much of which the Tribunal agreed with, that the Scientology leadership is opposed, as a matter of religious belief, to the practice of psychiatry and therefore it cannot be right that a person having links to such an organisation should sit on a GMC panel which may be required to make judgments on psychiatrists. He submitted that by not declaring his connection to Scientology, in the light of the published opposition to psychiatry and psychiatrists, the panel member may have breached the ethical conditions of his new role and committed misconduct. The appellant submitted that the panel member can have no reasonable expectation that such misconduct would be kept private.

The Tribunal concluded that disclosure would not be unfair and was necessary in the legitimate interests of the requestor and these interests outweighed any impact on the panel member. In coming to this conclusion it took account of, amongst other things, the role of the member (sitting in judgment on others), the seniority of the member and the fact that he had not declared his connection with the Church of Scientology. It also took account of the public interest in the disputed information as it relates to the possibility that if the panel member’s one time connection with Scientology had been declared, it may be that his fitness to sit on other cases involving psychiatrists would have been questioned, or that the GMC would not have considered him a suitable panel member for such cases, or that he would not have been appointed to a responsible position in the GMC at all.

Just because personal data was collected many years ago does not necessarily mean that disclosure of it will be fair to the data subjects. The section 40 exemption may still apply to it.

ICO Enforcement Notice

The Information Commissioner’s Office has taken enforcement action against the Independent Police Complaints Commission (IPCC) for failing to respond to FOI requests within the statutory time limits.

This action was prompted by a letter from the IPCC which stated that it was experiencing difficulties in responding to requests for information under section 1(1) of the Freedom of Information Act 2000 (the “Act”). The IPCC confirmed to the Commissioner that it had a backlog of 72 requests, 69 of which were ‘out of time’. In addition to this backlog, the Commissioner was aware that he had received nine complaints under section 50 of the Act which identified a failure to respond to requests for information within the statutory time limits, four of which remained outstanding at the time of drafting this notice.

The IPCC has repeatedly failed to respond to requests for information within the statutory time limits. Further the Commissioner is concerned that the timescale proposed by the IPCC for the elimination of its backlog of overdue requests may not be met, unless the authority is compelled to take such action by way of an Enforcement Notice.

This is only the second time the Commissioner has issued an enforcement notice under s.52 of the FOI Act. The first was in relation to multiple complaints about the non-disclosure of the Attorney General’s advice on the legality of military intervention in Iraq.

A copy of the enforcement notice is available here: [http://tiny.cc/3iucz](http://tiny.cc/3iucz)
NEWS IN BRIEF

WhatDoTheyKnow.Com
Many public authorities have been grappling with FOI requests made through the website http://www.whatdotheyknow.com. Many have tried to refuse such requests on various grounds including potential copyright infringement. An interesting recent ICO Decision Notice (FS50276715), involving the House of Commons, considers this issue further.

The complainant made a request for information to the House of Commons via his account on the www.whatdotheyknow.com website. He requested a copy of a document, to be provided in electronic form. The House of Commons expressed its willingness to provide the information to the complainant by way of an alternative email address, however claimed that it would not be reasonably practicable for it to provide the information to the email address generated by the website, as to do so would raise copyright implications as the information provided to that address would be automatically published on the website. The Commissioner ruled that the House of Commons should provide the requested information to the complainant to the whatdotheyknow.com email address that was used to make the request.

This is an interesting and important decision. Our view has always been that if there is no problem in disclosing the information, why should it matter where the request comes from and what is subsequently done with the information? The whole point of FOI is openness and transparency. Websites like whatdotheyknow.com are about promoting the very same principles, even though they may sometimes encourage vexatious requests. Then again, that’s why public authorities have section 14 to invoke (not to mention 23 exemptions in Part 2 of the Act)!

The Stationery Office Competition
TSO recently launched OpenUp, a challenge to encourage the British public to think about the government data they use in the course of their lives. For example parents may need data on local schools, or those looking to buy a property might want crime statistics for the area.

OpenUp asks data users to consider how they would like this information presented to them. What do they need to make informed decisions and how do they want that information presented: on a map, combined with other statistics, or delivered as a regular email?

If you have an idea you would like to enter into the OpenUp challenge, simply visit: http://www.tso.co.uk/openup and submit your idea online by 29 October 2010. The best five ideas will then be selected and if yours is one of them you will be invited to pitch your idea to our panel of experts.

The winning OpenUp entry will be brought to life with a £50,000 development fund from TSO, as well as a £1,000 personal prize for the creator of the winning idea.

FOI Podcast No 22
Our latest FOI podcast has now been published. It covers major decisions of the Information Commissioner and the Tribunal in February, March and April 2010. You can also read the scripts for the previous podcasts. Listen, learn and claim ½ a CPD point for free: http://www.actnow.org.uk/content/21

SIC Newsletter
Read Kevin Dunion’s latest FOISA newsletter here:
www.itspublicknowledge.info

Courses in Edinburgh
Act Now has a full program in Scotland on DPA, FOISA, RM and RIPSA:
http://www.actnow.org.uk/courses/city_Edinburgh
We will also be running the ISEB Data Protection Course in Edinburgh in November 2010.
Put a Value on Data Protection

Christopher Graham, the Information Commissioner, is urging organisations to put a value on personal information and invest in privacy protection.

At the Data Protection Officer Conference in Manchester in March the Information Commissioner’s Office (ICO) launched ‘The Privacy Dividend’ report which provides organisations with a financial case for data protection best practice.

The report explains how to put a value on personal information and assess the benefits of protecting privacy. It includes practical tools to help organisations prepare a business case for investing in privacy protection.

Speaking at the ICO’s Data Protection Officer Conference, Christopher Graham said: “No organisation can neglect to protect people’s privacy. Not only is it the law, but there is also a hard headed business imperative. This report provides organisations with the tools to produce a financial business case for data protection ensuring privacy protection is hardwired into organisational culture and governance.”

Practical tools to help organisations prepare a business case for investing in privacy protection include:

- Guidance on the steps involved in a privacy protection scheme to assess the costs and benefits
- Guidance on creating business cases for implementing a new system or changing an existing system
- Calculation sheets to assess the value of personal information and put figures to the business case.

Watson Hall Ltd and John Leach Information Security Ltd (JLIS Ltd) were appointed to undertake a three-month research project and produce The Privacy Dividend Report.

A full copy of The Privacy Dividend Report can be downloaded at: http://tiny.cc/5wbq8

Information Security Workshop

One of the central government responses to data breaches is to align its security activity with ISO27001 more fully and reframe its Security Policy. Our new workshop will look at what that means in practice and how it affects the wider public sector, introducing the Seven Principles of the HMG SPF and aligning them with current information security, assurance and governance trends and requirements.

This workshop is facilitated by legal and information security expert (Andrea Simmons) 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. Details on our website: http://www.actnow.org.uk/courses/Data_Protection
Change Your Security Culture!
(Introducing a FREE training package for Public Bodies)

Richard Roscoe of Sefton Council writes:
Most of the costly, serious and well publicised data breaches of the last few years were not down to a lack of security policy, but to a failure to implement that policy. It is now clear that unless your policy is built into systems, processes and people (i.e. your culture) then it will not protect your business. The only way to change culture is through appropriate, cost-effective training at all levels of your organisation. I want to introduce a free package that is now available to help you get started. READ MORE... http://www.actnow.org.uk/content/46

Richard Roscoe is the Data Protection and Information Security Officer for Sefton Council and Deputy Chair of the NWeGG Information Security and Assurance Group (ISAG). The views expressed in this article are his own and do not represent the views of the Council.

Latest Information Security Breaches

With the number of breaches involving individuals’ personal information reported to the Information Commissioner’s Office (ICO) reaching 1000, the privacy watchdog is urging organisations to minimise the risk of mistakes. The latest breaches include:

18 Jun 10 - Confidential personal information stolen from Kent Police
Kent Police is taking remedial action after the Information Commissioner’s Office (ICO) found it in breach of the Data Protection Act (DPA). An investigation concluded that Kent Police policies and procedures regarding the transportation and storage of personal information away from the office were limited in scope and required further clarification.

16 Jun 10 - Action taken after IPCC fails to respond to FOI requests
The Information Commissioner’s Office (ICO) has taken enforcement action against the Independent Police Complaints Commission (IPCC). The ICO’s enforcement notice, published today, indicates that 69 freedom of information requests were not resolved within the necessary legal timeframe.

15 Jun 10 - Poor data security in the NHS
The Information Commissioner’s Office (ICO) remains highly concerned that data breaches involving people’s personal information are continuing to occur in NHS organisations. Today NHS Stoke-on-Trent and Basingstoke and North Hampshire NHS Foundation Trust are the latest NHS bodies found to have breached the Data Protection Act (DPA).

03 Jun 10 - 8,000 people’s details lost in transit in Lampeter
The Information Commissioner’s Office (ICO) has found Lampeter Medical Practice to be in breach of the Data Protection Act, after an unencrypted memory stick containing the personal details of 8,000 patients was reported lost to the privacy watchdog.

02 Jun 10 - West Berkshire Council takes action after losing children’s personal data
West Berkshire Council is taking remedial action after the Information Commissioner’s Office (ICO) found it in breach of the Data Protection Act (DPA) following the loss of a USB stick containing the sensitive personal information of children and young people.
Data Protection

ID Cards Gone?
The Government has now scrapped ID Cards. If you think though that they have gone forever think again. They have a habit of making a comeback: 
http://www.tinyurls.co.uk/E7014

NHS Summary Care Record

The Summary Care Record (SCR) and HealthSpace technologies, introduced in the NHS as part of the National Programme for IT (NPfIT), have so far demonstrated only modest benefits according to the final report of a three-year independent evaluation carried out by UCL researchers.

The report’s publication coincides with the publication of a research paper based on the findings in the British Medical Journal: http://tiny.cc/khbes

Vetting Scheme Halted

The vetting scheme for nine million people working with children and vulnerable adults in England, Wales and Northern Ireland has been halted.

Home Secretary Theresa May has announced that registration, due to begin next month, has been put on hold. There will be a review of the entire vetting and barring scheme, with a scaling back to “common-sense levels”. The government says the vetting scheme would have been “disproportionate and overly burdensome”.  
http://tiny.cc/da80y

Animals’ Privacy

Animals’ right to privacy needs to be taken more seriously by wildlife documentary makers, suggests research. The ethics of the media and privacy should be extended beyond humans to the animal world, suggests Brett Mills at the University of East Anglia: http://tiny.cc/wgs6q

Some people may agree. Others may think this was taken from the election manifesto of the Monster Raving Loony Party! Get it?

Come Fly with Me

Airport security: Intent to deceive? Can the science of deception detection help to catch terrorists?

Sharon Weinberger takes a close look at the evidence for it: http://www.tinyurls.co.uk/X6886

Courses in Bristol

Act Now is running more Data Protection, Freedom of Information and Information Sharing Courses in Bristol with Philip Bradshaw in the Autumn. For more information please see: http://tiny.cc/ynw2h or download a full colour flyer http://www.tinyurls.co.uk/G6885

Google Admits Oogling

Google has admitted that for the past three years it has wrongly collected information people have sent over unencrypted wi-fi networks. The issue came to light after German authorities asked to audit the data the company’s Street View cars gathered as they took photos viewed on Google maps.

Google said during a review it found it had “been mistakenly collecting samples of payload data from open networks”. http://tiny.cc/r2tue

What else is Google doing that we do not know about?
The European Commission put out a press release in May saying Google et al do not comply with data protection rules. In June they decided that opt-out is not sufficient. See both press releases at: http://tiny.cc/k7g8j

Beware of Photocopiers

This is a must-watch video from CBS about the privacy implications of old photocopiers. It argues that images of every document photocopied is stored on a photocopier’s hard drive, which can be easily retrieved when the machine is scrapped or sold on. Click on the link below to watch: http://tiny.cc/92pc8

Smile Doc – You’re on You Tube!

GPs cannot prevent patients from recording consultations and posting them on the internet, legal experts say: http://tiny.cc/bcght

Information Sharing Web Seminar

Ibrahim Hasan recently did a free web seminar on Multi Agency Information Sharing. He examined the different laws which come into play when sharing personal information. Ibrahim also discussed the latest High Court decision which sheds light on this difficult issue. To watch the recording and gain ½ a CPD point please go to our website: http://www.actnow.org.uk/content/50
CCTV Controversy in Birmingham

A surveillance operation in parts of Birmingham with large Muslim populations has been halted after it was revealed the move was linked to counter terrorism. Some out of 218 cameras, mainly in the Washwood Heath and Sparkbrook districts, will be covered with bags. They were part of the Project Champion scheme, paid for from a Home Office counter terrorism fund: http://tiny.cc/i905s

What worries us is that these cameras were initially justified on the basis of tackling anti social behaviour. Was this a smokescreen or is this a case of function creep? The story goes on:

“The partnership said it would not be placing bags on the 72 hidden cameras because it does not want to reveal their location.”

Does this mean that they are doing Directed Surveillance under RIPA, in which case were RIPA authorisations sought? The new Government has said it will regulate CCTV. However, like other proposals, there is no detail available yet. Watch this space!

YH Information Law Networking Group

There was in the past a regional group called the Yorkshire and the Humber Data Protection Forum. In recent years it hasn’t been as effective but we are hoping to revive the group and extend its remit into all areas of current Information Law.

The inaugural meeting will be in Bradford on 12th July 2010 starting at 1.30 pm. This is a free event. Refreshments will be served from 1pm. Bring your own questions to discuss on the day. For more details click on the link below: www.tinyurls.co.uk/B7017

To attend please email info@actnow.org.uk with Y&H meeting in the subject line.

Data Protection Helpline

The Act Now DP Helpline is designed to supplement your internal expertise by acting as a friendly advisor for you to discuss your Data Protection and Privacy issues and avoid attracting the attention of the Information Commissioner. Our experts will guide you through the relevant sections of the Act and make recommendations about your response to difficult DP situations.

Public authorities are increasingly receiving complex and time consuming Data Protection requests. These involve consideration of a number of Data Protection exemptions as well as relevant Information Commissioner and Information Tribunal decisions. Internal legal departments are often over stretched and dedicated Data Protection practitioners are hard to recruit. External legal advice in this area is very expensive and there are very few experts in this field with real experience of advising the public sector.

Please click here for more information and subscription details: http://www.actnow.org.uk/content/25
Just when councils are trying to meet the challenge of implementing the changes to Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) (in force on 6th April 2010), it seems that the Act is due for another overhaul. The Freedom Bill, announced in the Queen’s Speech, is likely to be the vehicle for the changes, although the only concrete bit on RIPA (as well as other laws) is as follows:

“Ensuring anti-terrorism legislation strikes the right balance between protecting the public, strengthening social cohesion and protecting civil liberties.”

A further clue on the possible changes to RIPA can be found on page 12 of the Coalition Agreement which states:

“We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime.”

Hugo Rifkind, of the Times, has written an excellent piece in The Spectator magazine arguing that there is no need to curtail councils’ powers to do covert surveillance and that they are a force for good:

http://www.tinyurls.co.uk/U6883

The Jury is still out. We do not think that a Magistrate guarantees an improvement to the authorisation process. Local authorities will not, in most cases, be able to meet the serious crime test but they should not be restricted in their use of covert tactics to enforce laws for which Parliament has given them a statutory responsibility. There may be an attempt to negotiate a threshold below which RIPA cannot or should not be used. Of course RIPA is only a ‘shield’ and the absence of an authorisation does not prevent the surveillance activity (a point often missed by ministers and the media).

Whatever happens, Act Now delegates and newsletter readers will be amongst the first to know. Don’t forget our website has lots of RIPA Resources including free RIPA webcasts, articles and briefing notes on the changes and new codes which came into force on 6th April 2010.

RIPA Forms Guidance Manual (version 3)

Act Now Training is pleased to announce that version 3 of the RIPA Forms Guidance Manual has now been published. It has been fully revised in the light of the new RIPA Order and Codes of Practice, which came into force on 6th April 2010. The Home Office forms still make reference to the old codes. Our forms are reproduced with references to the new codes.

Version 3 (April 2010) of the Guidance includes each RIPA form with:

• Detailed notes on how to complete each section
• References to the new RIPA Codes and Order
• References to the OSC Procedures and Guidance Document

Other useful documents including:

• A detailed briefing note on the new RIPA codes and the changes they make to the local authority RIPA regime
• Revised colour flowcharts to help officers decide what type of surveillance they are undertaking
• A list of common mistakes to avoid
• A suggested template form to be used when doing non RIPA surveillance, not available elsewhere

For more details:

http://www.actnow.org.uk/content/26

You can also download an evaluation version. There is a 33% discount for those of you who bought earlier versions.
Local authorities and other public sector organisations are increasingly doing complex and time consuming covert investigations to tackle benefit fraud, licensing issues and trading standards offences, anti social behaviour and environmental health problems.

The Act Now RIPA/RIPSA Helpline is designed to supplement your internal surveillance law expertise by acting as a “sounding board” or “signpost service” for you to discuss your covert surveillance operations. Our experts will guide you through the relevant area of law, discuss possible legal tactics and how to complete the relevant standard Home Office forms. The helpline will be managed by Ibrahim Hasan and Sharon Heels who are renowned throughout the UK as the leading surveillance law experts.

Please click here for more information and subscription details: [http://www.actnow.org.uk/content/25](http://www.actnow.org.uk/content/25)

**Calling all Regional Networking Groups**

We at Act Now Training recognise the valuable work done by regional DP and FOI networking groups. That is why for the last few years we have maintained a list of such groups and contacts on our website: [http://tiny.cc/pvjgu](http://tiny.cc/pvjgu)

We understand that many groups have now progressed to setting up their websites and bulletin boards. We are happy to list these for free on our website. To enable us to do this, please let us have updated information about your group including name, key contact, telephone number, email address and website/bulletin board details. You can email us at info@actnow.org.uk

If you would like us to list your events in our newsletter please send us the details. Our newsletters are published in the beginning of July, October, January and April. We would need the information at least two weeks beforehand.

Speakers: From time to time we are requested to present short talks to regional groups. We are more than happy to do this free of charge. All we ask is that you pay our travel expenses and allow us to bring along some course flyers. If you would like a speaker for your next meeting please get in touch.

ISEB Courses: We are one of the UK’s leading providers of courses leading to the ISEB Certificates in Freedom of Information and Data Protection. Please see our website for our pass rates: [www.tinyurls.co.uk/F6884](http://www.tinyurls.co.uk/F6884)

In the current economic climate many networking groups are looking at more cost effective solutions to delivering ISEB training. You may wish to consider organising your own ISEB course with interested members at a venue convenient to them. This can work out to be up to 25% cheaper than sending delegates to one of our external courses. Please feel free to call us to discuss the details.

**Information**

We don’t give it out, only collect it.

---

**FOI PODCASTS**

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 only service of its kind in the UK, is completely free and has even been reviewed in The Times.

Every month Ibrahim discusses the latest legal cases and gives his personal views as to how they affect FOI practice. The first twenty one episodes are now on Ibrahim’s personal website together with the scripts. See: [http://www.informationlaw.org.uk/page20.htm](http://www.informationlaw.org.uk/page20.htm)
News in Brief

Workers’ Right to Privacy
On Thursday, the US Supreme Court unanimously held that a Police Chief did not violate a police officer’s 4th amendment rights by reading personal text messages which the officer had sent via a pager provided to him by his employer - see the judgment at http://tiny.cc/1cypa

The 4th amendment guarantees a person’s privacy, dignity, and security against arbitrary and invasive governmental acts.

The text messages were sent on a pager provided by the officer’s employer, they included a number of sexually explicit messages.

The texts were reviewed as part of a process of examining whether officers were using the pagers excessively for personal use. In a judgment which rejected a broad right of privacy for workers, the Supreme Court recognised that interferences with privacy may be justified where there is a reasonable suspicion that rules are being breached by the employee.

Notably, the Supreme Court recognised that, in an age of fast-evolving technology, the law of privacy should develop flexibly rather than through the introduction of broad, rigid rules. http://tiny.cc/zw321

The law on monitoring employees communications in the UK is set out in Part 1 of RIPA and what are commonly known as the Lawful Buisiness Practice Regulations. These set out reasons for which monitoring can be done without consent. For a full article on staff monitoring laws in the UK: http://www.informationlaw.org.uk/page18.htm

Ibrahim Hasan will be doing his popular workshop on email and internet monitoring again in the Autumn: http://www.actnow.org.uk/courses/347

RIPA in the ECHR
The European Court of Human Rights has rejected a claim that the UK’s Regulation of Investigatory Powers Act (RIPA) violates the human right to a private life. The UK’s rules and safeguards on covert surveillance are proportionate, said the court: http://tiny.cc/cigvj

RIPA Workshops
Ibrahim Hasan and Sharon Heels will be discussing all the latest changes to RIPA in detail in our forthcoming RIPA/RIPSA Update/refresher workshops in Manchester, Edinburgh, Belfast and London. More Information: http://tiny.cc/arow2

£1 Million Pound CCTV Camera
A London CCTV camera is earning almost £1 million a year in fines from local motorists. The camera, located outside Clapham South underground station in south west London, has caught an average of 23 drivers a day, each of which have been fined £100 for pulling into a bus stop outside the station to drop off passengers:
http://tiny.cc/u8pz6

RIPA Update Webcasts
Ibrahim Hasan has done two webcasts examining the revised codes of practice under RIPA which came into force on 6th April 2010. To watch again and claim ½ a CPD point for each one see our website: http://www.actnow.org.uk/content/50

Surveillance v Privacy – Radio Program
A recent “Law in Action” Program on BBC Radio 4 (Thursday 10 June 2010 at 8.30pm) was all about Police Surveillance v Privacy. Download the podcast to listen again: http://www.bbc.co.uk/programmes/b00sm6ct

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 www.actnow.org.uk

ACT NOW TRAINING LTD, 64 BRADFORD ROAD, DEWSBURY WF13 2DU
TEL 01924 451054, FAX 01924 451129
Act Now at your Service

FOI Helpline
Act Now training provides an FOI Helpline service. This is designed to supplement your internal FOI expertise by acting as a “sounding board” or “signpost service” for you to discuss your FOI/EIR requests and possible responses. Through the helpline Ibrahim Hassan will be available to guide you through the relevant area of law, discuss possible exemptions and how to deal with any complaints. At a time of increasing pressure on public sector budgets, the Act Now FOI Helpline is the most cost effective solution for your FOI problems.

More details at http://www.actnow.org.uk/content/25

Legal Advice 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 Legal Advice see Ibrahim Hasan’s website:
www.informationlaw.org.uk

Ibrahim can advise on all aspects of data protection, freedom of information and surveillance law. Recent instructions include appeals before the Tribunal and drafting and revising surveillance policies and procedures.

IN HOUSE TRAINING
Act Now trainers can also deliver in-house customised training at your site. At a time of increasing pressure on public sector budgets this may be the most cost effective solution to your training needs.

In the last three months we have done in house training on FOI, EIR, DPA, Data Sharing and RIPA for, amongst others, the General Medical Council, Isle of Anglesey Council, North Yorkshire Fire and Rescue, East Lindsey Council, Bradford Council, Preston City Council, Coventry City Council, Welsh Assembly Government, Lincoln City Council, Wirral Council, North East Lincolnshire Council, Royal Horticultural Society, Queen Elizabeth’s Grammar School, Dumfries & Galloway Council, South Gloucestershire Council, Flintshire 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/enquiry/

WEBCASTS: Act Now also runs the information/surveillance law webcast series. This is free to attend. All you need is a computer and a set of headphones. You can listen to Ibrahim’s web seminar and ask questions live. You can also view previous web seminars. More details: http://www.actnow.org.uk/content/50

ARTICLES: Ibrahim also writes a regular FOI Update column for the Law Society Gazette You can read this at: http://www.informationlaw.org.uk/page16.htm
Act Now Training is the UK’s leading provider of seminars and workshops on all aspects of Data Protection, Freedom of Information, Surveillance Law and Records Management.

SPEAKERS  
Led by Ibrahim Hasan and Paul Simpkins (our directors), our speakers are well known information and surveillance law experts with many years of public sector experience.

ISEB  
We are one of the UK’s leading providers of ISEB courses leading to the Certificate in Data Protection and Freedom of Information. We have an overall pass rate of over 80%.

IN HOUSE TRAINING  
We provide in house (customised) training on all aspects of information and surveillance law. Our clients include most local authorities in the UK as well as many government departments, NHS bodies and public sector agencies.

ACCREDITATION  
All our workshops are accredited by the Solicitors Regulation Authority (SRA) and the Institute of Legal Executives (ILEX) for CPD Credits. Delegates also receive a certificate of attendance.

VENUES  
Our external workshops are held at top quality city centre hotels in London, Manchester, Bristol, Edinburgh and Belfast. Most run for a full day (from 10am to 4pm) and refreshments and lunch are provided.

MATERIALS  
All course delegates receive a comprehensive set of training materials.

FOI PODCASTS  
Our free FOI podcast service is the only service of its kind in the UK. In each episode Ibrahim Hasan discusses the latest decisions from the Information Commissioner and the Tribunal.

WEBCASTS  
We run free interactive webcasts on the latest developments in information and surveillance law for which delegates can claim CPD Credits.

**FIVE EASY WAYS TO BOOK**

<table>
<thead>
<tr>
<th>TELEPHONE</th>
<th>01924 451 054</th>
<th>POST</th>
<th>Act Now Training Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAX</td>
<td>01924 451 129</td>
<td>64 Bradford Road</td>
<td></td>
</tr>
<tr>
<td>ONLINE</td>
<td><a href="http://www.actnow.org.uk">www.actnow.org.uk</a></td>
<td>Dewsbury</td>
<td></td>
</tr>
<tr>
<td>EMAIL</td>
<td><a href="mailto:info@actnow.org.uk">info@actnow.org.uk</a></td>
<td>West Yorkshire</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>WF13 2DU</td>
<td></td>
</tr>
</tbody>
</table>

www.actnow.org.uk | Tel: 01924 451054