



## *Briefing Sheet: Whose Data is it anyway?*

Last year's debacle concerning the cavalier dissemination of persona data by HM Revenue and Customs to the National Audit Office and other government departments highlighted the role of the Information Commissioner, whose office (the ICO) is the UK's independent public body set up to promote access to official information and protect personal information. The Ministry of Justice is the ICO's sponsoring department within the Government. The protection of personal data is governed by the Data Protection Act 1998.

Information commissioner Richard Thomas recently launched a thinly veiled attack on Gordon Brown after the PM's House of Commons statement saying he "profoundly regrets" the loss of 25 million personal records. The information commissioner said in response, "For some time I have been pressing the government to give my Office the power to audit and inspect organisations that process people's personal information without first having to get their consent. Ultimately this will ensure better compliance with the law and protect people's data".

"It is also important that the law is changed to make security breaches of this magnitude a criminal offence."

Thomas complained about his ability to only take "limited enforcement action" at present.

Making data breaches a criminal offence "would serve as a strong deterrent and would send a very strong signal that it is completely unacceptable to be cavalier with people's personal information," he said.

As a result, the PM announced that ICO would be granted the power to carry out spot checks on government departments.

When Thomas gave evidence before the House of Lords' Constitution Committee on Surveillance and Data Collection, he proposed significant extensions of his Office's powers. Noting that current Data Protection legislation imposes only minor penalties for negligent exposure of personal data, he proposed a new criminal offence of "knowingly and recklessly" flouting the provisions of the Act. He pointed out that only in the financial sector can this be pursued with effect at present, and then only by the Financial Services Authority under alternative legislation.

The fact of the matter is that the ICO's powers are pathetically meagre. At the moment the penalties for breaching the Data Protection 'Principles' (which deal with the fair and accurate processing of data) are limited to a financial penalty either in the Magistrates' Court or the Crown Court and there is no offence, for example, for the reckless and insecure dissemination of personal data to recipients who otherwise may be entitled to receive it.

As long ago as May 2006 Richard Thomas in his report 'What Price Privacy Now?' ([http://www.ico.gov.uk/upload/documents/library/corporate/research\\_and\\_reports/what\\_price\\_privacy\\_now.pdf](http://www.ico.gov.uk/upload/documents/library/corporate/research_and_reports/what_price_privacy_now.pdf)) called for prison sentences of up to two years for the illegal buying and selling of personal information. Perhaps something may now be done.

In light of the possible legislative consequences of this unfortunate episode, The Saunders Law Partnership's business clients need to be aware of their own responsibilities to comply with data protection law and the Principles upon which it is based which are, briefly that personal data shall be:-

- Fairly and lawfully processed
- Obtained only for one or more specified and lawful purposes
- Adequate relevant and not excessive
- Accurate and kept up to date
- Not kept for longer than necessary
- Processed in accordance with the rights of Data Subjects under the Act
- Protected against unauthorised or unlawful processing or accidental loss or destruction by appropriate technical and organisational measures
- Not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection.

The Saunders Law Partnership offers an audit service to its business clients to ensure compliance with the Data Protection Act 1998. For information contact Stephen Gilchrist.



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