



Organised and Financial Crime Unit

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9 July 2008

Electoral Registration Officers and the National Fraud Initiative

I am writing about an Order that we are proposing to make under section 32H(3)(a) of the Audit Commission Act 1998.

The Serious Crime Act 2007 amended the 1998 Act to give the Audit Commission legislative powers to undertake data matching exercises for the purpose of assisting in the prevention and detection of fraud.

Under those powers the Audit Commission may undertake data matching for certain bodies on a mandatory basis, namely, local authorities, NHS trusts and others falling within its audit or inspection remit. These bodies must furnish the Commission with such data as it requires for the purpose of its data matching exercises.

As I think you will be aware, the National Fraud Initiative (NFI) team at the Audit Commission has recently engaged in a data matching exercise which has involved the matching of electoral register data to council tax data. The purpose of this match has been to identify anomalies that could be indicative of council tax "single person discount" fraud. This is where an individual claims single person discount, but there have actually been other non-dependant adults living at the same premises, as evident from the electoral register. The pilot exercises undertaken to date indicate that nationally this work could reduce the amount of discounts fraudulently claimed by as much as £200 million over the next three years. This could make such matches amongst the most successful in the NFI.

During the course of this exercise, the question has been raised as to whether or not the Commission will be able to rely on section 32B(1)(b) of the Audit

Commission Act to obtain a copy of the electoral register from electoral registration officers (EROs). The Audit Commission has been advised by counsel that, although the ERO must be an officer of the local authority in order to be eligible for appointment, once appointed that person will be the holder of an independent statutory office, separate from the local authority itself. Thus, any documents will be held in an independent capacity. If this is the case, EROs may not be required to provide the Commission with the electoral register for data matching under section 32B.

We have considered carefully whether this problem can be avoided by means of seeking the full electoral register from the local authority, not from the ERO. There appear to be two difficulties with this. Firstly, although the local authority has the right to obtain the register from the ERO on written request, it will not always have done so, and this may lead to a gap in the provision of data under the legislation. Secondly, it has been argued on behalf of some authorities that data matching under the Audit Commission Act is a function of the Commission, not of local authorities, and as such, regulation 107(4) of the Representation of the People (England and Wales) Regulations 2001 may prevent them disclosing the register to the Commission. There are countervailing arguments but, as it is, it does raise a doubt.

Our view is that there should be no question about the legal basis for proceeding under the new powers and have concluded that the best way of resolving the problem would be to make an Order adding EROs to the list of public bodies in section 32B(2) of the Audit Commission Act 1998. This would put the matter beyond doubt for the future.

Such an Order would be compatible with regulation 94(3) of the Representation of the People (England and Wales) Regulations 2001, which specifically provides that an ERO may disclose the full electoral register in accordance with an enactment. The proposed Order would also be consistent with the overall scheme of the regulations, which generally authorise disclosure for purposes connected with the control of fraud.

We would be glad of your views on this proposal by 31 July please. Our intention is that any such Order should be in place in advance of the next data matching exercise due to commence in October this year.

I have written in similar terms to the Society of Local Authority Chief Executives, and the Association of Electoral Administrators.

RICHARD RHODES

The Electoral Commission

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31 July 2008

Dear Mr Rhodes

Thank you for your letter of 9 July 2008 regarding access to the full electoral register for National Fraud Initiative (NFI) activities.

Your letter seeks the views of the Electoral Commission – hereafter referred to as ‘the Commission’ – on a proposal to amend section 32B(2) of the Audit Commission Act 1998 so that Electoral Registration Officers (EROs) are added to the list of public bodies which must furnish the Audit Commission with such data as it requires for the purpose of its data matching exercises. This proposal is intended to address current doubts as to whether the Audit Commission can rely on section 32B(1)(b) of the Audit Commission Act to obtain from EROs a copy of the register to assist its NFI activities.

One of the Commission’s principal objectives is to promote confidence in the integrity of the registration system. To that end we aim to ensure that the electoral register is, and is seen to be, securely compiled and maintained and used only for electoral purposes. Therefore, we do not agree with the principle of using the electoral register for NFI activities.

However, if it is ultimately decided that access to the register for NFI activities should be allowed, we believe that including the ERO under section 32B(2) of the Audit Commission Act is not the best course of action to achieve the desired result.

Notwithstanding the fact that there are some existing instances (for example, data matching to investigate council tax fraud) where access to the register for non-election purposes is provided for in legislation not directly designed to regulate elections, we do not support adding further instances of this approach. It is important that EROs are able effectively to deliver their duties with regard to access and supply of the register; that those wishing to access the register (not least the Audit Commission) can be aware of

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their rights without having to pursue costly legal advice; and that the elector can be sure about who will be able to obtain their details and for what purposes. In addition, given that the register is a sensitive document, it is important that it is simple to control and scrutinise the processes governing its access and supply.

For these reasons, we believe the legislative framework governing access and supply of the register should be straightforward and unambiguous. Given that the register exists and is used primarily for electoral purposes, it seems reasonable that it should be governed through electoral legislation.

If the register is to be made available for NFI purposes, it would be more appropriate to achieve this through altering regulation 113 of the Representation of the People Regulations to include the Audit Commission as an eligible recipient of the electoral register from the ERO. It should also be clear what use the Audit Commission should be able to make of the register. Therefore, we would recommend a clear statement that the register is to be used only for the statutory functions of the Audit Commission for the purpose of detecting and preventing crime.

We note that the Association of Electoral Administrators also agree with our view that the most appropriate place for legislative change would be in the Representation of the People Regulations.

Yours sincerely



Peter Wardle
Chief Executive

(Approved by Peter Wardle and signed in his absence)

