



Organised and Financial Crime Unit

Richard Rhodes

5th Floor (B), Fry Building, 2 Marsham Street, London SW1P 4DF
Switchboard 0870 000 1585 Fax 0870 336 9014 Direct Line 020 7035 1570
E-mail richard.rhodes@homeoffice.gsi.gov.uk www.homeoffice.gov.uk

Mr David Clark
Director General
Society of Local Authority Chief Executives
Head Office
Hope House
45 Great Peter Street
London
SW1P 3LT

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 Electoral Commission, and the Association of Electoral Administrators.

RICHARD RHODES

SOLICITOR TO THE COUNCIL & CORPORATE LEGAL TEAM

MARK HEATH, LLB Solicitor, Dip.LG

Southampton City Council
Civic Centre
Southampton SO14 7LT



Direct Dial: 023 8083 2371
Email: mark.heath@southampton.gov.uk
Please ask for: Mr M R Heath

Fax: 023 8083 2308
Our ref: MRH/lcb/
Date: 24th July 2008

Mr Richard Rhodes
Organised & Financial Crime Unit
Home Office
5th Floor (B) Fry Building
2 Marsham Street
LONDON
SW1P 4DF

Dear Mr Rhodes

ELECTORAL REGISTRATION OFFICERS AND THE NATIONAL FRAUD INITIATIVE

Thank you for your letter of 9th July 2008 to David Clark, the Director General of the Society of Local Authority Chief Executives (SOLACE).

I am the Returning Officer at Southampton City Council and a member of SOLACE's Electoral Affairs Panel. David Clark has passed your letter to David Monks who is the Chair of the Electoral Affairs Panel. He has previously asked me to advise and attend meetings in relation to this matter. Accordingly I have been asked to reply to your letter.

I will not recap over all the issues, since you are clearly aware of them. The line I have taken on behalf of SOLACE and Returning Officers in relation to this matter very much parallels the sentiments expressed in your letter, namely the need to achieve a definitive, legally clear and unequivocal position on the matter. There are issues of policy associated with this which I will refer to later, but the predominant concern that has been expressed to me is the need for absolute clarity and legal certainty.

At a meeting a couple of months ago attended by representatives from the Audit Commission, Ministry of Justice, Electoral Commission, myself (on behalf of SOLACE) and John Turner on behalf of the Association of Electoral Administrators (AEA), a proposal was tabled which took account of the plethora of Counsel's Opinions circulating as a result of the way in which this matter had been progressed which seemed to achieve an acceptable solution without the need for legislative reform at this stage. Unfortunately, it appears that a further Counsel's Opinion has been obtained by a small group of authorities and, although we have not yet seen it, we have been told that it raises some doubts upon that proposal.

First of all, it does seem to me that there are some policy issues underlying this. Without in any way wishing to question the appropriateness or validity of the National Fraud Initiative, the role and use of the full Electoral Register is a matter of concern to those involved with elections. It is the gateway to democracy; its use for multiple other purposes can cause those who would otherwise register to choose not to do so. This can have an effect upon the democratic processes of the country. This is a genuine and legitimate concern that has been expressed for a long period of time by all those involved with elections, both those within Government departments, the Electoral Commission, Returning Officers and electoral administrators.



There is a need for a robust and genuine debate about the future use of the Electoral Register. As an aside, you will, I am sure, be aware of the recent Data-Sharing Review by Richard Thomas and, at the request of the Prime Minister, Mark Walport prepared a report on the topic of data-sharing which, amongst other things, recommended the cessation of the sale of the edited Electoral Register by local authorities. Whilst this has no direct bearing upon the disclosure of the full Electoral Register in accordance with legislation, it does demonstrate that the policy on the re-use of the Register generally may have moved in a different direction. There is, in my view, a policy issue here that requires some further thought and consideration.

If the policy is to make use of the full Register for other purposes within the legislative framework, then I certainly agree that some clarification of that in a robust and unequivocal manner would be extremely helpful and appropriate. I am not entirely convinced that the proposal that you make is the best way of delivering that. My view is that the appropriate person to disclose the full Register for this purpose to the Audit Commission is the local authority. I would prefer to see the Representation of the People (England and Wales) Regulations 2001, which established a comprehensive statutory regime as to whom the Electoral Registration Officer may supply the Register and for what purposes that Register may be used, amended either to prescribe the Audit Commission as one of the bodies to whom the Electoral Registration Officer may disclose the Register, in this case for purposes in relation to the Serious Crime Act 2007 or (and this is my preferred option) that the local authority may pass on the full Electoral Register, once it has obtained the full Register from the Electoral Registration Officer to the Audit Commission to perform the Audit Commission's functions under the Serious Crime Act 2007. Whether or not local authorities could refuse to obtain the Register from the Electoral Registration Officer and, thereby, fail to pass it on to the Audit Commission, is not, I will admit, something I had contemplated, and I will need to cast my mind in the direction of that issue. But, in principle, I believe it would be possible to provide a form of wording that says that where the Audit Commission requests the full Register from the Chief Financial Officer / local authority, the Chief Financial Officer / local authority shall make such a request under the appropriate paragraph of the Regulations for the Full Register from the Electoral Registration Officer. I do not believe that the wording of such an amendment could or should allow the local authority to not use its powers to get the Register from the Electoral Registration Officer, and I see no reason why the wording of such an amendment within these Regulations could not compel that, if that is felt necessary (and I put that on the basis that the Audit Commission feels that its other powers both contained within the Audit Commission Act itself and other secondary legislation is insufficient to require the Chief Financial Officer to take such actions).

I believe in principle, it would be preferable for the Electoral Registration Officer not to be passing the full Electoral Register to the Audit Commission for these purposes, but for the local authority to do so. The purpose of the NFI is clearly focussed on the local authorities' functions and responsibilities. It is the local authority who is subject to audit under the Audit Commission Act 1998. It is the local authority's Chief Financial Officer who has responsibility for ensuring the efficient and effective financial administration of the local authority's financial affairs. On the policy point that I have made, if public policy is that the re-use of the full Register may be made but always within the proper constraints of the legislative regime as approved by Parliament, I think one method of maintaining a degree of public confidence in the process is that the Electoral Registration Officer's focus remains with and always with the elector, the electorate and the electoral process, and that where there is re-use for the local authority's purpose, that must be controlled by, managed by, organised by and any risks lie with the local authority rather than the Electoral Registration Officer and the elections staff.

Our overall view of this proposal, therefore, in this context, is that we would have some concerns about it and not be able to give it immediate support at this time, in this form.


I think that it would be exceedingly helpful if there was a further meeting of all the participants that took part in the previous meeting, if possible with you or your representative from the Home Office, so that we may discuss how to take this matter forward in the most sensible and useful form.

Therefore, would a round table meeting with all those interested parties, including you, together with any other representatives who it is thought might be helpful or appropriate to attend be the best way forward?

I hope these comments and this suggestion is of use and benefit.

Please do not hesitate to come back to me if you have any questions, and I have sent a copy of this letter to the Ministry of Justice, Electoral Commission and AEA with whom we have been in significant dialogue over this issue for some time, as I am sure you will appreciate and who I believe you have also consulted upon your proposals.

Yours sincerely



Mark R Heath
Solicitor to the Council

cc:	David Clark,	Director General, SOLACE
	David Monks	Chair, SOLACE Electoral Affairs Panel
	Ministry of Justice	
	Electoral Commission	
	Association of Electoral Administrators	

If you would like this letter sent to you in another format or language, please contact the number at the top of this letter.

Mr.