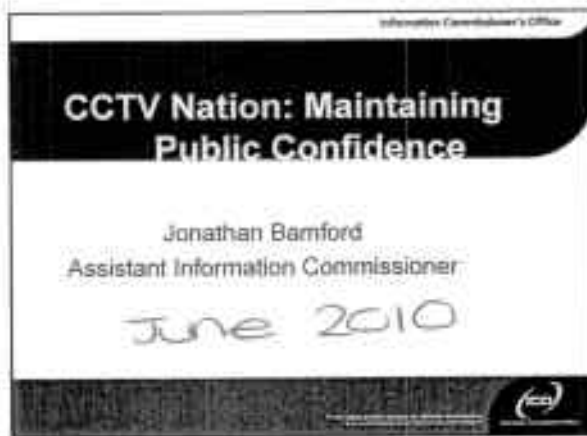
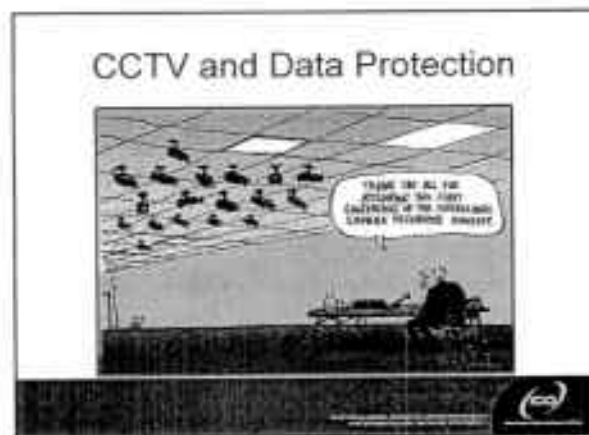
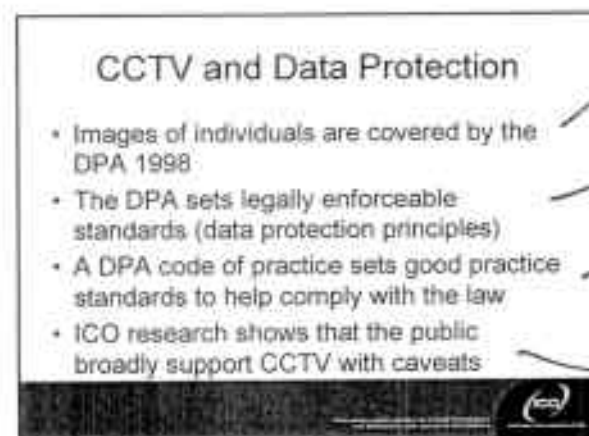


CCTV Number 411 -
Ben Gould - dr
Isabelle Sirey - Liberty

[illegible]

- Went to letter to go check
CCTV & DP - on walking
by digitally changed caption
links in Mr. / closest home
to start ^{we can} ~~enhance~~ ^{use} ~~search~~
for CCTV - No CCTV



- DPA applies - no - can't be
1st nor future.

→ No info system changes internal system as
class - 19.1.61

by the way it's too like want slatter
chore - p slatter
down up p slatter - down p slatter

→ specific review on PACE
+ also see the game

CCTV - public right - but clear
- see benefit to others - should be
but have only camera
- camera not a vehicle

13:45 - SS moved
upstairs
- also on other end

The Data Protection Principles

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate
- Not kept for longer than necessary
- Processed in line with individuals' rights
- Kept secure
- Not transferred to countries without adequate protection

Art 8

⇒ cf purpose

Some Important DP points

- Is CCTV justified?
- What do individuals expect?
- What is collected?
- Restrictions on use/disclosure
- Image quality
- Retention
- Security

both purposes

Art 8

impact assessment

- value our data receives
- control over data
- No value!

- not justified for public

- not to 40, 1

signs - which purpose - for CCTV

images or data - for CCTV

only for purpose - not any other

for purpose - Inconvenient

how long - pattern

Order - new challenges

- new challenges

- new challenges

- CCTV in public space

Further Information

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF
United Kingdom

Switchboard: 01625 545 700
Helpline: 01625 545 745

Email: mail@ico.gov.uk

www.ico.gov.uk

Public have contributed an offering for it.

- some public areas - above all

- some public areas - above all

- some public areas - above all

- some public areas - above all

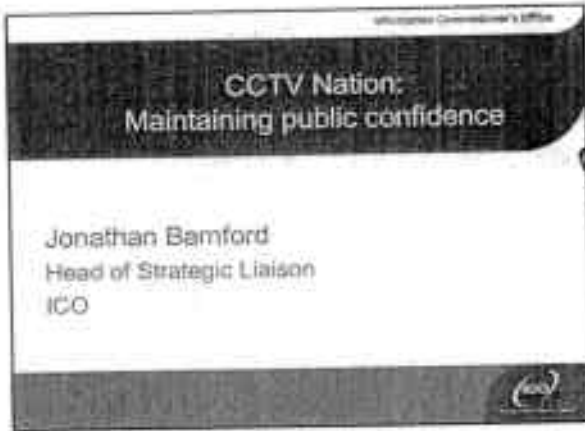
- some public areas - above all

- ToC like 1/1.0

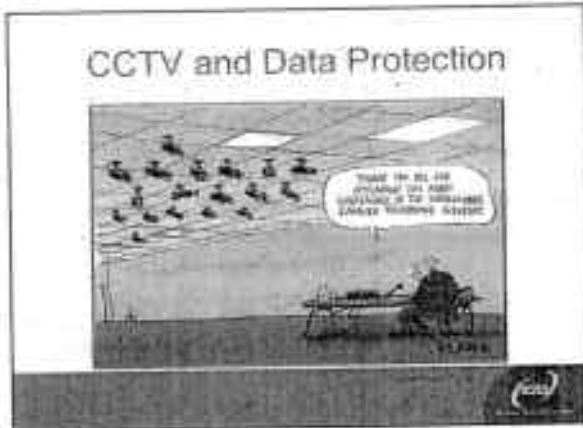
CCTV East Parliamentary Centre 10/6/10

Chair Rob Mager - Andrew Colles Liberts

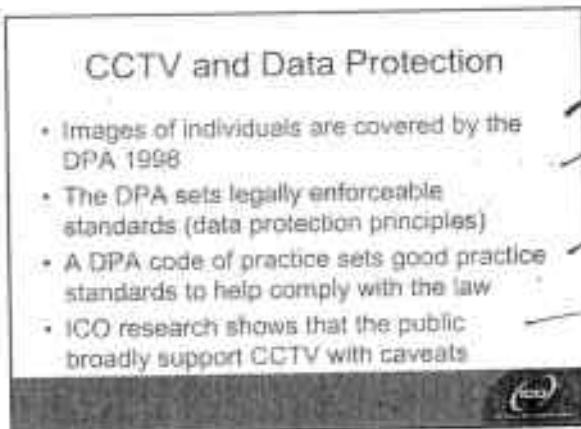
-JBate



23 years since development of CCTV
from small home centre schemes, approx 1000
publishing photo/video order, sign, but guidelines
more digital technology - help from private
being a eye to some products - Anti-Fit - Widening
- Go/3 was devices with use Widening
borders Widening Right - Radio recording
- Number data colours for private - Increased
Join up public private data Changes on Justice
Partners - regarding CCTV in public places as well
1st rule suites to see public places being over
sure was ok regarding agreement 1st
have seen a line for border debar
as file of CCTV - and just suggesting a
right to file to file to file to file
- also both regulate of CCTV
- follows on 2 public enquiries into SS.



One constant been our DP
laws which set standards for
info handling - control to
proper operation CCTV - design
not products designed to do it
DPA - to cater after HMA MS
and in some cases regard
James Act - talk about how CCTV
what public hell is they want - and
direction of view.



debate set of rules

bring to like -

2003 research on Public Attitudes
to CCTV and later research

attitudes to SS show consistent change:-

- public support when see
benefit to them

- don't like when don't see
benefit or aware!

- expect set of rules - and enforced

- SS research - or applied law
in the past has been

New Structure, New Powers and New Approach

Maureen H Falconer

Sr Guidance & Promotions Manager
Information Commissioner's Office

**Data Protection – Promoting Openness and
Safeguarding Individuals
2nd Annual Conference**

16 June 2010



New Structure, new powers & new approach...

➤ Our Mission:

The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

➤ Our Vision:

By 2012, we will be recognised by our stakeholders as the authoritative arbiter of information rights, delivering high-quality, relevant and timely outcomes, responsive and outward-looking in our approach, and with committed and high-performing staff – a model of good regulation and a great place to work and develop.

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MISSION:

Uphold information rights;

Promote openness and data privacy.

VISION:

Recognised as an authority;

Delivering high-quality, relevant and timely outcomes;

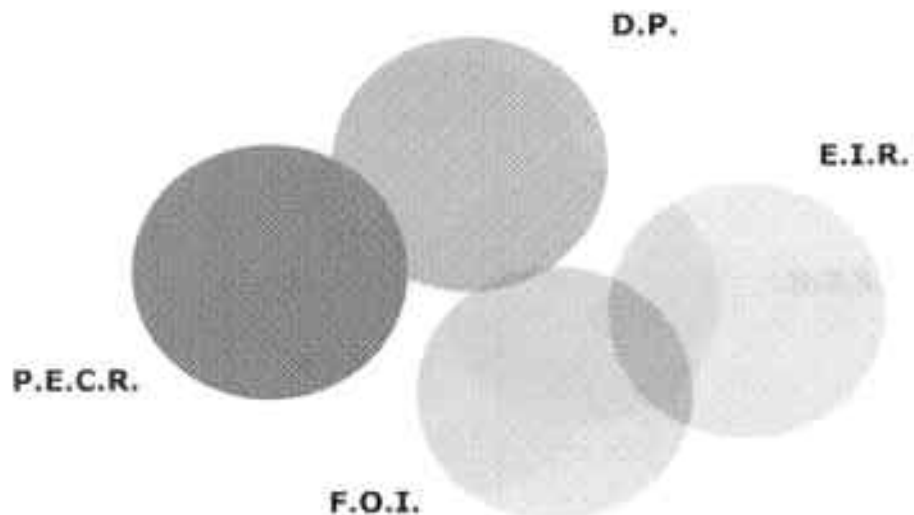
Responsive and outward looking;

Committed, high performing staff;

Model of good regulation;

Great place to work.

Current Structure...



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Essentially disparate sections dealing with each piece of legislation;

Small crossovers between:

- DP & PEC Regs iro marketing

- DP & Fol iro personal data

- Fol & EIR iro of process

Essentially, silos of activity:

- DP Policy

- Fol Policy

- DP Practice

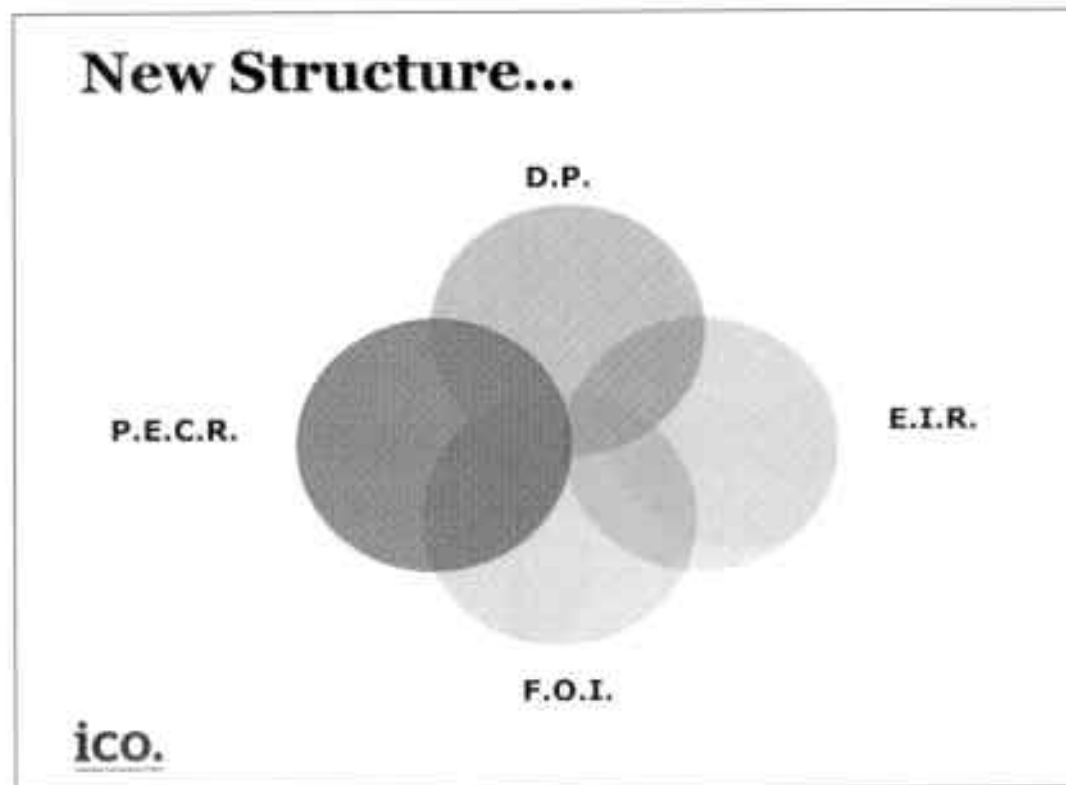
- Fol Practice

- DP Development

- Fol Development

- Audit

- RAD



Internal structure reflects activity rather than legislation:

- Policy Delivery
- Strategic Liaison
- Good Practice
- Enforcement
- Customer Contact
- Complaints Resolution

Current Powers...

- Powers:
 - Information Notices
 - Enforcement Notices
 - Undertaking
 - Entry and inspection
 - Audit (by invitation or condition of Undertaking)
- Offences:
 - Processing without notification/failure to notify changes (S21)(1&2)
 - Failure to comply with/making a false statement in a Notice (S47)(1)
 - Unlawful obtaining (S55)(1)
 - Unlawful selling (S55)(5)
 - Enforced subject access (S56)

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The ICO has powers to change the behaviour of organisations and individuals that collect, use and keep personal information.

These powers are designed to bring about compliance with the Data Protection Act 1998 and related laws.

They include criminal prosecution, non-criminal enforcement and audit.

We refer to this as Regulatory action.

The powers include:

New Powers...

Powers:

- Proactive audit – (Government and its agencies with expectation of public authorities through time)

Offences:

- Wilful and reckless breach of the data protection principles
- Monetary penalty notice for 'serious' breaches

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AUDIT:

- constructive participative process with real benefits
- consensual audit preferred but will pursue a compulsory audit if unwilling to engage
- no unreasonable demands will be made
- refusal without good reason may be taken into account when determining the amount of any monetary penalty

WILFUL & RECKLESS BREACH:

- previously not an offence
- not exercised all due diligence

MONETARY PENALTY:

- to deal with serious contraventions
- both a sanction and a deterrent against deliberate or negligent disregard of the law
- may also serve an enforcement notice for the same contravention
- not if breach is discovered while auditing – consensual or compulsory
- investigating the benefits of accreditation for co-operation

New Approach – our aim...

The ICO will take a practical down to earth approach – simplifying and making it easier for the majority of organisations who seek to handle personal information well and tougher for the minority who do not.

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Our aim:

to ensure that personal information is properly protected and taking regulatory action where this is at risk and is being deliberately or persistently ignored or examples need to be set or issues need to be clarified.

Carrot and Stick Approach:

adopting a targeted, risk-driven approach
not using our legal powers lightly or routinely
taking a tough and purposeful approach when necessary.

We believe:

Targeted, proportionate and effective regulatory action will also contribute to the promotion of good practice and ensuring we remain an influential office.

New Approach – when to act...

- Likelihood of 'serious' detriment to small number
- Large number (even if less detriment)
- Need to clarify a point of law or principle
- Need to set an example
- Deliberate, wilful or cavalier attitude
- Great public interest
- Risk to credibility of law or ICO

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We will adopt a selective approach driven by concerns about **significant actual or potential detriment**.

The initial drivers will usually be:

- issues of general public concern;
- the novel or intrusive nature of particular activities;
- concerns raised with us in complaints that we receive;
- concerns that become apparent through our other activities.

In addition, we will target particular sectors or organisations for attention, including audit

However, not all non-compliance will be referred for regulatory action.

Cases will only be pursued where:

these criteria are satisfied; *and*

a monetary penalty, a sanction for a criminal breach or formal action is both a proportionate response and reasonably achievable; or an audit could be expected to bring about any necessary improvement in practice.

New Approach – delivery...

Checking compliance against good practice and audit

DP Policy }
Audit } *Good Practice Department*

**Non-criminal action; monetary penalty notices;
investigation, assessment & co-ordination of pre-
prosecution work**

RAD }
Legal } *Enforcement Department*

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New Approach in action...

- *Focus on what will cause detriment*
 - Real likelihood of serious harm
 - Extent of harm – level vs volume
- *Prevention better than cure*
 - Working in partnership – request an audit
 - Foresee problems and identify solutions

...but we will use our new powers when necessary!!

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DETRIMENT

REAL and SERIOUS harm

EXTENT – one person with serious detriment or many with small detriment

PREVENTION

PARTNERSHIP with ICO – Engender public trust and confidence; reduction of potential harm

PIA – Identify potential for harm before it happens; benefits of efficiency, effectiveness and economy

BUT.... Will use powers where necessary!!

Information Commissioner's Office

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www.ico.gov.uk**



The Data Protection Act 1998 – New Powers and Penalties

**Ken Macdonald
Assistant Commissioner (Scotland & NI)**

**DMA Scotland
11 June 2010**



Contents

The New ICO

Breaches

Powers & Penalties

Getting it wrong

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The New ICO



.....Long Live The King
The King is Dead.....



Richard Fabras

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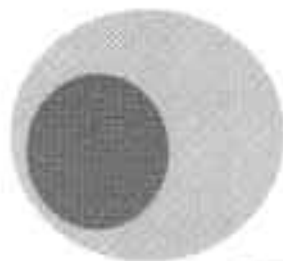


Information Commissioner's Office
Promoting good personal information use
protecting public access to official information

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Old Structure...

DP & PECR

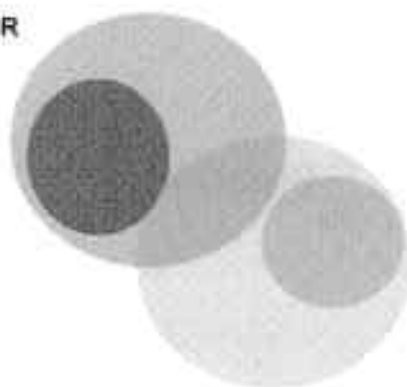


FOI & EIR

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New Structure...

DP & PECR



FOI & EIR

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Breaches



Background



NHS NES
December 2008



HMRUC
November 2007



NHS
Lanarkshire/Tayside
July 2008



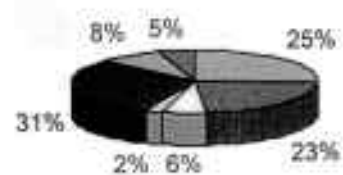
Glasgow City Council
Jan 2009

Google

Dept of Health
May 2007

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Causes of Reported Data Loss



- Disclosed in Error
- Lost Data/Hardware
- Lost in Transit
- Non-secure Disposal
- Stolen Data/Hardware
- Technical/Procedural
- Other

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Our Strategy



ICO Regulatory Action Policy

...is to take a practical down-to-earth approach – simplifying and making it easier for the majority of organisations who seek to handle personal information well and tougher for the minority who do not.

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Drivers of Regulatory Action

Significant actual or potential detriment

Public concern

Degree of intrusion

Level of complaints

Issues identified by the ICO

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Undertaking Regulatory Action

Purposeful action will be taken when:

Obligations are deliberately or persistently ignored

Examples need to be set

Issues need to be clarified

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Powers & Penalties



Security Breaches - Powers & Penalties

Breach of Principles

Formal Undertakings
Enforcement Notices
Audits (with consent)
Monetary Penalties
Information Notices
Assessment Notices
Search Warrants

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Security Breaches - Powers & Penalties

Offences

Sec 55 offence

Failure to Notify

Failure to Follow Notice

Max £5k in Sheriff Court

Unlimited fine in High Court

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Monetary Penalties



Monetary Penalties ICO Guidelines

Most serious situations only

Sector, size and resources of the DC

Not intention to impose serious financial hardship

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Monetary Penalties ICO Guidelines

The Commissioner has to be satisfied that:

There has been a serious contravention of section 4(4) of the Act by the data controller,

- b) The contravention was of a kind likely to cause substantial damage or substantial distress and either,
- c) The contravention was deliberate or,
- d) The data controller knew or ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but failed to take reasonable steps to prevent the contravention.

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Monetary Penalties ICO Guidelines

Seriousness of contravention

The contravention is or was particularly serious because of the nature of the personal data concerned;

The duration and extent of the contravention;

The number of individuals actually or potentially affected by the contravention;

The fact that it related to an issue of public importance, for example, unauthorised access to NHS Emergency Care Summaries

The contravention was due to either deliberate or negligent behaviour on the part of the data controller

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Monetary Penalties ICO Guidelines

Likelihood of substantial damage or substantial distress

The contravention was of a kind more likely than not to cause substantial damage or substantial distress to one or more individual.

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Monetary Penalties ICO Guidelines

Deliberate contravention

The contravention by the data controller was deliberate or premeditated;

The data controller was aware of and did not follow specific advice published by the Commissioner or others and relevant to the contravention; or

The contravention followed a series of similar contraventions by the data controller.

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Monetary Penalties ICO Guidelines

Reckless contravention

The likelihood of the contravention should have been apparent to a reasonably diligent data controller;

The data controller had adopted a cavalier approach to compliance and failed to take reasonable steps to prevent the contravention, for example, not putting basic security provisions in place;

The data controller had failed to carry out any sort of risk assessment and there is no evidence, whether verbally or in writing, that the data controller had recognised the risks of handling personal data and taken reasonable steps to address them;

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Monetary Penalties ICO Guidelines

Reckless contravention (con't)

The data controller did not have good corporate governance and/or audit arrangements in place to establish clear lines of responsibility for preventing contraventions of this type;

The data controller had no specific procedures or processes in place which may have prevented the contravention (eg, a robust compliance regime or other monitoring mechanisms)

Guidance or codes of practice published by the ICO or others and relevant to the contravention were available to the data controller and ignored or not given appropriate weight.

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Assessment Notices



Assessment Notices

Power of audit in the absence of consent

Government Departments – but could be extended to other public bodies and private sector

Statutory Code of Practice to follow

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Assessment Notices

ICO will aim for co-operation

Recommendations aimed at helping

Developing capability – staff and audit practice

Question of publication to be addressed

Spot Checks involve publication – but only after a department's response to our recommendations

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Summary



The ICO approach

Focus on what will cause detriment

- Real likelihood of serious harm
- Extent of harm – level vs volume

Prevention better than cure

- Working in partnership
- Foresee problems and identify solutions

...but we will use our new powers when necessary

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DETRIMENT

REAL and SERIOUS harm

EXTENT – one person with serious detriment or many with small detriment

PREVENTION

PARTNERSHIP with ICO – Engender public trust and confidence; reduction of potential harm

PIA – Identify potential for harm before it happens; benefits of efficiency, effectiveness and economy.



Information Commissioner's Office

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www.ico.gov.uk

scotland@ico.gov.uk
0131 301 5077

ICO: Alternative Access Regimes and their use for the solicitor – Overview of FOIA/DPA/EIRs

Catherine Vint
Senior Investigator
ICO NI.



11th June 2010

Content

FOI/DPA/EIR- uses for the solicitor
Information Access regimes
FOIA/EIR and the DPA overview
DPA, legal structure, definitions, coverage, scope
DP Principles, first principle
Rights under the DPA
Subject access requests
Exemptions
Contact details.

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Uses for the solicitor

- Access Regimes potential alternative mechanisms to discovery (e.g. Belfast Telegraph report of the Northern Trust's release of physician and toxicologist report under FOIA to family in Coroner's Inquiry into the death of Janet Brown)
- Can be a useful alternative to litigation
- Saves client expense and stress of litigation
- Can be utilised where litigation not in contemplation (e.g. employee taking a grievance)
- Client vindication.

Information Access

Freedom of Information Act 2000

Data Protection Act 1998

Environmental Information Regulations 2004

Privacy Electronic Communications Regulations 2003

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FOI/EIR – Types of Information Released

- Top legal aid earners in NI.
- Legal Advice on Derry/Londonderry name change
- DARD release of a KPMG Economic Appraisal Re: NI Racecourses.
- Financial model of Cancer Centre Belfast City Hospital
- Marker identities for QUB IPLS Institute exam.
- Surgeon mortality rates
- Stolen/ Lost items from the Ulster Museum
- EU subsidies paid to farmers

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Freedom of Information Act 2000

Royal Assent 30 November 2000

Extends to NI – but Northern Ireland Act 1998

Phased Introduction – Publication Schemes

Full Implementation 1st January 2005

Creates new rights for individuals

Imposes obligations on Public Sector

Wide Coverage

Private Sector increasingly aware

Making a Request under FOIA

- Request in writing (section 8)
- Section 11 (Form and Format)
- Duty to comply promptly (within 20 working days)
- Act is motive blind
- Duty to confirm or deny/communicate information
- Refusal Notice (section 17 FOIA)
- Fees notice (if applicable)
- Do not have to comply where costs of dealing with request exceed the 'appropriate limit'
- Advice and Assistance. (section 16)
- section 14 – is the request vexatious (see NI decision in case involving DRD, Ref: FS50154484)

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The Right to Know – FOIA 2000

Section 1 – A Request in writing from any **'person'**

To any public body covered by the Act

Information **"held"**

Twin Duties :-

Duty to confirm or deny if information is held .

Duty to communicate the information

....subject to 7 absolute and 16 qualified exemptions

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Exemptions under FOIA

Absolute Exemptions – *No Public Interest test to be applied*

Information supplied to/by security bodies- s.23

Court Records –s.32

Statutory Bar – section 44

Qualified exemptions – public interest test

Commercial Interest – section 43

Legal Professional Privilege – section 42

Health and Safety – section 38

Interface Exemptions

Personal data section s40

Environmental information –s39

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Public Interest Test

S2 (2) FOIA

"[Duty] does not apply if or to the extent that....In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"

- Relevant and non relevant factors identified by the Information Tribunal (see *Guardian & Brooke v Information Commissioner & BBC EA/2006/0013*)
- *Public not private interest*

Ms Elizabeth Jagger v John Darling & Others [2005] EWCA 683

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Refusing a Request

- s.17 FOIA must give a refusal notice
- Must state the exemption and why it applies and also public interest reasoning
- Applicant needs as much information as possible so as to decide whether to seek a review
- Failure to give an adequate refusal notice is a breach of FOIA
- Do not need a s.17 notice if you do not hold the information

FOI/EIRs

- Exemption at section 39 FOIA
- Environmental Information Regulations 2004
- Derived from European Directive 2003/4/EC
- Regulations drafted for UK by DEFRA
- Came into force Jan 01 2005, retrospective
- Give access to all environmental information held by the organisation as detailed in Regulation 2 (1) -
- 'Environmental information' has the same meaning as Article 2 (1) of the Directive

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What is covered under EIRs

Regulation 2 says:

Interpretation

2. - (1) In these Regulations -

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -
(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)."

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Who is covered

Detailed in Regulation 2 (2)

If you are covered by FOI you are covered by EIR!

Other bodies who are not covered by FOI are covered by EIR if:

they carry out functions of public administration;

or they are under control of a body covered by FOI **and:**
have public responsibilities relating to the environment,
exercises functions of a public nature and provide public
services relating to the environment

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Public Authority Obligations

- Generally same as FOIA but duty to make information proactively available.
- Verbal Requests valid - What that means in practice
- Duty to advise and assist
- Answer within 20 working days
- Extension to 40 days if complex or voluminous
- No extension for considering the public interest test
- Refusal notice as FOI
- EIR Code of practice (Regulation 16 equivalent to s45 code)
- No records management code - follow s 46
- Charging for requested information - see Markinson v Kings Lynn Borough Council EA/2005/0014 (28 March 2006)

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Exceptions available under EIRs

Reg (12) Exceptions – if disclosure would adversely affect:

- International relations
- Defence
- National security
- Public safety
- The course of justice
- Intellectual property rights
- Confidentiality of proceedings of the authority or any other PA where confidentiality is provided by law
- Confidentiality of commercial or industrial information where provided by law
- Exception for Personal Data – falls back into the DPA.
- All Qualified.

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FOIA and the Data Protection Act

- Relevant exemption is section 40 FOIA
- No exemption for Article 8 of the ECHR
- Section 40 (1) Information of which the requester is the subject- divert to s.7 DPA 1998
- Section 40 (2) Third Party Information – Information is exempt if it would breach the DPA.

Data Protection Act 1998

An Act to regulate the processing of information about individuals
European Directive 95/46/EC

- No restriction on personal data flow in EEA
- Right to privacy.
- Member states supposed to implement this by 24th October 1998
- Finally implemented in the UK on the 1st March 2000
- It is a RESERVED matter in Northern Ireland

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Structure of the DPA

- Definitions – Part 1 and sections 68-71
- Accessible Records- schedules 11 and 12
- Principles – Schedules 1-4
- Rights – Part II
- Exemptions – Part IV and Sch 7.
- Notification – Part III
- Enforcement – Parts V and Sch 9

Definitions within the DPA

Data

Personal Data

Relevant filing system

Accessible record

Sensitive personal data.

Processing

Data Controller

Data processor

Data subject

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Definition of Data

- Processed by electronic equipment or with intention that it will be processed by such equipment(s.1(1) DPA)
- Accessible records -health, education, housing, social services records (s.68 DPA)
- Relevant Filing System (s 1(1) DPA 98)
- FOI amendment - other data held by public authority (section 68 FOIA 2000) - category 'e' data

Personal Data

Personal data –

- " data which relate to a **living individual** who can be identified from the data or from that and other information in the possession of or likely to come into the possession of the data controller (s.1(1) DPA)"

S.2(2) Sensitive Personal Data

Scope of the DPA

"Processing" -
is now a very wide & Inclusive definition . No
longer is it confined to processing 'by reference to the
individual'.

Definitions continued

Data Controller: "Person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed"

Data Processor: "In relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

Data Subject " means an individual who is the subject of personal data"

S.4 (4) of the DPA: ultimate responsibility for adhering to the Act lies with the 'Data Controller'.

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8 Data Protection Principles

Personal Data Shall be:

1. Processed fairly and lawfully
2. Obtained only for specified and lawful purposes and further processed only in a compatible manner
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Kept for no longer than is necessary
6. Processed in accordance with the rights of data subjects (Part II)
7. Kept secure
8. Transferred outside the EEA only if there is adequate protection.

(Principles of good information handling- Legally enforceable quality standards.)

New Powers for Commissioner to fine up to £500,000.

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First DP Principle – key to information sharing.

Personal data shall be processed fairly and lawfully and in accordance with certain conditions (Sch 2 and 3) defined in the Act depending whether it is ;

'Non sensitive personal data' (only need a Schedule 2 condition)

'Sensitive personal data' (e.g. information about an individual's health). Need a Schedule 2 and 3 condition to process fairly

Conditions for processing

Sch 2 conditions

- Consent
- Contract
- Legal obligation
- Vital interests
- Administration of justice
- Legitimate interests of data controller

Sch 3 conditions

- Explicit consent
- Employment
- Vital interests
- Not for profit Trade Unions/religious/political/philosophical groups
- Already in public domain by data subject
- Legal proceedings/advice
- Administration of Justice
- Medical purposes
- Equal Ops monitoring
- Substantial public interest (SI2000/417)

Exemptions

- Subject access and non-disclosure provisions
- Some of the principals fall away.
- Facilitates information sharing
- Exemptions for crime and taxation/legal requirements

Exemptions continued

Section 35

- "(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by order of a court
- (2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary-
- (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
 - (b) for the purpose of obtaining legal advice
- Or is otherwise necessary for the purposes of establishing, exercising or defending legal rights."

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Exemptions continued

Legal professional privilege

Schedule 7 (10)

"Personal data are exempt from the subject information provisions if the data consist of information in respect to which a claim to legal professional privilege or, in Scotland, to confidentiality as between client and professional legal adviser, can be maintained in legal proceedings"

See Dubai Aluminium Co Ltd v Sayed Reyadh Abdulla S Nasser Al Alwani and Others (reported in the Times 06 January 1999 and mentioned at p.19 of the Commissioner's 15th Annual Report)

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Rights in the DPA

- Right of access to own personal data, known as subject Access (section 7)(e.g. client wanting their own file) (see s.27 (5) DPA 1998)
- Right to prevent processing likely to cause substantial damage or distress (section 10)
- Right to prevent processing for purposes of direct marketing (section 11)
- Rights in relation to automated decision-making (section 12)
- Right to seek compensation for breaches of the Act. (section 13)
- Right to seek rectification, blocking, erasure or destruction of inaccurate personal data (section 14) (Ensure client details are accurate)

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Section 7 – Subject Access

- A request in writing – Can charge a fee (Max £10/£50)
- Data controller has 40 calendar days to respond
- Data subject has right to be informed if his/her personal data being processed by the Data controller
- A description of the Data
- The Personal data in an intelligible permanent form
- Purpose for which the data is being processed
- Source of the Personal data
- Who it is being shared with
- Logic involved in automated decision making process
- Unless (s.8(2)) Disproportionate effort
- Effect of section 27 (5) DPA – SAR very strong right in law.

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DPA and Deceased Persons records

- DPA does not apply
- Access to deceased persons records under FOIA.
- Consideration of section 41 of the FOIA 2000.
- Common Law Duty of Confidence
- Access To Health Records (NI) Order 1993
- Article 8 Human Rights Act 1998
- Confidentiality subsists after death (*National Archives case Ref: FS50101391 contrasted with "Bluck v Information Commissioner and Epsom and St. Helier University NHS Trust EA/2006/0090"*)



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Basic Survival Skills: Interfaces and dealing with requests

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Access Regime Interfaces

- **Freedom of Information Act 2000**
- Data Protection Act 1998
- Environmental Information regulations
(Revised 2005)

- Human rights
- Enterprise Act
- Local Government Act
- Etc, etc.



Basic Survival: Documentation

- Freedom of information Act 2000 (FOI)
- Data Protection Act 1998 (DP)
- Environmental Information Regulations 2005 (EIR)
- Codes of Practice (s45 and s46, Reg 16)
- Fees Regulations (s9)
- ICO Guidance
- Decisions Notices
- Tribunal Decisions
- Others guidance and experience

Code of Practice

FOI section 45/EIR regulation 16

- Advice and assistance
- Handling requests
- Transferring requests
- Consulting with 3rd parties
- Contracts
- Refusing requests
- Complaints procedures

Code of Practice

FOI section 46

- Functional responsibility
- Policy
- Human resources
- Active records management
- Disposal arrangements
- Management of electronic records
- Review and transfer of records
- Standards

Fees Regulations - FOI

FOI section 9

- Not a charging regime, but facilitate withholding information
- Fees Limit £600 Any Government Department
- Fees limit £450 Any other public body
- All public authorities use same hourly rate £25/person/hour (regardless of costs)

Fees Regulations - FOI

What can be calculated:

- Determining if the 'information' is held
- Locating the information
- Retrieving the information
- Time of persons spent on those activities

Fees Regulations - FOI

What cannot be calculated:

- Time taken to check a request meets requirements of the Act
- Consideration of the requests
- Advice and assistance
- Extraction of the information
- Considering whether a request is vexatious
- Obtaining authorisation
- Time to taken to calculate charge

Charging Regime - EIR

Regulation 8 – A charging regime

- Any authority may charge for making information available unless:

It's in a public register or on an environmental list
Access is by view only

- The charges must be 'reasonable'
- Advance payment can be required
- The applicant must be made aware of the charges within 20 working days
- Before the charge is paid or after 60 working days an authority is not obliged to provide the information
- An authority must make available a schedule of charges

Interfaces

FOI/DP

- Confusion over SAR versus requests for official information
- Official information requests which include personal data of the applicant
- Official information requests which include 3rd party data

Interfaces

FOI/DP

- Section 40 – Exemption - Absolute
- If applicants data, exempt from FOI deal as SAR under DP
- If 3rd party data involved, s40 applied to that data following usual DP principles
- How do you deal with Hybrids?

Interfaces

FOI/EIR

- Debates regarding 'what is environmental information'?
- Does it matter to the applicant which regime is used?
- Similarities and differences

Interfaces

FOI/EIR

- Section 39 – Exemption – Qualified
- If Environmental information exempt under FOI dealt with under the regulations
- How do you deal with Hybrids?
- What if personal data involved?
- Section 40 FOI or Regulation 13 EIR

Similarities and differences FOI/EIR

- Language of the legislation
- Bodies covered
- Exemptions/Exceptions and the PIT
- Written/Verbal requests
- Proactive dissemination
- Time to reply
- Codes of practice
- Charging

Interfaces

FOI/Other statutes

- FOI section 44 statutory bars
- No direct equivalent in EIR
- Providing information outside of FOI/EIR

Surviving Requests

- Organisational awareness
- Normal course of business
- Policies, processes and PRACTICE
- Strong records management
- Proactive dissemination
- Talk to the applicant!
- When legitimate USE exemptions

Surviving Requests

The importance of refusal notices:

- **Respond** within 20 working days whatever the outcome
- Clarify what was requested
- Explain which information has been withheld, the exemption/s used and why
- Explain the appeals process

Surviving Requests

The importance of internal reviews:

- Dissatisfied applicant
- Review of the handling procedure and or the decision/s
- Code – More senior person – key, someone qualified
- One or more?
- Timescales
- Document the outcome

Appeals to the ICO

- Section 50 complaints
- Timescales
- Triage
- Required information
- Informal resolution
- Formal resolution

Notices

- Information Notice
- Decision Notice
- Enforcement Notice
- Practice Recommendation
- Contempt of court

Appeals to the Tribunal

- Within 28 days
- Paper only hearings
- Full hearing
- Uphold, overturn, amend
- Appeal to high court – only on a point of law
- Judicial review

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