

Freedom of Information 2.0

Christopher Graham
Information Commissioner

Constitution Unit FOI Seminar
7 December 2010



Context

- Information rights centre stage
- FOI embedded in public sector
- Compliance or culture change?
- Security concerns for personal data
- Government and European agenda

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Information Commissioner's Office

FOI/EIR

- Greater emphasis on proactive disclosure
- Government's "Transparency Agenda"
- Transparency Board (Cabinet Office)
- Salary information and public expenditure
- Obvious fit with Publication Schemes

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Complaints to ICO 2009/10

- FOI complaints received: 3734 – 20% up
- FOI complaints closed: 4196 – 39% up
- Significant reduction in age of caseload
- 628 formal decision notices
- 161 appeals to Tribunal

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Complaints Issues

- Volumes increasing – up 17% in 2010
- Resources likely to reduce significantly
- Tougher stance on timeliness
- Revised enforcement policy
- Small authorities – parish councils

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Possible amendments to FOI

- Cabinet minutes – ministerial veto
- Communications with the Royal Family
- Reducing the burden – cost/benefit
- A new “right to data”
- Re-use of public sector information

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Possible extension of FOI

- Newly created public authorities
- Privatised/partnership organisations
- Representative organisations
- Impact on EIR
- Geospatial information - INSPIRE

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Tribunal Activity

- First tier and Upper tier
- Paper hearings v oral hearings
- Strike outs and withdrawals
- Costs rulings
- Consent orders

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Upholding information rights in the public interest

Christopher Graham, Information Commissioner



7th Dec 2010

Information rights update

- ICO
 - Mission
 - Vision
 - Values
- Data Protection
 - Powers and penalties
 - Revising the Directive
- Freedom of Information
 - FOIA 2.0

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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.

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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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Our values



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We are:

Committed

We care about upholding information rights

Team workers

We work together as one ICO team, sharing information and expertise

Focused

We give priority to activities that make the biggest contribution to achieving our mission

Effective

We work productively and efficiently to produce high quality and timely outcomes, offering best value for customers and citizens

A model of best practice

We do not ask others to do what we are not prepared to do ourselves

Alert

We are alert to the perspectives and needs of all our stakeholders - and to the potential impact of new developments in our business

Fair

We treat everybody we deal with fairly and with integrity and respect. We are inclusive in our approach

Always learning

We are always learning and developing professionally

Climate change in UK

- Technological developments
- Changing expectations
- Security breaches
- Political interest
- Stronger regulation
- Pressure groups
- Transparency agenda



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Coalition priorities

What we do is where it's at

- Accountability
- Transparency
- Freedom
- Privacy

Efficiency

- Accountability drives savings
- Transparency identifies waste
- Right first time
 - Proactive disclosure and 'privacy by design' are cheaper
- Data Sharing Code of Practice

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Powers

- New powers introduced April 2010
 - Power of audit in the absence of consent
 - Government departments – but could be extended to other public bodies and private sector
 - Code of Practice published
- More on the way?
 - Implementing PECR
 - Compulsory breach notification

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There's not a lot that I can add to the suggestions of others. The only thing is that you might follow on from cookies and consent to say something more about the BIS consultation and in particular that the first compulsory breach notification is on the way, albeit confined to communication service providers. Also that implementation of the PECR Directive will require some increase in our powers (we think) but just how much is still under discussion.

Penalties

- Civil Monetary Penalties introduced April 2010
- Penalty of up to £500,000 for serious breaches committed knowingly/negligently
- ICO statutory guidance available
- Amount depends on nature/effect of contravention, behaviour of/impact on data controller

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Future EU framework

- Strengthened individual rights
- Free circulation of data, provided rules followed
- Revised rules in Police/Judicial co-operation
- Adequate protection for transfers outside EU
- Better implementation and enforcement
- New accountability principle?

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Accountability: a key principle?

Data controllers

- take appropriate and effective measures to implement data protection principles
- are able to demonstrate, on request, that such measures have been taken

Data Protection Authorities

- Focus on risk
- Proportionate
- Link to audit

Bridging different approaches – OECD, APEC, Canada – EU?

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Development of a Global Standard

Christopher Graham
Information Commissioner



1st Dec 2010

Where we are – and where we are heading

- ICO
 - Mission
 - Vision
 - Values
- Powers and penalties
- International
- Revising the Directive
- Accountability

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Climate change in UK

- Technological developments
- Changing expectations
- Security breaches
- Political interest
- Stronger regulation
- Pressure groups
- Transparency agenda



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International Transfers

- Growth of BCR
- Mutual recognition requirement
- Improving the current procedures
- More realism needed in legal framework
- MoJ call for evidence

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The European Scene

- Data Protection law commonplace
- Increasing harmonisation within EU
- More flexibility on international transfers
- Revised E-Privacy Directive
- Impetus for change
- Review of general DP Directive

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Madrid Resolution

- Adopted October 2009
- Supported by
 - DPAs
 - private sector
 - academics
 - civil society
- Call for intergovernmental conference

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Global Developments

- Growing spread of DP/Privacy Laws
- OECD Guidelines
- APEC Privacy Framework
- US Federal Trade Commission Active
- Global Privacy Enforcement Network
- Importance of self regulation

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Future EU Framework

- Strengthened individual rights
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Access to data, matching data:
appropriate, necessary and
proportionate?

Ken Macdonald
Assistant Commissioner
Information Commissioner's Office

IRRV Scottish Benefits Conference
1st December 2010



Data Sharing – the ICO Approach

Data Sharing and the Law
Deciding to Share
Fairness, transparency & Consent
Governance
Security of shared information
Individual Rights
Notification
Things to avoid
Protocols

Data Sharing and the Law

Check your vires

Express Obligations – legal requirement to share

Express Powers – a stated power to share, but not to the extent of an obligation

Implied Powers – sharing is reasonably incidental to an activity within express obligations/powers

Take legal advice before proceeding

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Deciding to Share

Why do you want to share ?

What information do you need to share?

Who will you share it with ?

When should it be shared ?

How should it be shared ?

Can the objectives be achieved differently ?

Fairness, Transparency & Consent (1)

Privacy notices

Who you are

Why you want to share

Who you are sharing with

Passive v Active Privacy Notices

Exemptions

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Fairness, Transparency & Consent (2)

Do NOT seek consent if statutory requirement

Nevertheless, *normally* good practice to inform of sharing

Consent most likely required where:

- confidential information to be shared without clear legal basis
- individuals may be expected to object
- where there may be a significant and adverse impact on an individual/group

Governance

Data Sharing Agreements / Protocols

Privacy Impact Assessments

Data Standards

Staff Training

Security of Shared Information

Organisational Security

Physical Security

Technical Security

Individual Rights

Rights to Access

Right to Object

Queries and Complaints

Use of Exemptions

Notification

Legal requirement

Keep your notification up-to-date

Prosecutions are frequent

Things to avoid

Failure to inform individuals about sharing

Sharing excessively

Sharing irrelevant information

Sharing inaccurate information

Sharing insecurely

Information Sharing Protocols

Purpose of Sharing

Partner Organisations

Data to be shared

Legal basis for sharing

Meeting individuals' rights

Governance
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Information Commissioner's Office

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scotland@ico.gsi.gov.uk

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Breaking down barriers to data sharing.

Iain Bourne

Information Commissioner's Office.

Breakthrough services in local
government.

1 December 2010

Data sharing

- What do we mean by data sharing?
- $A \rightarrow B$
- $A \rightarrow B, B \rightarrow A$
- $A + B \rightarrow C$
- $A + B \rightarrow C \rightarrow D \rightarrow E \dots$
- $A + B + C + D + E \rightarrow ? + ? + ?$
- Different models = different but related compliance issues
- Complex information chains / many partners

Opportunities...

- Multi-agency co-operation, 'joined-up' services – personalisation
- Convenience – 'tell us once'
- Child protection / crime reduction
- Crime / fraud prevention: mass data analysis
- People expect information sharing, but..

Risks...

- More data about more people available to more officials for more purposes?
- How do we explain very complex information systems to the general public
- How much control do they have over their information? How much do they want?
- Choice? Consent? Objection? Legal challenge?

How the Data Protection Act applies

- Deciding to share personal information
- Fairness and transparency
- Information standards
- Retention of shared information
- Security of shared information
- Access to personal information
- + Freedom of information
- Information rights more relevant than ever

Public sensitivity

- Electricity company → mobile phone company. Mobile phone company offers special tariff to customers in 'fuel poverty'
- Drug users more likely to have house fires. Fire brigade wants addresses of registered drug users from healthcare organisation
- Victim support – disclosure of victims of violence details to charity workers
- Commercial data sharing, list brokerage etc.
- Try to understand public sensitivity: the law doesn't answer all your questions

ICO data sharing code

- practical guidance re: the sharing of personal data in accordance with the DPA + other guidance the IC considers appropriate
- Good practice includes, but not limited to, compliance with the DPA
- Duty to consult with trade associations and individuals
- Submitted to SoS for approval (re: UK international obligations)

Data sharing code: status

- No legal duty to comply with CoP
- Admissible in evidence in legal proceedings
- Provisions must be taken into account – eg by Tribunal – when relevant to proceedings

Data sharing code: what will be in it?

- Strong on individuals' rights
- Public, private and 3rd sector advice
- Drafting 'info-sharing protocols'
- Transparency – esp. FOI
- Clear explanation of 'other law' + DPA
- 'Nuts and bolts' practical issues / governance
- Section on mergers / abolitions etc.
- Things to avoid
- Consultation ends January 5 – please participate

Further Information

**Information Commissioner's Office
Wycliffe House, Water Lane,
Wilmslow, SK9 5AF**

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Helpline: 01625 545 745**

Email. mail@ico.gsi.gov.uk

www.ico.gov.uk

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Information Commissioner's Office

Protecting Citizen Information

David Smith
Deputy Information Commissioner



25th Jan 2011

The current climate

- More for less
- Coalition commitments
- Monetary penalties
- Technological developments
- Access and accountability



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Information sharing

- Myths and reality
- Coroners and Justice Act 2009
- ICO data sharing code of practice
- Publication planned for March 2011
- More than just “sharing”

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ICO code

- Deciding to share
- Fairness and transparency
- Security
- Mergers and takeovers
- Private and third sectors
- Data sharing agreements
- Governance

Privacy by Design

- Data minimisation
- Privacy impact assessments
- Privacy enhancing technology
- Identity management
- Systems procurement

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General Approach

strengthening our teeth – no longer a “toothless tiger” but education, awareness, encouraging good practice still our primary focus;

retaining our commitment to “strengthening public confidence in data protection by 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” (if you want to keep this);

committed to principles of good regulation:

regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;

regulatory activities should be targeted only at cases in which action is needed;

developing risk based processes – based on minimising risk to individuals and society through improper use of personal information;

working with other regulators to ensure joined up approach, no double jeopardy etc;

international co-operation on cross border enforcement
eg case we referred to Spanish DPA on marketing of timeshare led to fine of 60,000 euros.

Risks and choices

- Do more or do less?
- Data protection not an optional extra
- Risk to trust and confidence
- ICO support available
- Accountability required

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Concluding remarks

- Information sharing and privacy protection are not alternatives
- Build privacy in from the start
- Sensible privacy protection is cheapest in the long run

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An update from the ICO.

Iain Bourne

Group Manager – Policy Delivery
ICO

BCS: 21 January 2011

What does the ICO do?

Enforces and regulates:

- Data Protection Act
- Freedom of Information Act
- Environmental Information Regulations
- Privacy and Electronic Communications Regulations

Provides information to individuals and organisations

Adjudicates on complaints

Promotes good practice

Our performance

c 212,000 – calls to our helpline
c 2.06m – visits to our website

Data protection

- 33,234 – data protection cases received
- 32,714 – data protection cases closed
- c 328,164 – organisations notifying

Freedom of information

- 3,734 – freedom of information cases received
- 4,196 – freedom of information cases closed

Significant risks and issues

- Health sector
- Credit and finance
- Security breaches
- Online and new technology issues (online CoP)
- Criminal justice sector

Other priorities

- Implementing monetary penalties
- Developing audit function
- Government's legislative programme
- Surveillance society update
- Revised E-privacy Directive
- Review of EU legislative framework

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- 'Nuts and bolts' practical issues / governance
- Section on mergers / abolitions etc.
- Things to avoid
- Consultation ended Jan 5 – 90+ responses
- → SoS for approval – publication in March

Review of DP legislative framework

ICO view:

- The current data protection principles are sound, but the law needs to achieve greater clarity of purpose and presentation. The principle of 'privacy by design' should be incorporated.
- The law must provide greater clarity about what is personal data, with a more contextual approach to the sensitivity of information.
- The law must be clearer about when consent is needed and what this involves.

Review of DP legislative framework

ICO view:

- The approach the law takes to the responsibilities of the data controllers and processors should better reflect modern business relationships.
- The law needs more realistic rules for international data flows.
- The law needs to be more in tune with the Freedom of Information regime and to recognise the impact of modern technology on what private individuals do with personal information.

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