

Answers we get to

What -

- Information

→ Scores

1  
d9

Scores I get from the RIBI  
of MPA - lots work the same way  
things go wrong sometimes

& here's think of yourselves

- like how does

Information Services - something do

into what use A service

Trust Your Public Trust or What  
you didn't expect

Exercise This year

A salutary tale



#### A Breach of Confidence

A report by the Parliamentary Commissioner on an investigation  
of a complaint about HM Revenue & Customs, the Child Support  
Agency and the Department for Work and Pensions

ico:

• (Commons) This

Not Research it might bring

Not another ticket, or May?

or (Commons) Other following

(ICO, or £1,000+) Records

RATHER



- Invader (Record) Invader

- Minor Mistake in segment

more

Then from 2 boxes

In brief

- HM Revenues and Customs
- Child Support Agency
- Department for Work and Pensions

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NICB  
workshop - till 6/6/11

- Split from Practice & then  
switched to Civil Administration

Lesson "update" to Ido -  
Gave Ms M same direction as  
the former practice  
Cllc & Tchr Regulator Tchr  
other Govt levels  
& no one took responsibility

### What happened

- Complainant (Ms M) dealing with a number of govt agencies had address incorrectly changed
- Error duplicated
- When error pointed out it was not corrected
- No one took responsibility

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### Consequences for Ms M

- Ms M's personal data sent to former partner
- Unexpected decrease in child support
- Time and effort spent trying to establish what had gone on
- Stress

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Lessons learned

- ① Systems Share info with each other
- change Cllc & Tchr Regulator to Govt level
- Go to Tchr Regulator to Tchr
- Myself take longer to find out what is fail

### Outcome

- Complaint to Parliamentary Ombudsman
- Detailed investigation
- Adverse outcome - maladministration
- Cost - actual and reputational

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## Outcome

- Complaint to Parliamentary Ombudsman
- Detailed investigation
- Adverse outcome - maladministration
- Cost – actual and reputational

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- Detailed investigation
  - COS - Organisational Type & Effect  
Who & how / to whom
- Administrative cost
- Only Ombudsman working best because the work had occurred
- They concentrated on what had got the concrete requirements from the DfES
- As I said No one took responsibility
- Meeting with Headteacher
  - Considered alternative review
  - Ms M was taking time off work to attend these

Bottom Big PR

But I think it's better writing

(4)

## More outcomes

In her response to a draft of this report, Ms M said that trying to sort this problem out had made her very distressed and had impacted on her family life. She felt she could not move on from her separation from Mr A, as the address change provided a constant reminder of a very unfortunate episode in her life. Ms M said she was particularly concerned because she took a lot of trouble trying to separate her and Mr A's affairs when they split up so that her credit rating was not adversely affected by his debts. She is still concerned that there may be some link between her and Mr A's affairs within a government department, which may leave her problems open in the future.

Having read the draft report, Ms M commented that she was shocked, to say the least, that agencies she had trusted appeared to have lied to her. Member of Parliament made a complaint, and delayed the investigation until such time as an audit (DID) was no longer possible. Ms M said that this left her in a situation where she would never know why the error had happened, she would never have peace of mind that it would not happen again and she would never trust a government agency again. Ms M said that she found all of this quite disturbing and sad.

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£2,000 Balance forwarded to Ms M

- Same amount but Great Damage

to reputation & Trust in the System.

x If this is how you will treat us?

Stay by a retailer, A Tesco - John Andrew  
would you go back?

- Would Terry Hines of Vince Business?



As the DfE have said last we - As Unicoy (Anytime)  
can take off - Trust a key or the people  
having of Associate Beta is At The Heart of  
Developing Trust.

+ If This Fails . . .

5

### More outcomes

100

## The ICO's powers

- Information gathering
  - Undertakings
  - Enforcement
  - Prosecution
  - Monetary Penalties

160

#### Monetary Penalties

- Administrative punishment:
  - Requires payment of a Monetary Penalty which must not exceed £500,000
  - ICO can serve a Monetary Penalty Notice on a data controller
  - Applies to all data controllers in the private, public and voluntary sectors.

100.

before I get back the Ocean of M.P.s  
below: so can't wait till you get  
home & we'll talk.

- ① - User Gathering - Needs + Screen Mockups
  - ② - ULR - user flows - but user is left
  - ③ - Feature - not functionality - Review  
Complexity + Complexity  $\rightarrow$  Prioritization
  - ④ - User needs vs. user motivation + SSS -
  - ⑤ - Alpha - now since 1 week ~~100% done~~

of the Constitution  
and the F. A.

- ① → his wife is conservative.

- ④ won't have to because  
it's the public sector  
(if nature is Section 16  
lawn Act)

### Monetary Penalties

- Before the ICO can impose a monetary penalty it has to be satisfied under section 13A that:
    - There has been a serious contravention of the data protection principles by the data controller.
    - The contravention was of a kind likely to cause substantial damage or substantial distress and either:
      - The contravention was deliberate or,
- ICO.

- Solium

- Reckless & Willful Breach

- Mayo (leaked of Herts)

or There was Age

### Monetary Penalties

- 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.
- ICO.

"gross negligence"

Toss of 5 - So far

- losing of Encrypted LAPTOPS

- What were used were NOT!

### Contravention was deliberate

- The contravention was deliberate or premeditated.
  - Data Controller was aware of and did not follow relevant advice published by the ICO and others.
  - Series of similar contraventions and no action taken by data controller to rectify cause of original contraventions.
- ICO.

- Again So far Toss of 5  
were AWAY - It was in  
Their respective Policies  
But not effective

no because

7

### Failed to take reasonable steps to prevent the contravention

- Inadequate procedures, policies, processes and practices in place
- No clear lines of accountability
- Failure to implement guidance or codes of practice published by ICO or others

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### Holes

- Same Reiteration twice
- FINE
- Good Article Acceptances  
V.V. Sensitive!!
- Annex 2006!

### [Category 2006]

### What happens? - Notice of Intent

- ICO must serve a data controller with a Notice of Intent setting out the proposed amount
- The Notice must also contain prescribed information and provide the data controller with at least 21 days to provide written representations to the ICO

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### \* Returns on Classification

- Working with implementation

- White blanket - unrestricting

### Curing of Non-Compliance

- M.P.N.

Encryption - Policy = Encryption  
Potentially - Not So

\* Person's best being used  
to store sensitive personal data

### MPN Summary

- Applies to ALL Data Controllers
- Only applies to **serious** contraventions of the data protection principles
- Notice of Intent
- Monetary Penalty Notice
- Appeal to the Tribunal

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5

## MPNs so far

1. Hertfordshire County Council - £100K
2. A4e - £60K
3. Hounslow - £70K
4. Ealing - £80K
5. ACS - £1K (£200K)

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## Monetary penalties – the future

# MORE

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## We want your views...

We are consulting on our draft information rights strategy.

This strategy is being introduced in light of our commitment to integrate our data protection and freedom of information activities whenever we can.

It replaces our former, separate data protection and freedom of information strategies.

The strategy describes the purpose for which the ICO exists and explains how we go about achieving this purpose.

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## EXPLAIN ACS

- fine in THOUSANDS  
to millions

ICO Tackles Ticks (is it working?)

- NHS - Changes

- Advertising - BBC etc

Healthcare not working  
(important)

- BP tie-up with etc

"And finally..."

- part of new APP Code

- to Jan 2011

one FP + FOI sites

focus on best case uses

team based working + local organisation

(4)

## How to take part...

Please visit the consultations page of the ICO website:

[www.ico.gov.uk](http://www.ico.gov.uk)

Homepage > About us > Consultations > Current consultations  
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We want your input

- Own Explanations of CCPA for

- better more insights

- larger easier GPPs or  
federated processes

we will consider changing laws that

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# Chair Peter Waddington

March 24  
Geoff Webb

BSI 22/03/11  
Focus on Biometrics

## Privacy and legal considerations: developing biometric systems

Jonathan Bamford  
Head of Strategic Liaison



## The role of the ICO

- Enforce and regulate
  - Freedom of Information Act
  - Data Protection Act
  - Environmental Information Regulations
  - Privacy and Electronic Communications Regulations
- Provide information to individuals and organisations
- Adjudicate on complaints
- Promote good practice
- Discharge UK international obligations

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## 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

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- JB etc - 6 point number
- obviously covers the Data Protection Act & PECR
  - Test your usual standard from  
or change DP Policy (not legal)
  - PDP - does some of what I said PDS
  - Standard N part 1 in
  - good practices very important - no  
in itself, who do you trust to follow
  - Now you have got your policy, now  
it will draw up personnel
  - getting rid of certain "surveillance  
state" substances like NIST or  
Cavell Park
  - Interacting / relating to agreed  
dates - and after setting up  
biometric
- ~~Attitudes to DPA changes as the  
main to go to your individual  
one. If not particular  
action~~
- of DPA to DPA changes, PECR DPA
  - of DPA to DPA changes, if not particular  
changes across DP Policy / package
  - can't agree, then withdraw  
with blown cover to both rule by  
any legislation - difficult  
actions, e.g. 2 days.

At least one DPA here  
and above

Understand, not process, - covering, Unlawful  
- not processing

Up to 16  
- implied - Complainants - no - rights  
- Arises - right to object

Essential aspect continues

focus on society protecting  
data users, Sainsbury's,  
Sains et al

## Information rights are central to new Government policies

### Transparency:

- Extension of RTI
- Right to data
- Big Society:
  - Location
  - Pricing
  - Health

### Privacy:

- Protection of Freedoms Bill:
  - CCTV/VANPR
  - Biometrics in criminal justice
  - Biometrics in schools
  - Criminal records
  - Wheel clamping

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Right to data - data sets made available from

## SOS Code Surveillance Camera

Cameras - in the UK - data -  
- data - data protection at  
relevant - interface of

## NDNAD - Unclear - relevant for five years

- Biometric surveillance  
Not clear what relevant

Clear signal public services  
about biometrics - predict  
asset - child asset  
seen as suspicious

## Privacy issues and biometrics

- Personal data, potentially sensitive personal data
- Proportionate and justified
- Fair collection
- Not excessive and not kept longer than needed
- Access rights
- Security
- Privacy enhancing technologies
- EU Data Protection Commissioners' collaboration
  - Opinion WP 80 under review

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PAs 97 make clear PA - privacy  
rights exists - what they have  
of scroll - just say provider  
A F/T - Facebook etc by the  
website - delete user

## PDS against PAs 92 codes

Only 2003 -  
2003

## Information rights: embrace, don't ignore

- Tools to help get it right first time:
  - Privacy by Design
  - Privacy Impact Assessment handbook
  - Codes of practice:
    - data sharing code published 10 May 2011
  - The Privacy Dividend-business case
  - Personal Information Promise

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## PAs 97 helpful

Legal - not technical  
should brief says not  
cross ref to handbook -  
input deal with principles

110 calls were D)

for real not just tech  
or physical security

Significant changes in legislation  
MPs,

### Monetary penalties

- Introduced in April 2010
- Criminal Justice and Immigration Act 2008
- Penalty of up to £500,000 for serious breaches of DP Principles, committed knowingly/recklessly
- ICO statutory guidance

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Penalise worst privacy failures  
£120 - serious breach of DPA  
but well public failure to  
comply or misleading govt

### Assessment notices

- Coroners and Justice Act 2009
- Power of audit in the absence of consent
- Government Departments - but could be extended to other public bodies and private sector
  - NHS Trusts?
  - Finance sector?
- Voluntary audits where concerns

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- Full Audit Dept  
- Corrected audits together  
where problems  
exists in either

### Information rights regulation: here to stay

- Government's programme on openness, transparency, privacy and information rights
- Amendment to DP legislative framework in UK and EU

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What are DPA's key  
about - close privacy areas  
no put as cost plus

- DPA law now covers  
- changes in DPA  
- include - Play schools  
- are you doing  
- Rights to be kept  
or about

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- welcome PAS 92 and standards shown by BSI, - it's over but needs bringing to life and they not practical.
- Business identified technology  
in line with a risk register  
which are used against risk on  
the contract with agency contractor
- Business must recognise that  
an industry tick is not enough  
business and the business come  
into effect with better  
solutions across its products
- update all you do is marketable  
and marketable does not mean  
just a website or public sector  
charity, it's a matter  
of compliance with your own  
standards and regulations.

TY.

10:05

# Latest Developments in Data Protection

## An Update from the ICO

**Ken Macdonald**  
**Assistant Commissioner**

Data Protection & Compliance Update  
Conference

8 June 2011



# Content

Organisational Change

Legislative Change

Our Guidance

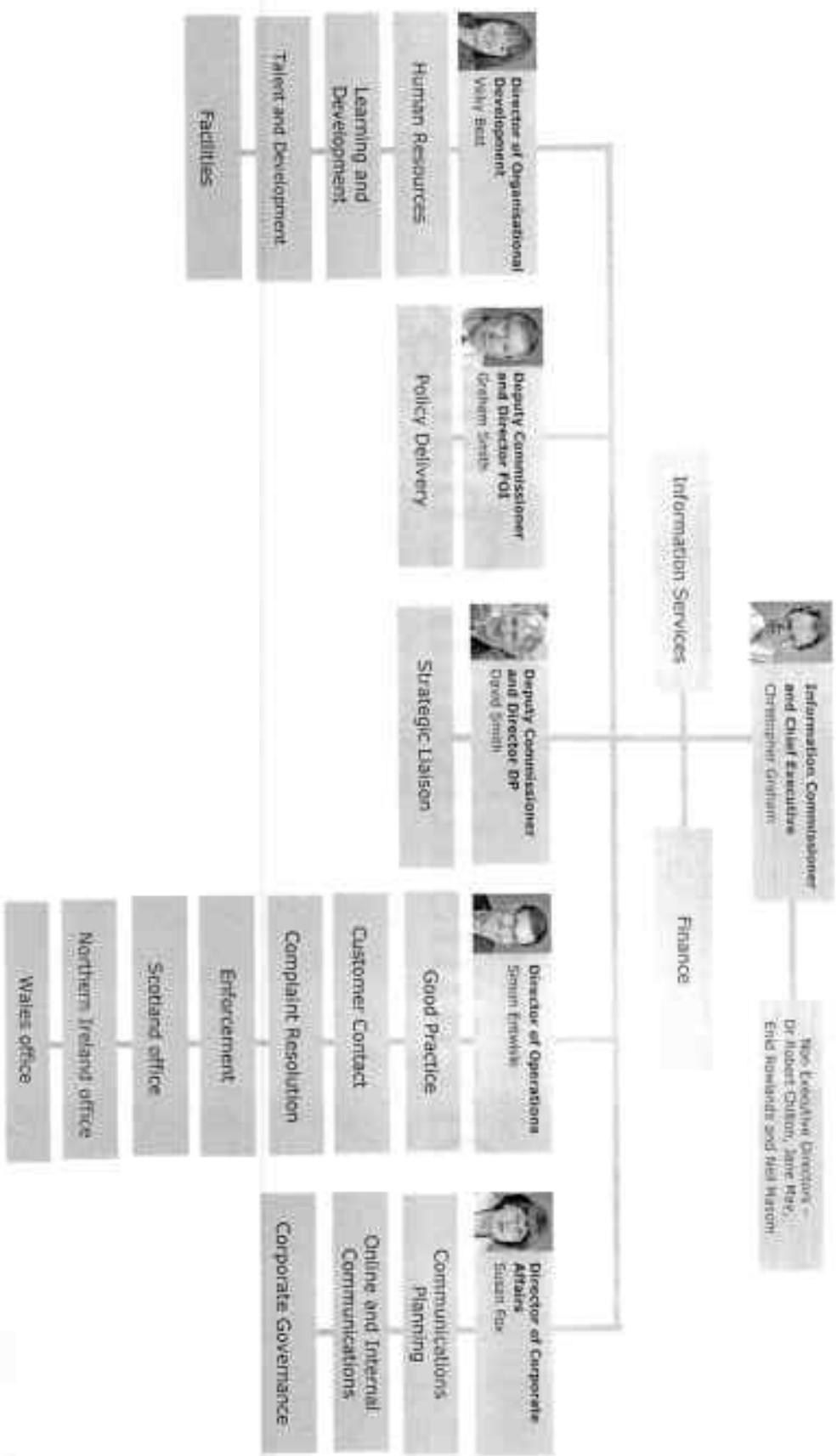
The ICO Approach



# Organisational Change



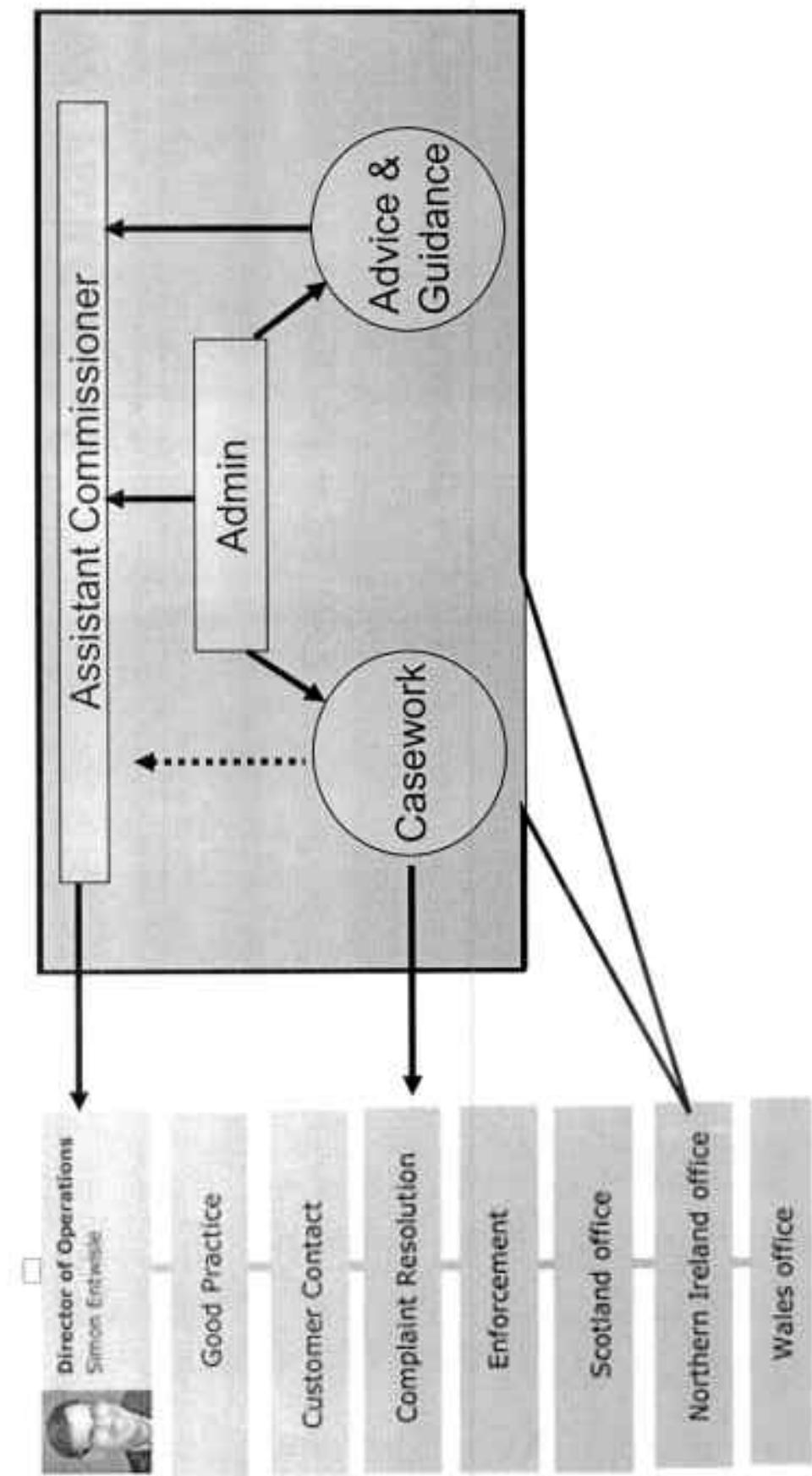
# ICO organisational structure



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Upholding information rights

# ICO - Northern Ireland



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Information Commissioner's Office

# ICO Performance

DP / PECR Casework

March 2011

Casework received - 28,837

Casework completed - 32,173

Caseload - 3775  
(Caseload March 2010 - 7230)

0.15% of cases > 1 year old

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# Legislative Change

Criminal Justice & Immigration Act 2008

Coroners & Justice Act 2009

Privacy and Electronic Communications Regs 2003

The Protection of Freedoms Bill 2011



# Criminal Justice & Immigration Act 2008

## Provisions:

s77 Power to alter penalty for unlawfully obtaining etc. personal data

s78 New defence for purposes of journalism and other special purposes

s144 Power to require data controllers to pay monetary penalty

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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.

# Coroners & Justice Act 2009

Provisions:

s173 Assessment notices

s174 Data-sharing code of practice

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# Privacy and Electronic Communications Regulations 2003

New Provisions (wef May 2010)

Consent to download cookies

Requirement for telecoms sector to notify breaches

Power to serve monetary penalty for breaches

# Protection of Freedoms Bill 2011

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Bill in Progress

Majority of provisions extend only to England & Wales

Devolution may result in different approaches UK-wide

NIA currently considering changes to DNA rules

# Our Guidance



# Our Guidance

The Privacy Dividend

Preparing a financial case for data protection

Personal information is an asset

Assess costs and benefits

Don't forget the reputational cost !

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# Our Guidance

Personal Privacy on-Line

Collecting personal information

The use of cookies

Personal data and marketing

The Cloud



# The role of the ICO

# 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
- Create privacy friendly culture

# NIRO Contacts

Admin / PA

Fionnula Torney

Advice

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Information Commissioner's Office



# Public Sector Records Migrant Culture 28/6

Mr. Matthew Steglerman

JB & Gis draw

## Transparency and privacy: from policy into practice

Jonathan Bentford  
Head of Strategic Liaison



### The role of the ICO

- Enforce and regulate
  - Freedom of Information Act
  - Data Protection Act
  - Environmental Information Regulations
  - Privacy and Electronic Communications Regulations
- Provide information to individuals and organisations
- Adjudicate on complaints
- Promote good practice

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→ NSPCC  
group

Cathy SW (M)  
[initials]

### Information rights are central to new Government policies

#### Transparency:

- Extension of FOI
- Right to data
- Big Society
  - Liberation
  - Forcing
  - Health

in PFI deals, Bill

Contract for Nick

Now see NCS, CJA

#### Privacy:

- Protection of Freedoms Bill
  - CCTV ANPR
  - Biometrics in criminal justice
  - Biometrics in schools
  - Criminal records
  - Wheel clamping

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### Tiered access to B

- So w
- contract SVS NI
- LT side -
- C1 212m
- £2.7

- New belief is 26 years seems fine + happens to be up the agenda
- Have seen election campaign where politicians talk about and stick to say milestones, lots of this, not to improve happens in category priority - it has dictated them
- Now seen govt care not other and PR privacy and transparency at least of work
- All you entitled right to know know its ours to tell the transparency of doing this - it can be made more difficult to translate into practice
- Of course privacy & transparency
  - its about what we do
  - we all played to help
- (- Do our law as regulate as seen by public
  - as we have public sector data protection regulator - PIA (data officer)

transparency issues - ACPO, UCIS, FSC, - security as also big numbers

→ review fast - raw data

- open reusable formats

- government reuse

ensure these come common NCS

col consistency - PIA's

GIS rule SC location - one type

DNA (ff, 3+2)

Printed access / child centric

not don't child yes parents

more benefits

Safeguard vulnerable groups

parents Distance Learning

- link Valley

Information rights are central to new Government policies

Transparency and privacy working together:

- Right to data and data sets
- Crime data/mapping
  - Maximize transparency
  - Minimize privacy risk

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- Haworth meeting - photo  
press offenders

Not just any underlying idea  
Press on now

Crime map - Police UK  
Truillizer - No of arrests -  
in all cases at  
any violence type?

- ICO advice -

Information rights:  
embrace, don't ignore

- Tools to help get it right first time:
  - Codes of practice
    - data sharing code published 10 May 2011
  - Privacy by Design
  - Privacy Impact Assessment handbook
  - The Privacy Dividend-business case
  - Personal Information Promise

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Policy (2-5) to prove diff

- good example at how police  
can change their approach to  
events - Anglos 2010  
HMRC - Behavioural insights  
more effective
- public sector focus  
Healthcare  
Healthcare
- Survey to combat f120% - Healthcare  
2011 Healthcare
- Safety Guard f80% Healthcare
- Health IT f7% - Healthcare
- HealthIT f10% - Healthcare  
more effective

### Assessment notices

- Coroners and Justice Act 2009
- Power of audit in the absence of consent
- Government Departments – but could be extended to other public bodies and private sector
  - NHS Trusts?
  - Finance sector?
- Voluntary audits where concerns

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Again toughening up regime rather  
gap to

### Revised Privacy and Electronic Communication Regulations

- Changes to Privacy and Electronic Communication Regulations on:
  - Consent to cookies
  - Mandatory security breach notification for communication service providers
  - £1M fixed monetary penalty for failures to report breach
  - Monetary penalties of £500k for serious PECR breaches
  - ICO can audit security measures/ breach notifications
  - Third party information offices

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- concern ab SV but are vulnerable to online world -  
but also brings new issues

- took effect on

→ unless strictly necessary for service  
will be a CP. Then

find out who sends those emails

### Information rights regulation: here to stay

- Government's programme on openness, transparency, privacy and information rights  
- INFO Regime
- Amendment to DP legislative framework in UK and EU

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- None of this going away  
- went to Govt agenda  
- went to SV agenda  
from long ago into creation.  
- accepts like Benefits  
- Ployd purpose  
- rights to be fulfilled

...Breaking news....Breaking news....

- Draft ICO Information Rights Strategy published
- Strategy informs our regulatory approach and sets out:
  - The outcomes we are seeking
  - How we go about achieving these
  - How we set our priorities within the limited resources available
- Consultation exercise closes 12 August 2011

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- Need to ensure we keep up  
with this changing landscape too

- first annual Insights

- integrated approach

- One year focus

Regulation, compliance, info

- commits to ID priorities

- One-Touch prioritised

- Measurement & eval

- Lots happening in client rights policy area  
already - very significant prioritising  
- perhaps start?

- Winds of change blowing through info  
rights landscape

- implement all relevant changes  
- important will continue to monitor  
and implement

- important understand the  
public policy changes in the  
practice.

- Info rights not going away.  
Evidence please substantiate.

- The Transparency and Privacy  
Policy reports is here to stay

- And the information rights law  
book underpins this is not  
going away.

- Transparency Policy  
- DPA 2012

# TRANSPARENCY AND FOI: An Update from the ICO

Graham Smith  
Deputy Commissioner and Director of FOI

FOI Live  
London – 23 June 2011



# Transparency and FOI - Outline

- The Government's Transparency Agenda
- The transparency/privacy fit
  - Recent cases
  - Developments at the ICO
  - Looking ahead

## The Government's Transparency Agenda

- Emphasis on proactive disclosure
- The right to data
- FOI and re-use of public sector information
- Datasets in re-usable formats
- Amendments to section 19 – publication schemes
- Extension of FOI Act

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## Action to date

- Top level political leadership
- The Transparency Board
- Salary disclosures
- Expenditure and contracts
- Transparency and accountability

# The Transparency/Privacy Fit

- Applying the data protection principles
- Information about an individual – redacted details
- Aggregated information – identification issues
- Can personal data be truly anonymised?
- Is this a block to transparency?

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# Information About Individuals

- The MPS expenses case
- Retirement packages/compromise agreements
- Pycroft v IC + Stroud District Council (EA/2010/0165)
- Gibson v IC + Craven District Council (EA/2010/0095)
- Legitimate public interest/unwarranted interference

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# Aggregated Information

- Statistics and datasets
- Department of Health v IC (co/13544/2009)
- Definition of personal data
- Disclosure of anonymised personal data
- Applying Lord Hope's judgment in CSA (HL) case

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# Complaints Activity

- FOI complaints received up
- FOI complaints closed up
- Age of caseload significantly down
- Over 800 Decision Notices 2010/11
- Complainants' appeals up

# Current ICO Issues

- Information Rights Strategy - draft for consultation
- Action on timeliness
- Efficiencies and Savings
- Streamlining procedures

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# Looking ahead

- Transparency and FOI are here to stay
- Post legislative scrutiny
- Higher societal and political expectations
- More technological progress and possibilities
- A battleground or second nature?

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Modernising Justice  
through Technology  
23/6/10 -

big major turn sharper in to legal - similar  
in other areas - progresses  
increasingly more  
IT Self-service - off site - far of town. In  
new area - remote

### - Panel Session.

- Privacy & transparency at heart of Govt's web program
- guests responses - right to site - Data protection - Govt  
- also Modernisation - new approach  
by responses - but in certain areas  
for segments
- PNP - populate approach to CTI 1000 - NDWAD 5th  
bullet system after NPPC
- revised crime victim check - argues need  
of crime victim categories - historical & current
- Hype PNP represents that populate approach
- 2 demands of pms & responses can need generic  
crime mapping - interest wide - by person  
or your house or building? or district-wide  
but plus there, or a type? - careful about  
names and not identify specific people - difficult  
if say, in a pub or outside a the station
- Hiving between DPD<sup>(old)</sup> and Data sharing code of practice  
- Heelers - Hylies

Needy need to think modernising way crime victim mapping  
etc for 21st century - very wants no Police PNL - strong and  
obvious need category - keep and crime needs - available to  
all who need them

### Nick Herbert.

- PNP - no new site
- Crime mapping police network - extend platform to be able  
to show services - need to be transferred

Modern pms - handle crime user

- Game master - tells  
has  
spies

Barners Nature - Given the PNP DATA

- in some parts information no other place can be



# Shared Services, Shared Data

Ken Macdonald  
Assistant Commissioner  
Scotland & Northern Ireland



23rd June 2011

# Approaches to Partnership Working

- Services delivered with partners  
eg, child protection services
- Services delivered on behalf of partners  
eg, payroll services

## Services delivered with partners

- DPA is not a barrier where information sharing is justified, necessary and proportionate
- DPA provides a framework for sharing in a secure, lawful and reasonable way
- Limitations and safeguards are essential

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# Services delivered with partners

- Legal provisions for sharing
- What benefits are sought from the proposed sharing?
- What risks are there?
- What are the likely effects on individuals/society?
- Consider the consequences of **not** sharing.
- Consent? Choice? Transparency?
- Make the citizen/client/consumer the focus of the decision.

## Services delivered with partners

- Do you have the power to share the information?
- What is the sharing intended to achieve?
- Do you need to share personal data?
- What information needs to be shared?
- When should it be shared?
  - Who does it need to be shared with?
  - How should it be shared?

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# Services delivered with partners

## Data Sharing Agreements:

- The purpose or purposes of the sharing
- Who will have access
- What will be shared
- Quality issues – accuracy, relevance and usability
- Data security
- Retention and deletion
- Individuals' rights
- Review of effectiveness of sharing

## Services delivered on behalf of partners

### Data Controller v Data Processor

#### Seventh Principle :

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

# Services delivered on behalf of partners

Specific Seventh Principle requirements:

The Controller must choose a processor who provides sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out and take reasonable steps to ensure compliance with these measures

## Services delivered on behalf of partners

### Specific Seventh Principle requirements:

A contract under which the data processor is to act only on instructions from the data controller and which requires the processor to comply with obligations equivalent to those imposed on a data controller by the seventh principle must be made or evidenced in writing

# If you get it wrong

Undertakings

Enforcement Notices

Audits (by invitation)

Monetary Penalties – up to £500k

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Information Commissioner's Office

## Keep in touch

Contact us on 0131 301 5071 or at  
[scotland@ico.gsi.gov.uk](mailto:scotland@ico.gsi.gov.uk)

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# UK Data Protection: A Regulatory Update

David Smith  
Deputy Information Commissioner

20th June 2011



# ICO Powers

- Criminal prosecution
- Enforcement Notices
- Undertakings
- Monetary penalties
- Audit/Assessment Notices

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# ICO Audit

- Assessment Notices introduced April 2010
- Power of audit in absence of consent
- Government departments – but could be extended
- Code of Practice published
- ICO aims for co-operation
- Growing numbers of consensual audits

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# Monetary Penalties

- Introduced April 2010
- Up to £500,000
- Serious breaches committed knowingly/negligently
- ICO statutory guidance
- Amount depends on nature/effect of breach
- First penalties imposed

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## Some Lessons

- Theft/loss of portable media significant
- Retention/lack of weeding a problem
- Poor communications/training/awareness a frequent factor
- Policies/procedures not related to jobs
- Need to monitor contractors/processors
- Still room for improvement in governance
- Not just security eg subject access

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# Some More Lessons

- Fax/E-mail communications often insecure
  - Shared services/joint working brings risks
  - Tendency to focus on IT security at expense of physical security
  - Security improvements do not have to be expensive
  - Movers and leavers procedures lacking/not implemented
  - Examples of good practice exist
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# Changes to Privacy and Electronic Communications Regulations

- Specific security requirements for service providers
- Compulsory breach notification for service providers
- Extended supervisory powers for ICO
- Consent for cookies
- Implementation from May 2011

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# Future of the DP Directive

- European Commission communication
- Right to be forgotten
- Privacy by design
- Accountability
- Collective redress
- More effective supervision

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# What does the ICO want?

- Clarity of scope
- High level of protection
- Clear responsibility and accountability
- Focus on risks
- Effective, simple rights for individuals
- Better rules for international transfers

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# What can the ICO offer?

- Commitment
- Independence
- Expertise
- Influence
- A common sense approach!

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# Draft Information Rights Strategy

- Integrated approach
- Outcome focussed
- Regard to Regulators' Compliance Code
- Identification of priority areas
- Our tactics – the strategy in practice
- Includes measurement and evaluation

# Maximising our impact

- Prevention better than cure
- Education, awareness raising and provision of guidance are key activities
- ICO primarily a facilitator
- Need to act firmly where organisations do not seek to live up to their responsibilities

# How to take part...

Please visit the consultations page of the ICO website:

[www.ico.gov.uk](http://www.ico.gov.uk)

Homepage > About us > Consultations > Current  
consultations

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[www.twitter.com/icoengland](http://www.twitter.com/icoengland)



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# Upholding information rights: working with the ICO

Christopher Graham, Information Commissioner

ACPO Information Practitioner Professional Development Event  
15 June 2011



## Working with the ICO

- What the ICO does
- How the ICO enforces the Acts
- How the ICO can help
- Current issues
  - Protection of Freedoms Bill
  - Data Protection
  - Freedom of Information
- Information Rights Strategy

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## Public social concerns

**Q1: I am going to read out a list of issues that could be considered of social importance. Table shows respondents who were either 'very concerned' or 'fairly concerned' about each issue.**

Social Issue	Overall		
	2004	2009	2010
Preventing crime	85%	96%	93%
<b>Protecting people's personal information</b>	<b>70%</b>	<b>94%</b>	<b>92%</b>
Unemployment	50%	93%	90%
The National Health Service	78%	90%	80%
Improving standards in education	76%	89%	80%
Equal rights for everyone	69%	89%	87%
Protecting freedom of speech	67%	89%	86%
National security	71%	90%	85%
Environmental issues	66%	90%	83%
Access to information held by public authorities	48%	80%	75%

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Source: ICO Annual Track 2010/11

- For all issues there are lower levels of concern than 2009
- Less concern about access to public information
- Very high levels of concern regards protecting personal information

## 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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## The role of the ICO

- Enforce and regulate
  - Freedom of Information Act
  - Data Protection Act
  - Environmental Information Regulations
  - Privacy and Electronic Communications Regulations
- Provide information to individuals and organisations
- Adjudicate on complaints
- Promote good practice

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## ICO latest

- Record FOI business
  - S 50 complaints up 17%
  - Record number of Decision Notices
- DPA powers
  - Civil Monetary Penalties
  - S 55 fines
- New rules on 'cookies'
- Data sharing code of practice
- Consultation of information rights strategy

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## How the ICO enforces the Act

- Undertakings
- Information Notices
- Enforcement Notices
- Civil Monetary Penalties
  - < £500k
  - Substantial damage or substantial distress
  - Deliberate or reckless:
    - Knew or ought to have known
    - Failed to take reasonable steps to prevent
- Five CMPs to date; two more in prospect
- Criminal sanctions – sec 55
- Assessment Notices

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## How the ICO can help

- ICO website [www.ico.gov.uk](http://www.ico.gov.uk)
- Newsletter
- Helpline 0303 123 1113
- Codes of Practice
  - Personal Information Online
  - Data Sharing
- Resources
  - Publications
  - CD-Roms
- Privacy by Design
- Good Practice Audits
- Support for DPOs

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## Coalition agenda

- Protection of Freedoms Bill
  - DNA database
  - CCTV
  - Criminal records
- Transparency and accountability
  - Proactive disclosure
  - Extension of Freedom of Information
  - Data sharing
- Open Data
  - Publishing data sets, eg crime mapping
  - Publication in reusable form
  - Let a thousand flowers bloom
  - Open v privacy

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# Protection of Freedoms Bill



## DNA retention

- Welcome greater clarity over retention of biometric information of individuals who are of no ongoing concern
- BUT regret that there does not appear to be a provision to delete the allied biographical information, as in the arrest record, contained on either Police National Computer (PNC) or Police National Database (PND)
- No justification for the police to continue to retain a PNC Identity record which is linked to other biometric records that the police are required to delete having served their purpose. This engages concerns about compliance with the Fifth Principle of the Data Protection Act 1998.

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## Vetting and barring

- There does not appear to be any specific provisions to:
  - filter to remove old and minor conviction information from criminal records checks;
  - ensure penalties and sanctions for employers knowingly making unlawful criminal records checks are rigorously enforced; or
  - to introduce basic level criminal record checks in England and Wales
- Outlaw Enforced Subject Access
- Commence s 56 of the Data Protection Act 1998 and the relevant provisions in Part V of the Police Act 1997

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## CCTV

- Minister has confirmed that ICO remains responsible for data protection
- Clarity and co-ordination
- Surveillance Camera Code applies to police and local authorities
- Why not Whitehall departments, eg Transport or Home Office?
- There's still more mischief with private sector operators

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## Joined up

- Co-ordinating the Commissioners
  - Information Commissioner
  - Interception of Communications Commissioner
  - Interim CCTV/Biometrics Commissioner
  - Surveillance Commissioner
- Avoiding gaps/overlap
- Liaison
- Memoranda of Understanding
- Building confidence

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# Data protection



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## Data protection

- Abuse of personal information still too common
  - Blagging from databases, eg DVLA
- ANPR
  - Potential for abuse
  - NPIA software for deletion after 2 years, unless required
  - Retention periods under review
- DP Audits
  - Crown Prosecution Service
  - Metropolitan Police
  - Lancashire Constabulary
  - Criminal Records Bureau

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# Freedom of information



## FOI

- Monitoring compliance
  - 2010
    - Metropolitan Police
    - British Transport Police
  - 2011
    - City of London Police
    - Surrey Police
- Speeding up all round
- 20 days window. It's the law
- Post-legislative scrutiny
- Police and Crime Commissioners and Panels subject to FOIA

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# Information rights strategy consultation



## We want your views...

We are consulting on our draft information rights strategy.

This strategy is being introduced in light of our commitment to integrate our data protection and freedom of information activities wherever we can.

It replaces our former, separate data protection and freedom of information strategies.

The strategy describes the role of the ICO and explains how we go about our work and set priorities.

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## How to take part...

- Please visit the consultations page of the ICO website:

**www.ico.gov.uk**

Homepage > About the ICO > Consultations  
> Current consultations

- Consultation closes 12 August

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