

ICO Publication Scheme Initiative

Advisory Group Meeting 14 June 2007

Attendees:

The Advisory Group

Jim Amos (JA)
Judith Cullen (JC)
Christine Gifford (CG)
Maurice Frankel (MF)
Susan Healy (SH)
David Lammey (DL)
Jeremy White (JW)

ICO

Graham Smith (GS)
Dawn Monaghan (DM)
Sue Markey (SM)

Apologies were received from Nicola Westmore and Phil Michaels.

Introduction

Graham Smith welcomed all members of the group. He outlined the objectives, agenda and timescale for the ICO Publication Scheme Development and Maintenance Initiative. (DMI). The role of the Advisory Group was also clarified.

The Initiative

The ICO's goals are:

- A model scheme approach across all of the public sector
- To be more prescriptive
- To develop consistency across sectors / the public sector
- To develop a standard approach to such aspects of publication schemes as manner, fees etc.
- To deliver the message of proactive dissemination across the public sector

DM described the main concepts of the initiative:

- a promise and commitment by the local authorities to proactively disseminate information
- authorities to disseminate information to the public by identifying for themselves the content of the information they have committed to providing.

DM identified the ICO's main areas of concern in relation to the new approach some of which have been identified at the sector workshops:

- Interface with the EIR
- Re-use of public sector information

- Defining 'information available on demand'
- Achieving senior level 'buy in' particularly in the health and local government sectors
- Importance of effective communication authorities with their web teams

Key areas of discussion

CG who has attended a number of the workshops commented that the ICO's approach had been generally widely welcomed. She had been very surprised that many authorities currently participating in the sector workshops had indicated that they did not have a disclosure log. She felt strongly that the ICO should set a time limit by which all public authorities must introduce a disclosure log.

There was agreement within the group that many authorities are nervous about proactively disseminating information without it having been requested; they are more comfortable deciding whether the information should be released when a request is made or when another authority has already made the same type of information publicly available.

Some members of the group commented that in their experience foi is not perceived by authorities as adding value to the organisation. DL commented that in his experience senior involvement in foi was not a major issue although there were 'pockets of resistance'. There was general agreement that competing priorities and lack of resources were common to many authorities and that this needed to be taken into account by the ICO.

MF questioned what additional benefit would be provided by the new approach – he was concerned that in many cases publication schemes had become lists of publications and that the current classes were not being enforced. He considered also that many public authorities only include information in their schemes which they want to publish. He suggested that the new approach should consist of a small number of high impact classes that would be capable of being enforced – for example:

- Internal guidance
- Finding aids (the indexes held by public bodies)

He suggested the majority of the proposed classes should be included in a single class. He also specifically raised the issue of charging and the importance of the ICO including this in the review. DM confirmed that charging policy and practice had been raised at all the sector workshops.

Reference was made to the very positive pro-openness measures in the Irish foi legislation

There was some discussion of ICO enforcement powers. GS commented on the ICO's impact in moving forward to proactive information agenda. The ICO intends reinforcing the model scheme approach with a range of enforcement activities including mystery shopping.

JA welcomed the visibility of current publication schemes on the home page of many authorities' websites. He considered that the foi logo and access to foi information generally should continue to be available on the home page which would take the user to standardised paragraphs such as 'how to find the information', 'how to complain' etc. He commented that some users would want to know what information was available in each class.

There was wide discussion concerning the issue of financial information, particularly contracts. CG commented that the public are generally most interested in high impact contracts. The issue of business need was raised in this context by SH.

Issues Outstanding

The ICO will follow up with MF on the points he raised during the meeting.

The ICO will continue to communicate by email with the group over the next months to keep them informed of developments etc.

Minutes of GPE Team Meeting 20/11/08

The NI events organised by Chris. Gifford were well received

Received from**Date rec'd Query**

Christine Gifford from Public Partners (who work with Chief Executives and PCT practitioners as consultants on FOI and DP) contacted Dawn with the following - *'.. the request about the estates of deceased persons; this is a perennial request – and there is a TV programme based on the information which is provided called the Heir Hunters. We first became aware of this request a couple of years ago and talked to the Treasury Solicitors about it as a result of which we circulated the attached advice which we have done again this time around. There is a huge amount of confusion about the disclosure of information relating to deceased persons and anything you can do to clarify this will help enormously too'.* Dawn is to have a meeting with Christine at the end of September 2010 and will obtain further details on exactly what they are struggling with, what they would like from us and volumes involved etc after which PD will look at the issue to determine what work will be done.

Dawn Monaghan

02/08/2010

**Date response
provided**

Response

Dear Christine

Graham Smith has asked me to write to you about the meeting to be held at the Information Commissioner's Office on 20 April 2011. As I understand it the meeting was arranged to discuss the disclosure of information to the Hillsborough Independent Panel (HIP) from the NHS.

On 15 March 2011 I and two colleagues, Tony Dixon and Joy Corne, attended a meeting in Sheffield with representatives of the South Yorkshire Police Hillsborough Archive Disclosure Team. The Team had asked for our advice about some concerns they had with the disclosure of sensitive personal data to the HIP in some cases.

The SYP Archive and Disclosure Team are of the view that due to the requirements of Schedule 3 of the Data Protection Act 1998 which lays down the conditions required for the processing of sensitive personal data they are unable to disclose sensitive personal data to the HIP without first obtaining the explicit consent of the data subject as this is the only condition in Schedule 3 that they can meet. Given the HIP's declared principle of full disclosure the SYP Team do not think that obtaining explicit consent would be practical in all cases.

We have since considered the issue in detail and we agree with the SYP Team's interpretation of the requirements of Schedule 3 of the Act; in effect the SYP Team cannot disclose sensitive personal data to the HIP without the explicit consent of the data subject. We would now like to discuss this issue with you at the meeting on 20 April 2011. Unfortunately I will not be able to attend the meeting but my colleagues Meagan Mirza and Tony Dixon will attend in my place. If you would like me to provide more details of the issue before the meeting please let me know.

Regards

Ian Miller

Ian Miller

Senior Policy Officer.

Public Security Group.

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Meeting report	Strategic Liaison
Date:	20/04/2011
Attendees ICO:	Graham Smith - Graham.Smith@ico.gsi.gov.uk Ian Miller - Ian.Miller@ico.gsi.gov.uk Dawn Monaghan - Dawn.Monaghan@ico.gsi.gov.uk Tony Dixon - Tony.Dixon@ico.gsi.gov.uk
Other organisations:	
Attendees (please include contact details)	Christine Gifford - chris.gifford@publicpartners.org Bill Kirkup [REDACTED]
Reason for meeting:	Hillsborough Panel - Disclosure Issues
Contribution to business plan:	Stakeholder Engagement

Internal Note: in the event of an FOI request being made to the ICO for this note, we would expect some of the content to be exempt under s.36(2)(c) FOI Act, given the ground rules established for some of the more sensitive aspects of the discussion.

Issues discussed / questions raised	Action
<p>1. Introductions and Background</p> <p>Introductions were made. CG provided a background to the Hillsborough Panel. She explained the Panel's remit and the fact that they see disclosure to the panel and eventual disclosure into the public domain as two separate issues. The issues they would like to raise relate to a small percentage of the material held by the public bodies involved in the project where they are coming up against barriers which have prevented disclosure of information to the Panel.</p> <p>2. Medical Records</p> <p>CG explained that a specific issue had arisen around disclosure of certain 'health records' to the Panel, particularly by Yorkshire Ambulance Service. The main issue with YAS was around full running sheets for ambulances active at the time of the Hillsborough tragedy that transported victims of the disaster. The running sheets include information about all passengers that were transported in the ambulance that day including details such as the time at which individuals arrived at hospital. The Panel feel this is important information and would add to the public understanding of the disaster.</p> <p>There was discussion around what constitutes a health record. IM explained that for data protection purposes this was defined in section 68 DPA. The definition refers to a</p>	

health professional which is further defined in section 69 DPA. It is questionable to what extent the full running sheets would constitute a health record.

To the extent to which the information on a full running sheet did not fall within the categories of sensitive personal data outlined in section 2 DPA, the ICO is of the view that it is likely the information would be disclosable under the FOIA. Although section 40 of the FOIA would be engaged, for non-sensitive personal data it seems unlikely that to disclose such information would breach the DPA principles. When considering Schedule 2 condition 6, given the public interest in a successful conclusion of the Hillsborough project this is likely to outweigh any unwarranted prejudice to an individual, and the condition is likely to be met.

3. Sensitive personal data and Schedule 3 conditions

CG explained that they had encountered problems relating to the disclosure of other sensitive personal data to the Hillsborough Panel. They could not identify a Schedule 3 condition, save for explicit consent, that would be applicable.

ICO explained that a public body disclosing sensitive personal data to the panel would have to be satisfied that a Schedule 3 condition was met. We have not been able to identify a Schedule 3 condition that would apply in the absence of explicit consent. A confidentiality agreement between the disclosing body and the panel would not discharge this requirement. Should the ICO receive a complaint we would have to assess whether a Schedule 3 condition had been met.

There are a number of options to consider. Firstly, the Secretary of State could make an order under Schedule 3(10) DPA. There was a discussion around whether an order could specify a body such as the Hillsborough Panel which has no statutory basis in such an order. It was agreed that this was a question for the Home Office/parliamentary draftsmen.

Secondly, there may be scope for exploring Schedule 7(1)(c) – functions of a Minister – if the Minister was satisfied that this would be met and could make such assurances to the public bodies involved. The ICO's view is that an order under Schedule 3(10) would be the preferred option and most likely to satisfy the public bodies that that they can disclose sensitive personal data to the panel without breaching the DPA.

Any other comments: