

BALANCING DATA USERS' DUTIES AND DATA SUBJECTS' RIGHTS

The UK Data Protection Registrar's 4th Annual Report

Complaints to the UK Data Protection Registrar, Eric Howe, have increased by nearly four times in the last year compared with the previous year, he says in his fourth annual report published in July. In this report, we look at the main types of complaints about companies to highlight problem areas which require particular attention, plus his role as ombudsman, an update on the Data Protection Register, and the work of his office on investigations and enforcement.

Complaints and the Registrar's Ombudsman Role

The Registrar considers that the considerable increase in complaints is partly due to far greater public awareness of the 1984 Data Protection Act. In total, the number of complaints received from the 1st June 1987 to 31st May 1988 was 836, compared with 225 in the previous twelve month period. They cover a wide range of problems and relate to all parts of the Data Protection Act.

The complaints fall into seven main categories:

1. Subject Access

The right of individuals to have a copy of personal data held about them by a data user has been in force only since 11th November 1987, and yet this group of complaints forms 25% of all complaints received between 1st June 1987 and 31st May 1988.

Many individuals requesting access had not received a reply within the 40 day period, or had received no response at all, or the data users had provided inaccurate information. Mr. Howe's office has followed up these complaints with the result that some data users have introduced more effective procedures to deal with subject access requests. Where necessary, help has been given to individuals to understand the data they had received.

2. Inaccurate Information

About 12% of complaints were about inaccuracies, and these were corrected after discovery. An example:

"The complainant received a statement from a credit card company showing an item purchased at an address he had never heard of, and despite the fact that his credit card had been returned to the company six months previously."

"The company explained that when cardholders close an account the details are not "auto-deleted" from the computer records immediately in order to allow for the processing of late vouchers. The complainant was not informed about this procedure. The procedure which caused a statement to be sent to him was a result of a clerical keying error."

The company is currently reviewing its procedures and will advise the Registrar's office of amendments to prevent a repeat of this incident.

3. Unsolicited Mail

The number of these complaints has decreased from 30% to 19% of all complaints received this year. This could be because those who most object to receiving direct mail are increasingly helping themselves to cut down on the flow of this material by registering with the Mailing Preference Service, the UK direct marketing industry's clearinghouse. This organization gives people an opportunity to either reduce or increase the flow of direct marketing mail in general or for specific categories of products and services. There is also evidence that owners of mailing lists are improving their procedures. An example:

"The complainant objected to receiving a mailshot which made references to his financial status. The organization that supplied the mailing list confirmed that they did not actually hold details on the complainant's income but had (estimated) this from other information in its possession. The complainant's details were suppressed on the mailing lists owned and controlled by the company. The offending mailshot was also withdrawn."

4. Obtaining Information Unfairly

The Registrar's office is meeting with a number of different organisations to allay the concern of individuals about the amount of personal information they are asked to provide on some forms, its relevance and purpose. Examples of complaints under this heading include: "forms for opening a personal account at a bank; a guarantee card to be completed on purchase of consumer goods; a local (government) form concerned with education grants; and a holiday survey questionnaire."

5. Credit Reference

The number of these complaints accounted for 17% of all complaints in the year. There are four main areas of public concern:

*** The Use of "Other Name" or "Similar Address" Information**

Some credit reference agencies supply information from files based on the current and previous addresses of the applicant. Others may supply the lender with information about similar names and addresses in the same area. The information will also be provided to applicants if they apply for a copy of their file under the Consumer Credit Act 1974. The effect of this system is that an individual's creditworthiness is assessed on a third party basis, and sensitive information may be revealed to the individuals, intruding on their privacy.

Recent research carried out by the Data Protection Registrar's Office has shown that there is a high degree of disapproval of this practice. The Director General of Fair Trading, Gordon Borrie, also expressed concern when he and Eric Howe met with credit industry representatives. By October 1st the industry's responses should have been received, and agreement reached on working practices. However, if this does not materialise, the Registrar will

consider using his enforcement powers under the Act.

* The Accuracy of County Court Judgement Information

Problems can arise because the information provided to the County Court may not be sufficiently accurate to identify the debtor on a credit reference file of several million names. Many county court judgements are obtained by organisations outside the credit industry, local authorities for example, and an inaccurate record in the public arena could do much damage to individuals. Talks are being held about improving this situation.

* The filing of Debt Satisfaction

Credit reference agencies may supply, and data users may use, default information for a debt which has been paid without taking the satisfaction of the debt into account. Data protection principles require information to be adequate, accurate, and up to date. The credit industry is responding positively and procedures are being reviewed.

* Comprehensive Credit Registers

These seem to be the main basis of future developments in the credit industry, and could eventually include all major lenders such as banks, building societies and possibly public utilities. The result will be massive collections of sensitive personal data which will need very careful scrutiny in data protection terms. The prospect of a "national credit register" has now receded, but three large comprehensive registers exist at present (Credit Account Information System, Payment Profile and Insight). The information is provided by members and is available to them. Mr. Howe has recommended that the use of information in the schemes should be specifically restricted to checking the standing of an applicant for credit. New initiatives such as a "fraud register" may be developed in the future, and Mr. Howe was pleased that he has been involved in these at an early stage.

6. Direct marketing

The main types of complaints about direct marketing, apart from unsolicited mailings (see section 3), cover:

* forms which seem to ask for information beyond that required for the transaction which the complainant was seeking; and

* information obtained through surveys or questionnaires designed specifically for the compilation of mailing lists.

The Registrar sees these complaints as tied to the direct marketing industry's growing use of collections of large files of "lifestyle information." Information is collected through a variety of documents whose purpose is not always clear to the subjects, and combined into a "lifestyle profile." Marketing organisations then use statistical techniques to assign individuals to groups or categories with similar characteristics and likelihood to purchase particular goods and services. For effective direct marketing, companies need to know as much detail as possible about potential customers, and information collected in this way is extremely valuable. However, some firms have acknowledged that this practice presents them with a

data protection problem which they have agreed to tackle.

Mr. Howe suggests that there are two approaches to this problem:

1. Collecting and using information only with the informed consent of the individual concerned; and
2. Switching off direct marketing approaches to individuals at their request.

The Registrar recognizes that the Mailing Preference Service, with over 130,000 names from over 60,000 households, is helpful. But he is now discussing with the Advertising Association extending this principle to enable individuals "to suppress unsolicited mailings by direct request to particular organizations." Another initiative is a proposal for a Telephone Preference Service, which would work for telephone selling on similar lines to the Mailing Preference Service.

7. Security of Personal Data

Complaints to the Registrar show concern about data security, in particular, that personal details may have been disclosed to unauthorized third parties. An example:

"A complaint was received from a member of the public who had visited a major high street retailer of electrical goods in order to purchase a washing machine. The complainant's personal details were entered on a (computer) screen in full view of many other customers. The problem was brought to the attention of the store which has relocated the screen so that the problem should not reoccur."

The Data Protection Register

Over the last year, the number of applications for the Register (PL&B August '87 p.11) went up from 133,000 to 163,000 and the number placed on the Register went up from 125,000 to 150,000. About 14,000 applications have been made using the simplified registration form, introduced in September 1987. Over 30,000 register entries have been amended or deleted.

Investigation and Enforcement

The Registrar's Investigations Department looks into complaints and checks data users who have not registered under the Act (PL&B August '87 p.12, November '87 p.4, February '88 p.5). The 16 investigators had carried out 525 visits investigating non-registered data users and had conducted enquiries about 54 complaints in the period between December 1987 and 31st May 1988.

The Registrar's powers include issuing enforcement notices specifying corrective action. If organizations do not comply, they may be prosecuted either by the Registrar or by the Director of Public Prosecutions, or in Scotland by the Procurators Fiscal.

Between 1st December 1986 and 31st May 1988, 10,569 organizations had checked to find out if they were data users and, if so, whether they were registered if no exemption applied. Of these, 74% were already registered or claimed not to process personal data. The subsequent investigation process is to send a letter, if necessary, a second, and then where necessary make an inspection visit. The final stage is a prosecution, of which there have been two by the Registrar (February '88 p.5), he has decided to prosecute in three more cases, and the Crown Prosecution Service has started two prosecutions.

Although the Act does not give the Registrar any specific powers to demand information when investigating for possible infringements of the Act or breaches of the Data Protection Principles, he may seek a warrant from a circuit judge to gain access to a data user's premises. There are two procedures. One involves a hearing where the data user is represented. The second is an "accelerated procedure" where the data user is not represented on grounds of urgency or because it would defeat the purpose of entry to the premises. The Registrar has used only the accelerated procedure, twice. In both cases, the investigators gained access to the premises easily but had to formally use their legal powers (execute the warrant) to obtain the information required.

The Public Sector

The Community Charge: Mr. Howe has received assurances from the Ministers concerned that the minimum of information should be collected for the new Community Charge Registers (CCR) and that guidance would be given to local authorities on good data protection practices. The whole issue of information supplied from the CCR towards a "national population register" is highly sensitive, and Ministers will have to take decisions taking into account the Council of Europe Convention. The Registrar will continue to review the data protection aspects of this scheme.

The Government Data Network: Mr. Howe has had discussions with the heads of the four government departments which are initially planning to use the network - the Home Office, Customs and Excise, Inland Revenue and Health and Social Security. The main issues discussed were network security and the way the network is to be used.

The 1991 Census: Mr. Howe is also involved in data protection arrangements for the Population Census in 1991.

Conclusions

The Registrar considers that public trust in computer-held information has diminished. His office continues to strive for a proper balance between the conflicting interests of data subjects and data users. However, Mr. Howe sees evidence that data users are changing procedures for handling personal data to incorporate the Data Protection Principles.

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