

DATA PROTECTION NEWS FROM AROUND THE WORLD

1. International organizations

Council of Europe: Denmark, on October 23rd 1989, became the 9th country to ratify the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Its ratification will come into force on 1st February 1990. Denmark made a declaration that the convention shall not apply to the Faroe Islands and Greenland. The other countries which have so far ratified the convention are Austria, France, the Federal Republic of Germany, Luxembourg, Norway, Spain, Sweden and the United Kingdom.

The Council of Europe has now published its Recommendation no.R(89)2 on the Protection of Personal Data Used for Employment Purposes (PL&B Feb '89 p.2). The full text is reproduced and distributed with this issue of Privacy Laws and Business.

The Parliamentary Assembly of the Council of Europe has adopted a Recommendation and Report on AIDS and Human Rights, presented by the Legal Affairs Committee, which includes a clause recommending that the Committee of Ministers: "instruct the Committee of Experts on Data Protection to investigate the problems arising in connection with computerised data concerning carriers of the HIV virus."

The Committee of Ministers of the Council of Europe on 24th October 1989, adopted a Recommendation (no. R (89) 14 on The Ethical Issues of HIV Infection in Health Care and Social Settings. It includes recommendations (Appendix paragraphs 94-97) on occupational health services which relate directly to an individual's privacy rights. It is recommended that the competent authorities ensure that:

* "occupational health care staff are on no account compelled by an employer to carry out HIV screening on applicants or employees;"

* "occupational health care staff, if informed by an employee of a possible HIV infection, treat the employee's case with the usual rules of confidentiality and use such information only in the interest of the patient's health;"

* "on no account should the occupational health care staff reassess his aptitude in the light of such information (unless the employee might risk exposure to factors in the workplace detrimental to his health); and on no account should they be required to inform the employer of the condition of any worker who is HIV infected;"

* "employers have a duty to protect the confidentiality of medical information relating to their employees, particularly as concerns HIV infection; therefore, health data should only be handled and stored by

authorized personnel who are bound by rules on medical confidentiality."

European Economic Community: The EEC, together with the Council of Europe, is jointly organizing a conference, Access to Public Sector Information, Data Protection, and Computer Crime. It will be held in Luxembourg on March 27-28th for specialists from government, business, universities and the legal profession. The conference's subtitle is Legal Challenges and Opportunities Created by the Prolific Growth of Electronic Information Services (see p.7). In addition to the speakers from the EEC and the Council of Europe, there will also be presentations from:

- * Mme. Charlotte-Marie Pitrat, the CNIL, France
- * Professor U. Sieber, University of Bayreuth, Germany
- * Mr. M. Mohrenschlager, Federal Justice Ministry, Germany
- * Mr. P. H. Bolle, University of Neuchatel, Switzerland
- * Professor Spiros Simitis, Data Protection Commissioner, Hessen
- * Professor Jon Bing, Research Centre for Computer and Law, Norway
- * Professor Brian Napier, Centre for Commercial Law Studies, London
- * Professor Stefano Rodota, Member of the Italian Parliament
- * Mr. Herbert Burkert, GMD, Cologne, Germany
- * Dr. Walter Dohr, Data Protection Commissioner, Vienna, Austria
- * Prof. B. de Schutter, Centrum vr. International Stafrecht, Belgium

At Privacy Laws & Business's recent conference, there was considerable interest in a conference which looked comparatively at these two organization's data protection policies. This conference will have simultaneous translation in 5 languages (English, French, German, Italian and Spanish) and is free of charge. Anyone interested in attending should (by January 20th 1990) contact the organizer, Mr. G. Papapavlou, Commission of the EC, Batiment Jean Monnet, B4/018, Kirchberg-Luxembourg, L-2920, Luxembourg, Fax: (352) 4301 2847.

2. Countries with data protection laws

Australia: The Privacy Committee of New South Wales has published two reports this year on privacy related business issues. Both are available from Privacy Laws & Business.

The Privacy Committee's Paper on Direct Marketing (40 pages), published in April, explains direct marketing techniques, looks at related privacy principles, and has sections on social justifications for direct marketing, types of direct marketing (covering direct mail, electronic marketing and telephone marketing) increased use of technology, the problem of public information, approaches in other jurisdictions, revised recommendations, and relevant Privacy Committee publications.

The Privacy Committee's Further Report on Regulation of Credit Reporting (40 pages) was published in September this year. The report explains how credit reporting works and has further sections on the privacy issues, trends in credit reporting, and a commentary on the Privacy (Amendment) Bill 1989 (PL&B September '89 p.13).

The Privacy Committee of New South Wales covers the whole range of privacy issues in both the public and private sectors. It is independent and acts as a privacy ombudsman. The Committee was established by the Privacy Committee Act, 1975 (NSW) and started work on May 2nd 1975.

Finland: Leena Sateri, the Secretary to the Data Protection Board (DPB) has corrected our recent report (PL&B September '89 p.4) on the role of the DPB. The DPB has the following main functions. It:

1. studies ways in which the legislation on personal data protection can be improved.
2. makes formal policy statements and takes initiatives on important issues concerned with personal data files.
3. may give permission for exceptions to be made from the law in individual cases.
4. may take appeals from individuals, under Section 35 of the Personal Data Files Act.
5. may give permission for private sector files to go into archives, under the Personal Data Files Decree Section 14.
6. may give permission for the export of "mass delivery" or sensitive personal data to countries that do not have legislation that corresponds to the provisions of Finland's Personal Data Files Act.

Anna-Riitta Wallin, the Data Protection Ombudsman, (DPO) tells PL&B that her office has recently been giving attention to inspections for organisations which process automated personal data. So far, such visits have been made to:

1. a direct marketing company (to look at direct marketing files);
2. a large Finnish-owned company with international operations (to examine, in particular, their employee files, for example, the types of data stored, from whom it is collected, to whom it is disclosed, and how it is used); and
3. to a health care centre (to look at medical files). This visit is the first stage of a larger project to examine health records policy at both national and local levels.

Inspection visits may be made either on the initiative of the Data Protection Ombudsman or in response to complaints. The visits are usually made with prior notice.

Other projects include:

- * limiting use of the Personal Identification Number to strictly relevant applications like social security, but not, for example,

for sports clubs. The DPO is trying to draw up a limited list of approved uses for the PIN and will then inform data users and the public.

- * A police files study looking at both automated and manual files. A newspaper article recently attracted attention when it revealed that manual police records were found - not shredded - at a public waste dump. The investigation will include the police's compliance with the Personal Data File Act, including its policy on disposal of records.

The Data Protection Ombusman and Data Protection Board now have a direct fax number: (358) 0 343 1247.

France: Companies should expect stricter enforcement of the Data Protection Act now that Labour Inspectors are taking an increasing role in this work. This cooperation resolves the problem of how CNIL (the Data Protection Authority) can best cope, despite slim resources, with:

1. a number of complaints on management-labour issues (see p.13), and
2. the carrying out of inspections of companies which have registered with the CNIL their automated processing of personal data.

Labour Inspectors now have the right to demand the CNIL's receipt of a company's registration when they see its automated processing of personal data.

The Labour Inspector's new powers are the result of closer cooperation between the CNIL and the Labour Inspectorate. Cooperation has led to an amendment to the Labour Code, announced in July 1989. Now the Ministry of Employment (Ministère du Travail) is preparing a circular (circulaire d'application) which will be published soon. This practical guidance will be sent to every Labour Inspector (Inspecteur de Travail) and is supported by a CNIL training programme.

The new policy has already encouraged Labour Inspectors to use this new tool and has led to them making a number of complaints about companies to the CNIL.

United Kingdom: Highlights of the Data Protection Registrar's (DPR) activities over the last few months include:

- * the preparation of a report which might lead to the issue of enforcement notices against the main credit information companies. The next stage would be a preliminary notice which outlines the Registrar's intention to act. The companies then have a month to respond when they can explain why they think the Registrar should not issue an enforcement notice against them. The final stage is the Registrar's issuing of an enforcement notice (PL&B May '89 p.10).

- * in December the issuing of preliminary notices to 216 local authority Community Charge Registration Officers (CCROs) in England and Wales

outlining the action they need to take to comply with the Data Protection Act (PL&B September '89 p.9). Such action involves: deleting 20 different categories of irrelevant data including that on: relationships between those in a household; date of birth; further education; details of students; and dates when premises were occupied. A further 120 CCROs have been asked to guarantee that certain items of information from the Community Charge forms will not be kept on their computers.

* the formal committal proceedings in the case of the Registrar's prosecution of the Halifax Building Society (PL&B September 'September '89 p.9) are due to be heard in Calder Magistrates Court, Halifax, on February 6th 1990. The magistrates have stated that the case should be heard before a (higher) Crown Court (probably Leeds) before a judge and jury. The Halifax magistrates court considers that the Crown Court is more appropriate for this first ever case where an organization has been prosecuted for "knowingly and recklessly:" holding data for an unregistered purpose; for disclosing data to a person not registered; and obtaining data from a source not registered.

* action to encourage a more consistent approach by magistrates to Data Protection Act criminal cases that come before them. In October, the DPR issued a Magistrates' Courts Guidance Pack on the criminal provisions of the Data Protection Act 1984 which has been sent to all Clerks to Magistrates' Courts and Clerks to Justices. The guide has been produced by the DPR's office in association with the Magistrates' Courts' organizations.

The Guide explains the Data Protection Act and the related offence provisions. It cross references the offences to the relevant definition sections of the Act; and tabulates the offences showing the mode of trial, penalty, and relevant sections for each offence. The pack also includes specimen information, summons and an order for erasure of data material.

The Guide is not a commentary on the Act, nor does it deal with how the law should be interpreted, nor with policy issues like fines.

Anyone wanting a copy of the Guide should write (enclosing £2.50p. payable to the Office of the Data Protection Registrar) to Mrs. J. Struthers, Secretary to the Legal Adviser, Office of the Data Protection Registrar, Springfield House, Water Lane, Wilmslow, Cheshire, SK9 5AX.

United States: A Data Protection Bill was introduced into the USA House of Representatives on November 15th by Congressman Bob Wise, reports Access Reports/Freedom of Information (November 29th 1989 p.1). The bill would go far beyond the scope of the Privacy Act 1974 which applies only to individuals' files held by the federal government with no organization to help enforce those rights, apart from recourse to the courts. When Wise introduced the bill, he stated that: "today, there is no voice in government that represents and articulates data protection concerns on an ongoing basis. The (Data Protection) Board would be an institutional representative for privacy issues relating to the use and misuse of personal information. The Board would be a resource to assist individuals, government, and the private sector." Wise plans to hold hearings on the bill in 1990.

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