

DATA PROTECTION NEWS FROM AROUND THE WORLD

1. International organizations

The Council of Europe: Ireland became the 10th country to ratify the Council of Europe Convention (for the Protection of Individuals with Regard to Automatic Processing of Personal Data) on April 25th this year. Ireland's ratification entered into force on August 1st 1990. In common with other countries, Ireland declared, in its formal ratification, that it will not apply the Convention to certain automated personal data files. They are the ones referred to in Section 1 (4) of Ireland's Data Protection Act 1988:

- a. "personal data.....kept for the purpose of safeguarding the security of the State;"
- b. "personal data consisting of information that the person keeping the data is required by law to make available to the public;"
- c. "personal data kept by an individual and concerned only with the management of his personal, family or household affairs or kept by an individual only for recreational purposes."

Ireland's ratification follows that of Austria, Denmark, France, the Federal Republic of Germany, Luxembourg, Norway, Spain, Sweden and the United Kingdom. A country's ratification means that the Convention is binding in its national law. All these countries (except for Spain) have national data protection laws which follow similar principles included in the Convention.

Iceland and the Netherlands, which already have data protection laws, are expected to ratify the Convention in due course.

In addition to the Convention itself and the sectoral recommendations, the Council of Europe's Committee of Experts on Data Protection also prepares reports analysing the issues for the benefit of national legislators and national courts and to explore whether a recommendation is required. Such reports include the one on new technologies (PL&B August 88 p.2) and studies on member states' definitions of sensitive data (PL&B May '89 p.3). At its meeting on 20-23rd March this year, the Committee approved new reports on:

1. Data Protection and the Media; and
2. The Introduction and Use of Personal Identification Numbers: the Data Protection Issues.

Both reports were approved by the European Committee on Legal Co-operation at its meeting on 8-11 May. Now they will be submitted to the Committee of Ministers which should approve the texts for publication at their next meeting in mid-September. There will be fuller reports on these documents in the next issue of PL&B.

The Council of Europe Recommendation for the Protection of Personal Data used for Employment Purposes has now been published with its explanatory memorandum. The text we distributed with our December 1989 issue was the typescript version of the Recommendation itself. It has now been printed in booklet form together with a helpful explanatory memorandum. Copies are available from the PL & B office.

The European Community: On July 18th, the European Commission adopted a long awaited (PL&B Dec '89 p. 7) package of draft directives aimed at providing an equivalent standard of data protection legislation throughout the Community. The Commission's objective is to ensure that national rules will not be used as barriers to the use of information networks throughout the Community. The package was the 8th point on the Commission's agenda and was adopted with little discussion. In September, it passes for close scrutiny to the Committee of Permanent Representatives, the Economic and Social Committee, and the European Parliament.

The most important draft directive concerns general principles, and was prepared by Directorate-General 3 (internal market). The next most important covers the protection of personal data and privacy in the context of public digital telecommunications networks, prepared by Directorate-General 13 (telecommunications, information industries and innovation).

There is a full report on the Commission's first proposal on page 11.

2. Countries with data protection laws

Australia: The Legal and Constitutional Committee in Victoria published a report* in May recommending that consideration be given to the implementation of statutory Privacy Laws, reports Greg Tucker, Senior Lecturer at the School of Banking and Finance, Monash University, Melbourne. The report has been referred to the Attorney General for action.

The charter of the Committee was to review whether the Law of Breach of Confidence could be extended to cover privacy infringements. The Committee concluded that this was inappropriate. Many witnesses were critical of the narrow focus of the enquiry. They argued that to concentrate on breaches of confidence was merely to "play at the edges of a deeper, more enduring and clearly urgent need to protect individuals against encroachments upon their privacy." The critics main arguments were:

1. "The action of breach of confidence could not address vital aspects of the protection of personal information or data. The action is reactive rather than pro-active and does little to create systems in which personal information will be handled responsibly."
2. "This limited approach was out of step with international trends in data protection which focused upon the enactment of comprehensive legislation such as that recently introduced by the Commonwealth (federal) Parliament."

3. "The litigious nature of the action meant it was costly and therefore of limited use to the average person."

4. "To tinker with the law relating to breach of confidence may serve to instil in the public a false sense of security regarding the degree to which their privacy is protected."

Accordingly, the Committee made six recommendations, including:

".....the introduction of comprehensive information privacy/data protection legislation for Victoria," with specific commendation of the Hesse (Germany) and the Ontario (Canada) models.

".....the Commonwealth Privacy Act 1988 (excluding those sections dealing with breach of confidence) be the principal model for...the introduction of comprehensive information privacy/data protection legislation for Victoria," with specific reference to first regulating the public sector and then to regulating the private sector on an industry by industry basis.

* Report upon Privacy and Breach of Confidence (73 pages). The Legal & Constitutional Committee's Fortieth Report to the Parliament of Victoria. May 1990. We have a copy of this report in the PL&B office.

Canada: There have been major changes at the top at both federal level and in Ontario. From July 2nd, John Grace has been appointed as Information Commissioner with responsibility for administering the law on gaining access to federal government information. Alan Leadbeater, formerly Executive Director of the Privacy Commissioner's office, now becomes Acting Privacy Commissioner, and Parliament will decide in the coming months on the appointment of Bruce Phillips, nominated by the government to take over from Grace. Phillips is a former national political correspondent on Canadian television and former Director, Public Affairs at the Canadian Embassy in Washington D.C.

In Ontario, Sidney Linden has stepped down as Information and Privacy Commissioner/Ontario to take a post in the judiciary, and Assistant Commissioner, Dr. Ann Cavoukian (PL&B May '89 p.26) has taken over as Acting Privacy Commissioner. The office has been active in recent months publishing a major study on HIV/AIDS in the Workplace; producing revised privacy guidelines on faxing; and addressing an open letter to the Ontario Minister of Health, discussing serious privacy concerns related to the new Ontario Health Number. More details in our next issue.

The Privacy Commissioner's Annual Report

The publication in May of John Grace's last Privacy Commissioner's Annual Report gave him an opportunity to make a 7 year review of his term of office. His annual reports are the most consistently readable in the English speaking world both at the level of ringing principles and policy statements.

"Privacy moved from a peripheral social issue, from being a rather esoteric, rarefied - almost cult - concern into the main stream of public

consciousness.....Turning to privacy values is an instinctive human response to, and defence against, a prying pervasive technology. The cry for privacy protection is a plea that human values - human dignity - should prevail against a computer-driven culture which would claim sovereignty over every recorded transaction.....The consciences of the collectors of personal information are all that control the uses of private-sector data bases."

Some highlights from the report:

* Inquiries from the public have increased from 1,008 in 1984-85 to 3,447 in 1989-90. The most frequent question - when must the Social Insurance Number be given?

* "300,000 individuals have used the Privacy Act to apply for their information in federal government files over the last seven years."

* "National Defense now gives members of the Canadian Forces access to their current evaluations and to their position on a merit list without a formal request under the Privacy Act."

* "Employment and Immigration, Industry, Science and Technology, the Canadian Security Intelligence Service, among others, conduct their own internal audits to determine compliance with the Privacy Act."

* "In seven years, the Privacy Commissioner has not been forced to his ultimate resort - to bring a case against a government institution before the Federal Court....No recommendation of the Privacy Commissioner has been defied."

* "The government should consider bringing forth an amendment to the Privacy Act requiring federally-regulated firms to develop, implement and submit to the Privacy Commissioner for review, voluntary codes of privacy protection in conformity with the OECD Guidelines. It is not necessary for the Privacy Commissioner to have the power to order changes to any such code or to have any role in its enforcement. He should, however, continue to monitor the effectiveness of these voluntary codes and, only if experiences prove unsatisfactory, develop recommendations to Parliament for stronger privacy regulation."

* "In conducting investigations of complaints against the Canadian Security Intelligence Service, the Privacy Commissioner has extensive powers to enter premises, compel the production of witnesses and documents and take evidence under oath."

* A General Motors newspaper advertisement for a preferred customer card under GM's Smartlease program prompted a call from a Member of Parliament. The advertisement asked for the applicant's Social Insurance Number. The MP considered the request "an example of excessive use of SIN. The president of GM replied that the Privacy Commissioner's letter had given GM an opportunity to test one of its corporate values - to be "customer focused." He wrote "...all future General Motors advertisements containing a form for customer information will no longer require the applicant's SIN."

* Other issues covered in the report involve drug-testing, police databases, telecommunications, data matching, and privacy auditing.

Finland: A Ministry of Interior and Ministry of Finance plan for an Identity Card was defeated in July following strong opposition from the Data Protection Ombudsman (DPO). Anna-Riitta Wallin, the DPO, tells PL&B that the plan, proposed at the end of 1989, was to combine on one card name, Personal Identification Number, photograph, health data, entitlement to state financial aid and signature. The purpose of the new file would be to improve efficiency by making it easier to write and read the card in an automated format.

The police and other authorities claimed a right of access to the data on these cards under the law on access to government information. The DPO's task in opposing this proposal was made more difficult as a result of discovering from the Ministry of Health only at a very late stage that the proposal existed. In future, the DPO is aiming to be consulted at an earlier stage of government projects involving personal data.

The DPO expects to publish by the end of this year a major study on health data. The research has included interviews with the Ministry of Health and Social Affairs, doctors and other health professionals.

Iceland: The new Act Concerning the Registration and Handling of Personal Data, no. 121 of 28th December 1989, (PL&B Sep '89 p.6, April '90 p.5) came into force on 1st January this year and has now been translated into English. Copies are available from the PL&B office.

Ireland: From 2nd July, the Data Protection Commissioner's office has moved to:

Address: Block 4, Irish Life Centre, Talbot Street, Dublin 1.
Telephone: + (353) 1 748 544
Fax: + (353) 1 745 405

Norway: The annual meeting of Nordic Data Protection Commissioners took place this year in early June at Frederikstaad, the home town of Georg Apenes, the Director of Norway's Datatilsynet (Data Inspectorate), reports Eirik Djonne, who - after 10 years - leaves at the end of August as Head of Division. Their discussions covered:

1. The census which is being held this year in Sweden, Norway and Denmark.
2. The way that the Council of Europe Convention and Recommendations are being followed in each country. For example, members of the policy staff at the Datatilsynet are each looking at the implications of a different Recommendation.
3. Areas of Nordic co-operation, such as credit information, telecommunications, and immigration.
4. National news (see our reports on Finland and Sweden in this section).

Earlier in the year, there had been a seminar to celebrate the 10th anniversary of the Datatilsynet, organized together with the Business University. Issues discussed included auditing, health research, and genetic screening.

Portugal: Marta Santos Pais of the Procuradoria-Geral da Republica (Attorney General's Department) tells PL&B that three data protection bills are currently under consideration by the Parliament:

1. Bill no. 381/V, on the rights of citizens in relation to information technology, presented to Parliament on 31st March 1989 by the Socialist Party, and published in the official Diario da Assembleia da Republica on April 7th 1989;
2. Bill no. 135/V, on the protection of personal data in relation to information technology, seen and approved by the Council of Ministers on February 22nd 1990, and published in the Diario on March 14th 1990; and
3. Bill no. 519/V, on defence of the rights of man in relation to information technology, presented to Parliament on 11th April, 1990 by the PRD party, and published in the Diario on April 18th 1990.

This renewed activity follows the stalled 1984 bill (PL&B Feb '87 p.20) and has been stimulated by last year's revision of Article 35 of the Constitution (PL&B Sep '89 p.18). PL&B has the Portuguese original texts of these bills but no English translations. If any PL&B readers are interested in contributing towards an English version or summary, or know of the existence of an English version, please contact the PL&B office.

Sweden:

Review of the Data Act

The government has set up a Data Legislation Commission to make a thorough review of the Data Act and to draft a new law, reports Britt-Marie Arne-Hellstrom, Head of Division for the private sector at Sweden's Datainspektionen (Data Inspectorate).

The purpose of the review is to create simple, intelligible rules while preserving good safeguards against improper encroachment on personal privacy. The rules should not be linked to any specific computer technique but should be applicable to any future automated information system. The review should be finished by the end of 1991, but the earliest that new legislation could come into force would be 1993.

The first stage is being handled by a special investigator who is studying the need for revising the law and identifying possible solutions. Subsequently, the government will draw up more detailed guidelines for a parliamentary committee to continue the work.

The issues to be covered include:

1. the licensing system;
2. general rules/regulations for certain groups of personal files;
3. self-regulation
4. new methods of supervision
5. special provisions for certain sectors
6. the basic concepts
7. clarifying or improving the rights of the individual
8. the Datainspektionen's organization
9. the correction system
10. the relationship between the Data Act and other laws and co-ordinating their enforcement
11. the system of appeal against a decision of the Datainspektionen

New Study on Personal Data in Management-Employee Relations

At PL&B's June 14th conference on the Council of Europe Recommendation on Employment Data, Karin Berke-Granfors, Datainspektionen's Principal Administrative Officer, outlined the scope of its new study on personal data used in management-employee relations. The project is based on the wish to evaluate how Sweden's law should create a balance between:

1. employers' use of automated data processing for rationalizing administration, supervising employees and for planning the allocation of individuals to specific jobs according to their education, skills and other attributes; and
2. threats to personal privacy at work.

The aim of the project is to find out how employers use personal data, and, if there is a risk to personal privacy, to issue guidelines or recommendations. As a result, the Datainspektionen has established a Study Commission and invited the Employers' and the Employees' Associations from the private and public sectors to be represented on the Commission.

The Commission plans to visit places of work in both the public and private sectors to study how personal data is used by the employers. These are likely to include the electronic industries, retailers, transport companies, wholesalers and direct marketing companies.

The systems likely to receive attention are access control systems,

telemarketing systems, tachometers (for measuring the work of truck drivers), and the recording of data in many areas, including: job applicants, character, sex, electronic images of fingerprints and eye movement patterns, assessment for promotion, reasons for retirement, union membership, and time of vaccination.

The United Kingdom:

Registrar Serves Enforcement Notices on Credit Information Companies

Data Protection Registrar (DPR), Eric Howe, announced on August 29th that he has served Enforcement Notices on the four main credit reference agencies. He has ordered them to change their methods of processing personal data by reference to the address or previous address of the credit applicant (see page 25).

Television Advertising for Data Protection Rights

The DPR's TV advertising campaign to inform people of their rights was piloted in the Granada (north-west England) TV region in February and subsequently extended to the rest of the UK over the following months until the end of June.

The DPR has started investing in television advertising to increase the public's awareness of their rights regarding organization's holding of personal data about them. There has been a measurable increase in public concern in the Granada TV region:

* There, three-quarters of the respondents surveyed were concerned about the amount of public and private sector information kept on them, compared with two-thirds in other regions of the UK.

* 54% of people in the Granada region were aware that there was an organization to help them assert their data protection rights, compared with 33% in the rest of the country.

New Codes of Practice Published

Over the last year, a number of new codes of practice have been published which interpret the Data Protection Act for specific sectors:

- Property management (Royal Institute of Chartered Surveyors, Incorporated Society of Valuers and Auctioneers and the National Association of Estate Agents);
- Customer and supplier administration (Chartered Institute of Management Accountants, Institute of Internal Auditors, and the Institute of Purchasing and Supply);
- Computer bureau services (Computing Services Association);
- Confidentiality of personal information (Office of Population

Censuses and Surveys) - prepared but not yet published.

Work is also under way on developing new codes of practice for the insurance and pension industries and for pharmacists.

Advertising Association Revises Personal Data Code of Practice

On June 11th the Advertising Association published the 2nd edition of its Code of Practice Covering the use of Personal Data for Advertising and Direct Marketing Purposes.*

The new edition contains many points with which the Registrar agrees. These include the provisions concerning list warranties, which regulate the way names are transferred between list owner and list user so as to ensure that personal data complies with the code in every way. Also the establishment of the Mailing Preference Service. This gives individuals an opportunity to inform the direct marketing industry that they do not wish to receive direct marketing mail, or that they do in specific categories.

The main point of difference between the industry and the Registrar is on how to interpret the first data protection principle which states that information contained in personal data should be fairly obtained. The difference centres on when an individual should be informed of who will make use of the data, and of the intended uses and disclosures, if these points are not clear from the context. Ultimately, these differences will need to be tested in the courts.

At the launch of the Code, Eric Howe gave PL&B examples of his view of acceptable and unacceptable practices in terms of fair obtaining of data (PL&B April '90 p.23):

* It would be unfair obtaining if a bank used information about an individual's bank account to mail him offers of financial services managed by another company in the same corporation. When an individual opens a bank account, he assumes that the bank will use the data solely for managing that account. It would be fair obtaining only if the individual had consented to the use of data on him for another purpose.

* It would be fair obtaining if an individual responds to a reply coupon requesting information about garden seeds and the company retains the information to mail a catalogue to the same individual the following year with an offer of garden products. In this case, the assumption is that the individual has a continuing interest in garden products and has consented for data on him to be used for this purpose.

* Code of Practice Covering the Use of Personal Data for Advertising and Direct Marketing Purposes. Second Edition. Published by the Advertising Association, Abford House, 15, Wilton Road, London, SW1V 1NJ, UK. Telephone: 071 828 2771.