

## UK DATA PROTECTION REGISTRAR STEPS UP PRESSURE ON DATA USERS

Eric Howe, the Data Protection Registrar (DPR), is now clearly showing organizations which ignore or challenge his interpretation of the Data Protection Act that he will enforce it vigorously. His Sixth Annual Report, published on 18th July, gives plenty of evidence that the DPR's office is both responding to complaints and making the Data Protection Act bite.

### Complaints

There has been an almost two and a half times increase in the volume of complaints, to 2,698 over the year up to the end of May compared with 1,122 in the previous year. There has been a reversal at the top of the list of complaints, with those about credit information falling from 35% to 17%, while those about unsolicited mail have risen from 16% to 45%.

Organizations from other sectors should not relax, however, because two categories cover issues which relate to every type of organization: 15% of complaints were that information had been unfairly obtained, and 8% of complaints were that data users had not been complying with their obligations to give data subjects access to data on themselves.

### Investigations

The complaints procedure has been streamlined to cope with this workload. The DPR's staff now often discusses the issues with complainants by telephone so that they can make a rapid assessment of the nature and seriousness of the complaint, without necessarily engaging in lengthy correspondence. If necessary, one of the regionally based part-time investigators follows up the call to obtain a detailed statement. This streamlining of investigation procedures follows an increase in investigation assignments of 25% over the last two years. The DPR expects this number to increase to around 1,000 over the coming year.

The annual report includes 30 examples of complaints and how they were resolved. The following examples reflect inadequate policy procedures and show the importance of extending awareness of the Act's principles beyond your legal department.

#### Example 1: Data security

"The complainant sent in a building society computer print-out containing personal data which she had found discarded near her home. The officers of the society took the breach of security very seriously and quickly introduced new procedures for the disposal of confidential waste."

#### Example 2: Subject access

"The complainant had not received an adequate explanation of the codes used by a sporting authority on its files to make

his subject access reply meaningful. Follow-up correspondence had been unsuccessful."

"The full key to the coded records was obtained from the authority which was reminded of its obligations under the Act. The authority stated that it had attempted to explain the details by telephone to the complainant."

#### Example 3: Unauthorised disclosure

"A local council rates office had disclosed the complainant's address to her ex-husband. The complainant was divorced and had moved several times in an effort to prevent her ex-husband from contacting her. The ex-husband had informed the rates office that he was a relative and produced evidence proving his identity. It is normally the policy of the rates office to forward correspondence in these circumstances, but in this case, the clerk returned the envelope with the ex-wife's address."

"The council's Data Protection Register entry covered the disclosure to relatives of ratepayers, but the council's own code of practice had been contravened. As a result of the complaint, written instructions were re-issued to all members of staff reminding them that under no circumstances must information be disclosed to third parties; such breaches would result in disciplinary action."

#### Example 4: Complaints leading to prosecution for holding, obtaining and disclosing personal data without an appropriate Register entry

"Complaints were received concerning a letter sent by a theatre company to individuals on its mailing list. This letter informed individuals who had not paid their subscriptions, or had allowed them to lapse, that their names had been rented out to other organizations. It went on to say that one of these companies had copied the list onto its database and that the theatre company therefore had no control over the mailings that might be sent as a result."

"Inspection of the Data Protection Register revealed that the company was not registered to hold or obtain personal data about prospective theatre goers, to use such data for marketing purposes or to disclose such data to other theatre companies."

"The theatre company was prosecuted for four offences under Section 5 (2) of the Data Protection Act."

#### Prosecutions

While the complaints set the agenda for the DPR's enforcement

activities, the DPR has prosecuted organizations in 30 cases over the last year. Each case is considered by the Registrar's Legal Adviser, Mrs. Rosemary Jay, and carefully prepared, with the consequence that the DPR has won each of the 22 cases which have been concluded.

Fines have ranged from £100 to £2,000 and costs from £50 to £900. The organizations prosecuted include an insurance broker, an employment agency and a property company. All the cases so far have been heard in Magistrates Courts but the first trial in a Crown Court, involving the Halifax Building Society, is due to be heard in Leeds on November 26-28th this year.

The 30 prosecutions have involved 8 out of the Act's 15 criminal offences, and most of these relate to registration. Indeed, 25 of the cases were brought against non-registered data users, and of these, 10 were due to data users failing to renew their Register entries.

### **Enforcement Notices**

During the period of the annual report, the DPR issued 216 preliminary notices, which indicate that he is intending to take certain steps, subsequently 9 enforcement notices and 14 notices of refusal of registration - all against Community Charge Registration Officers. Three of these cases have been appealed to the Data Protection Tribunal, one case is still pending from last year but none of these cases have yet been heard.

### **Managing the Enforcement Process**

With this rapid increase in enforcement action, the DPR's Legal Adviser has established a network of solicitors who handle prosecution cases in their own areas. They are provided with specialist training and extend the range of the DPR's resources without adding an establishment cost.

The DPR's Legal Adviser has issued to all Magistrates Courts a Magistrates' Court Guidance Pack to ensure greater awareness of the Act.

### **Renew Your Registration**

In addition to this activity on the enforcement front, the registration work of the DPR's office continues. Over 100,000 register entries were due for renewal after three years had elapsed; there were 37,000 amendments to register entries; and 19,000 new applications for registration. By the end of May, there were 153,000 entries on the Register representing about 130,000 data users.

The drop-out rate, those failing to re-register, is currently 22% of the total. The DPR gives the following reasons for companies dropping out:

1. Companies have gone out of business
2. Some small organizations originally registered as a safety measure but are now relying on the exemptions, such as processing personal data solely for payroll, pension and accounts purposes

3. Some larger organizations are reducing the number of their registrations
4. Some organizations are simply failing to re-register and are leaving themselves open to prosecution.

Many organizations are taking this opportunity to amend their registration details. The DPR's office makes the process easy for data users to renew or to re-register by writing a reminder letter and asking for the return of a single sheet of paper. Data users should return these forms by the due date because, otherwise, the DPR's team will investigate.

Particularly vulnerable are those companies which have re-organized and changed their management responsibility for data protection. After all, during a corporate takeover or re-organization, data protection is not necessarily at the top of the action list!

The DPR expects an increase in the registration fee in April 1991 from £56 to £75 for three years. The DPR projects that his office will break even, as required by the Data Protection Act, by March 31st 1996.

#### Other issues covered in the annual report

- (a) The construction and use of Personal Identification Numbers
- (b) The use of the National Insurance number
- (c) The student loans scheme
- (d) The consumer credit industry
- (e) Recommendations on banking services law
- (f) Use of information published under statute
- (g) The national criminal records system
- (h) The community charge
- (i) Direct marketing
- (j) The Human Fertilisation and Embryology Bill
- (k) Codes of practice
- (l) Review of the Act

(m) Others issues requiring attention include: the replacement Police National Computer System (PNC2); use of the Government Data Network; Health Service computing; The European Community; transborder data flows; personal identification systems; profiling techniques; and data matching.

The Sixth Annual Report of the Data Protection Registrar June 1990 is published by the HMSO. ISBN 0 10 247290 4 Price £8-10p.