

UK REGISTRAR REPORTS POOR AWARENESS, SOCIETY-WIDE AGENDA AND STRONGER ENFORCEMENT

The consequences of breaching the UK's Data Protection Act in terms of publicity and fines are now clear to your customers, shareholders, and employees.

The UK Data Protection Registrar's *Seventh Annual Report* marks a turning point by naming the organizations which he has prosecuted and for the first time reporting decisions of the Data Protection Tribunal. This means that every part of the Data Protection Act's (DPA) machinery is now fully working. Levi-Strauss (UK)'s fine of £1,000 no longer remains in the closed files of the Northampton Magistrates Court (after the conclusion of the case) and finding information on the Halifax Building Society's acquittal is no longer a matter of scouring newspapers from the time of the decision.

This feature on the working of the UK's law includes:

1. survey results showing awareness of the DPA is superficial (this page)
2. the Registrar's agenda for action (p. 9)
3. a sample of typical complaints (p. 11)
4. the decisions of the Data Protection Tribunal in all four credit reference cases (p. 13).

Awareness of DPA up..... but superficial

The DPR periodically conducts surveys of public awareness using an independent research company. The March 1991 survey's most significant results were:

- Awareness of the DPA had increased from 42% (February 1989) to 53%
- One third of the public continue to wrongly assume that the DPA covers *manual files*
- Both larger and smaller organizations showed *less awareness of their need to*

register their processing of personal data in 1991 compared with 1986 when the registration publicity was at its peak. This year, less than two-thirds (62%) of smaller organizations (employing less than 50 people) and just over four fifths (82%) of larger organizations were aware of their need to register.

- Disappointingly for the DPR, awareness in 1991 of organizations' *other duties under the DPA*, apart from registration, is low, at a quarter (26%) of small organizations and under half (44%) of larger organizations. This is disappointing because registration represents the bureaucratic requirement of the legislation while adherence to the eight principles represents the substance of data protection which the law is designed to promote.
- Of this minority of organizations which were aware that they had other duties in addition to registration, in the 1991 survey, only just over one-third (36%) of smaller organizations and just under a half (48%) of larger organizations were aware of data subjects' *right of access* to data on themselves; and well under a half (40%) of small organizations and just under a third (31%) of larger organizations realized that they *must not disclose information to unauthorized persons*.
- *Awareness of the other principles* is at a significantly lower level in both larger and smaller organizations. For example, awareness of the requirement to obtain personal data fairly remains at 10% or below in 1991, regardless of the size of the organization.

Registrar welcomes EC Draft Directive

The DPR welcomes the strengthening of privacy protection. The UK does not have a written constitution guaranteeing a right to privacy. The UK's Data Protection Act has a much more limited role and does not mention privacy. His comments on the EC draft directive include:

The Registrar's Aims

The Registrar is creating an environment where data protection is an integral and routine part of everyday handling of personal data. Data subjects should know and exercise their rights as they wish, and data users should follow the eight Data Protection Principles which accompany the Data Protection Act. The Registrar aims for data protection principles to be automatically incorporated into private and public sector policies and to be consulted at an early stage when new legislation is drafted.

1. There is a need to *strike a balance* between protecting individuals' rights while not unnecessarily restricting Data Users' rights to carry on their businesses.
2. The EC draft directive's coverage of *manual data* needs to find a formula which does not cover all manually held personal data.
3. The requirement to *notify individuals before making disclosures* to a third party needs further discussion to ensure that it can be implemented in a fair and practical way.
4. It is ironical that the EC's proposals offer a *registration system* closely modelled on the UK's when the DPR has made proposals for significantly reducing its scope.
5. The provisions preventing the private sector from holding *criminal records* will present problems if firms cannot hold records, for example, covering fraud or traffic offences committed by company drivers.
6. Although a high standard of data protection is welcome, the EC's approach of taking the Council of Europe Convention and adding a selection of national data protection provisions would cause *practical implementation problems* at the national level.
7. The proposed EC directive might be adopted by the Council of Ministers by the end of 1992. However, the DPR considers that the earliest date for

implementation in the UK would be *November 1994*.

Registrar's public sector agenda

- **National Insurance Numbers/Personal Identification Numbers/Identity Cards:** the concern that National Insurance Numbers become in practice a national identity number. At present, there are no statutory regulations to restrict its use to tax and benefit related purposes. There is a similar concern that a Driver and Vehicle Licensing Agency proposal to introduce photographs on driving licenses (held by over 30 million people) would inevitably increase the attractiveness of the driving license as a proof of identity in many non-driving transactions. It could become, in practice, a national identity document.
- **Data Matching:** the concern over the matching of personal data held by different central or local government departments without proper regard to data protection principles. The assembling of information on an individual from various sources is also a practice which relates to the direct marketing and credit reference industries.
- **Use of Public Data for Private Purposes:** the concern that public data, such as electoral registers, is being used for commercial purposes. The 1990 amendment to the Representation of the People Regulations 1986 caused Electoral Registration Officers to sell copies of their Registers to anybody placing an order and paying a fee. The DPR considered that "the new regulations weakened the position of individuals by effectively forcing them to

supply their names and addresses to anyone who cares to buy their registers."

- **Access to Criminal Records:** these issues include - who should be the record keeper; the scope of the records; who should provide information for the records; who should be entitled to see them; and for how long they should be retained. The DPR has supported a publicly accountable National Criminal Records Agency and a system of statutorily regulated disclosures. The DPR wants to end the practice of individuals being forced, by employers and others, to use their own subject access rights to gain access to these records.
- **The Health Service:** reforms to the National Health Service (NHS) have increased the flow of patients' sensitive personal information between different health care organizations. The DPR's staff are investigating the content and use of this confidential information. Questions include who will have access to health information; and whether administrators will be able to identify individual's medical conditions. The DPR wants a Code of Confidentiality of Personal Health Information to be backed by an enforceable statute but the Department of Health has opted for non-statutory guidance.
- **Child Support Agency:** the DPR welcomes the fact that the Child Support Bill, which covers the assessment, collection and enforcement of payments for child maintenance, was referred to him at an early stage. The Agency and Officers created by the legislation will have wide ranging powers to gather information and the DPR's office has had detailed discussions to support the Data Protection Principles in the drafting of the bill and will do so again when the implementing regulations are drawn up.
- **New Legislation:** the DPR has now received the support of the House of Commons Home Affairs Committee and Government Ministers to the proposal that he be consulted at an early stage when new legislation is prepared. The DPR has

followed up by contacting the heads of all relevant government departments.

Registrar's private sector agenda

- **A Code of Banking Practice:** A Working Group with representatives of the Association for Payment Clearing Services, the British Bankers Association and the Building Societies Association was set up in March 1990 to produce a voluntary Code of Banking Practice for dealing with personal customers. The DPR explained to the Group that the draft code reduced the level of protection for individuals offered by the present banker's duty of confidentiality; and insufficiently respected the use of customers' information for purposes other than for administering an account, for example, for direct marketing.
- **Direct Marketing:** The DPR's staff have been studying several techniques including profiling and targetting. Issues include: the collection of information via lifestyle questionnaires; the relationship of census or geographically based data to individuals; the use of publicly available information such as electoral and share registers; the range of information held on individuals; and the attributing of assumptions such as age or income to individuals for targetting purposes. The DPR supports the work of the Mailing Preference Service, the plans for a Telephone Preference Service and continues to encourage the use of opt-out opportunities for customers and prospects not to have their data passed to third parties.
- **Telecommunications:** The DPR's office has been involved in discussions at national and international level in assessing privacy concerns and considering appropriate solutions, in particular, for itemised billing and calling line identification.
- **Small Businesses:** The DPR's office is taking steps to produce simplified guidance for small businesses.

Technological Change

The Registrar follows developments, such as smart cards and document image processing. The latter technology uses optical discs. One twelve inch optical disc can hold the equivalent of 200,000 A4 pages of text. The DPR's office keeps up with such novel technologies to give guidance on how the data protection principles should be applied.

The Registrar's Future Activity

Over the coming years the DPR will concentrate on:

1. More contact with the different sectors to discuss their policies and promote good data protection policy and practice.
2. A more positive approach in monitoring compliance by enquiring into the practices of data users.
3. Continuing to handle effectively all complaints to his office.
4. Progressing with enforcement and prosecutions.
5. Further publicising his functions and the Data Protection Principles.
6. Reviewing the registration process.

This report by Andrew Winch, a county council strategic advisor, is based on a presentation by Francis Aldhouse, Deputy Registrar, at July's *Privacy Laws & Business 4th Annual Conference* in Cambridge. It has been edited and supplemented by the *Seventh Report of the Data Protection Registrar June 1991* published by HMSO, London, £11.40. ISBN 0 10 255391 2.

COMPLAINTS TO THE UK REGISTRAR SHOW NEED FOR TIGHTER MANAGEMENT

For the year ending May 31st 1991, the DPR received 2,419 complaints of which 31% related to consumer credit, up from 17% last year, and another 31% related to direct marketing. Over half (60%) of complaints are dealt with without the need for formal detailed investigation. On speed of investigation, just over one-third (36%) are dealt with within three months, two-thirds (67%) are dealt with within six months, and 9% take over a year.

Complaints to the UK's Data Protection Registrar show evidence of inadequate systems and staff training. These complaints have been selected from the DPR's Seventh Annual Report and provide an agenda for action for all to ensure that similar complaints could not be made against your organization.

Credit Reference

The complainant had encountered problems with her credit reference file. The financial dealings, including several debts, of a local company had been added to her file because they had wrongly been given her post code. The complainant wished to disassociate herself from the company involved. She also felt that this information had been the reason for her being turned down for credit. However, when she approached the credit reference agency they refused to remove the offending information.

The complainant was advised to have a notice of correction added to her file which would indicate that she was not financially responsible for the company in any way. This notice was added to the credit reference file although the County Court Judgements held against the company still showed her post code.

The credit reference agency was then warned that the way such data was held was in breach of the Fourth Data Protection Principle. This was because the personal data were inadequate and irrelevant for the purpose of