

NEWS FROM AROUND THE WORLD

European Community The long awaited European Community's revised Data Protection draft directive (PLB August '91 p.9) was finally adopted on October 15th in a special procedure where two Commissioners act on behalf of the Commission. The decision was taken by Vice-Presidents Martin Bangemann of DG3 covering the Internal Market (PL&B August '92 p.14) and Filippo Pandolfi of DG 13 covering Science, Research and Development, Telecommunications, Information Technology and Innovation. The revised text will now be considered by a Council of Ministers working party and again by the European Parliament. The details will be featured in the next issue of the *Privacy Laws & Business Newsletter* to be published soon.

Hong Kong's Law Reform Commission's Sub-Committee on Privacy and Data Protection will shortly publish its public consultation document (PL&B July '91 p.14). There will be a three month public consultation period before making its report and then it reports to the Law Reform Commission which may or may not endorse it.

Isle of Man's first data protection court case was heard on March 13th resulting in a fine of £200 and costs of £250 being awarded against defendant Richard Newton for failing to register as required by the Data Protection Act. Newton's home was raided in August 1991 on the basis of warrants executed by the Data Protection Registrar, Dr. Malcolm Norris, the police and the Consumer Affairs Department. They found Newton carrying on a business trading in personal data. Despite the fact that the Registrar had sent him three letters inviting him to register last year he had not replied, as he claimed in court that he believed that he did not need to register. A complaint was made by UK-based Chartsearch Direct. Written statements were given to the court by Chartsearch Direct and by a data subject on

one of Newton's lists, stating that the information had been improperly used in the Isle of Man. The court ordered Newton's seized tapes and documents to be held for a further 30 days, after which they were to be destroyed if he had not registered by then. Newton registered within the time limit.

New Zealand's first Privacy Commissioner (PL&B December '91 p.15) is Bruce Slane who was appointed on April 15th to his Department of Justice-funded office. He visited *Privacy Laws & Business* in June and explained his role.

Although he is a member of the New Zealand Human Rights Commission, he has chosen to retain an independent and distinct role from the other members of the Commission. He has a separate office and has hired separate staff. He has begun the task of monitoring the way that the designated government agencies comply with the new law and aims to report on *government data matching* within two years. However, he did not want to suggest a timetable for making recommendations to the legislature on extending the law and his competence to the *private sector*. In the meantime, he has initiated contacts with parts of the private sector, such as the direct marketing industry, most likely to be affected by a stronger privacy law.

He has wide powers, which include inquiring into any practice or abuse, inviting and receiving representations, examining any proposed legislation or policy, making public statements and offering recommendations directly to the Prime Minister. He is not empowered to investigate individuals' complaints about invasions of their privacy but he may make general inquiries or recommendations on problems that lead to such complaints.

Bruce Slane was senior partner in the Auckland law firm of Cairns Slane, is a former president of the New Zealand Law Society (1982-1985) and of the Auckland District Law Society, former chairman of the New Zealand Broadcasting Tribunal from 1977 to 1990 and

founding editor of a law journal, *Northern Law News*.

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Spain's Great Personal Data Scandal earlier this year broke all the Council of Europe Convention's data protection principles but has shocked the legislature into adopting a data protection law on October 8th after years of delay.

The scandal involved three people who were arrested by the police on January 15th accused of being involved in the sale of personal data from the Computer Centre of the Work and Health Department. Its *Publigest* data bank stored 53 sets of data on more than 20 million Spanish citizens. This data included:

1. identification card numbers
2. sex
3. marital status
4. name and address
5. family data, for example, number and sex of children, age of spouse
6. personal income data and details of type of home and car, and
7. data relating to professional life.

As there was not yet a law which could specifically address this personal data scandal (PL&B July '91 p.11), the accused were arrested and then released while the public prosecutor decided on the most appropriate charges.

Of course, this scandal has been a shock to Spain but there are positive aspects. The public has been forced into awareness of the need for effective regulation of personal data. Spain's constitutional provision on privacy has been seen to need amplification in statute law. The government and legislature moved data protection higher up the agenda.

Sweden's Data Inspection Board from 1st September has a new Director General, Anitha Bondestam a judge (Head of Division) of the Stockholm Administrative Court of Appeal. She was Minister of Transport 1978-79 (Liberal Party). She has also been chairperson of several Governmental Commissions, among them the Equal Opportunities Commission. The former Director General, Stina Wahlström, has been appointed Parliamentary Ombudsman.

United Kingdom There has been a significant fall in the total number of *complaints* this year. Last year there were 2,419 complaints against 1,747 this year. Consumer credit complaints form around a third of the total. Complaints regarding unsolicited mail have fallen to 18.5% of the total this year from 31% last year and 44.5% in 1990. Some reasons for this significant fall might relate to the publicity problem as the budget available for Data Protection Office public relations is declining.

There have been 27 *prosecutions* this year. All of them but one, fell under section 5(1) of the DPA of holding personal information without registration. The prosecution under section 10(9), which is failing to comply with an enforcement notice, was unsuccessful. There has been no prosecution of individuals so far. Any prosecution of individuals would have to be under section 5(2) of the Act, using data for the purpose not registered or disclosing to someone not included on the register entry. Such acts must carry the elements "knowingly or recklessly," which is difficult to establish. The Annual Report mentions one case where an employee gained access to the customer record of the company in order to pass details of a customer to a friend. In the event, the employee lost her job and the Registrar decided not to proceed with a prosecution.

This year there has been a change in relation to *supervisory actions*. Formal undertakings have been developed to avoid the need for enforcement action. An undertaking is a formal document agreed between the Registrar and the data user concerned, which

sets out the issues involved and the steps that the user has agreed to take to comply with the data protection principles. The undertaking is signed by a senior officer at the organisation concerned and is drafted in such a way that the Registrar can take action if the undertaking is breached. This technique have been used in a number of cases where the consideration of enforcement can lead directly to an undertaking or it can lead to a preliminary notice and then to a formal undertaking.

There are two *appeals* against an Enforcement Notice to the Data Protection Tribunal, which are quite important as they may resolve some of the questions raised by the Registrar in relation to fair obtaining of personal data involving the details and timing of the notification.

The DPR received 16,500 new applications for *registration*, 22,000 requests for amendment, 113 registration refusals and 3 appeals against refusals.

The DPR will have to reduce his promotional efforts due to financial cuts and

will therefore concentrate on maintaining and distributing existing material and will make use of Citizens Advice Bureaux to address data subjects and bodies representing small firms.

Finally, **monitoring and research**. There have been a couple of compliance projects on monitoring, for example:

The DPR contacted 203 advertisers with a view to looking at whether the requirements of the Act for registration and compliance with the DP principles were being met. The DPR found out that the requirements were often not being met, and that there were problems of compliance in both areas. Some of them led to prosecution and enforcement actions.

Another project involved town tests (Cambridge, Stockport and Dundee) where a particular area is targeted in order to promote information about the Act by distributing leaflets, through media coverage, attending trade exhibitions, and making random visits to businesses to ask whether they hold personal data and if they are aware of the Act. This

SIMON MOULTON : AN APPRECIATION

Early this year, I learned that Simon Moulton, Assistant Registrar at the Office of the Data Protection Registrar in the UK, had suddenly died. This newsletter goes to press exactly four years since we first met on October 19th 1988.

Simon Moulton was a barrister and had worked in labour relations before joining the Office of the Data Protection Registrar in April 1986.

On hearing of the tragedy, I immediately wrote to Eric Howe, the Registrar:

I was devastated to hear that Simon Moulton has died and am writing to express my deep shock and sorrow. You have lost an outstanding colleague for whom I had the greatest respect. I met him at our first Privacy Laws & Business conference in London in October 1988 and he proved a most helpful contact at your office ever since.

Simon made useful contributions when he attended the Data Protection Authorities' Forum meetings on consumer credit in Denmark in 1989 and insurance in Switzerland in 1990. He also spoke at our annual conference in Windsor in 1989 and at our Managing Data Protection and Employee Relations conference in June 1990 in London.

On every subject, Simon displayed a command of the issues, a firmness on data protection principles and flexibility on how they might be interpreted in specific situations. He was surely a model policy adviser.

As one of the first members of your staff with whom I made contact, he always made himself available to discuss the progress of various policies. I know that you will miss his finely balanced judgement combined with his warm and modest manner. I will.

Please convey my condolences both to your colleagues and his family. I share your loss.

Stewart Dresner, Publisher

