



New UK Registrar reassesses and strengthens privacy protection role

Elizabeth France, UK Data Protection Registrar, reassesses the role of her office and adopts a new approach to data protection in the Eleventh Report of the Data Protection Registrar, the first annual report since she took up the post. In the following pages, we highlight some of the issues attracting the Registrar's attention in the previous twelve months.

The new approach

Presented with new challenges in the second decade of data protection legislation in the UK, Elizabeth France sees her role as "promoting and ensuring respect for individuals' private life, and in particular information privacy."

Although this may be seen as a significant policy shift, the Registrar's new approach and emphasis on protecting individual's privacy came as a response to changes in technology, law and culture in the past years.

Technology has changed most dramatically since the Act was enacted in 1984. Geographic Information Systems, Document Image Processing, data matching and data mining are mentioned as some of the new techniques used for processing information about individuals. Electronic Data Interchange, smart cards and Internet all pose new questions and demand ingenious answers in relation to privacy and data protection implications.

The Registrar stressed the need for a balance between the rights of the individual and the legitimate requirement of organisations and the society in general for information. "Perhaps, more importantly, a balance has to be struck between convenience and confidentiality, between privacy and public interest."

In this changing climate of emerging technologies, mounting pressures to use and match information and varying attitudes of the individuals the law seeks to assist, the Registrar has to "be in a position to ensure that data protection is recognised as part of the privacy portfolio."

Elizabeth France confirmed her determination to work closely with those who are using and sharing information to ensure that the data protection principles are considered from the start. She believes that a "cultural" shift is necessary to ensure full compliance with the principles. This would mean "a situation where thinking about the implications of processing for the privacy of personal information is second nature."

The priorities

Soon after taking the post of the Data Protection Registrar, Elizabeth France identified the following areas as of particular importance for her function and the role of the Office:

- increasing awareness and accessibility of the Act amongst both computer users and the general public;
- streamlining procedures for registration and compliance;
- stimulating debate over issue of public concern regarding privacy and the use of personal information.

Much of the work in the previous twelve months has been devoted to the above priorities.

Raising awareness

In order to improve awareness of the Act and, in particular, the Registrar's role, the new brand statement was devised - "Using the Law to Protect your Information." Also, this need to "put the message across to data users and individuals" was partially the motive to issue the mission statement setting out the Registrar's tasks and perception of her role.

Streamlining procedures

Streamlining procedures for registration and compliance has been a focus of activity within the Office over the last six months. Simplification of the registration process is intended to benefit both data users and the Registrar's staff. The Registrar's aim is to make the information in the register entry more useful, both to data subjects and to the compliance work of the Registrar's staff.

Stimulating public debate

The Registrar's Office had an active role in stimulating public debate over various issues affecting information privacy.

Thus, workshops and conferences have been organised on the amendments to the Act brought



in by the Criminal Justice and Public Order Act, on the principle of confidentiality, and on identity cards.

Finally, an informal *advisory group* from representatives of commercial, academic and government fields has been established. Its role is to provide a sounding board for various ideas and projects and give a "vital link into those groups the Registrar seeks both to regulate and to serve." The group is due to meet for the first time after the summer break.

Implementation of data protection principles

Elizabeth France stressed the need to continue work on ensuring compliance with the data protection principles. She has welcomed their inclusion in a similar form in the EU draft Data Protection Directive.

The Office has provided much advice to data users on particular points of application of the principles to their processing activities. Also, in many cases, the Registrar has followed up complaints relating to non-observance of these principles.

The following are some of the issues of particular importance and concern to the Registrar's work on compliance with the principles.

Data matching

The Registrar expressed concern over an increased trend towards information sharing between various public and private sector organisations, facilitated by sophisticated new technology. Examples of such data matching projects included the Association of British Insurers' database for prevent fraudulent claims and a group of London boroughs sharing information to prevent fraudulent claiming of benefits.

Although there are advantages from these techniques for society as a whole, such as prevention of fraud, it is important that they are conducted within legal boundaries. "The purpose of the database, the extent of the proposed sharing and the safeguards necessary to ensure that the boundaries are maintained have to be in place from the outset." Also, data subjects have to be aware of the proposed sharing of their personal data.

The Registrar stressed the need to get involved from an early planning stage in any discussions with data users wishing to carry on data matching activities. An advice note has been produced by the Office on the issue of data matching, particularly as it may apply to local authorities.

Confidentiality

Confidentiality of information has been examined within the Registrar's Office on several occasions in the past twelve months.

As a result of a debate with the finance industry regarding the January 1994 Confidentiality Paper, two draft guidance notes have been issued, one on direct marketing and one on credit reference. The latter was of particular importance since the credit reference industry still generates the largest category of complaints in the private sector- 32% of total in the previous twelve months.

The issue of confidentiality has also been examined in the context of the health sector, where the Registrar offered comments on the Department's of Health draft guidelines on confidentiality.

Police sector

The Registrar's Office took an active part and welcomed its involvement in various discussions and projects involving data processing within the police sector.

The Registrar commented on a revised code of practice prepared by the Association of Chief Police Officers which Elizabeth France believes will "bring about new standards in data protection compliance within the police service."

Further, the Registrar had an opportunity to discuss various data protection and privacy implications of setting up the DNA database. The way in which the database should be registered, the procedure of retention and deletion of records, the permissible uses of the data were some of the issues discussed.

Finally, progress has been made in relation to the controversial inclusion of an individual's HIV/AIDS status as part of the contagious disease warning on the Police National Computer (PNC). This practice was condemned by the Registrar as contravening the Fourth Principle, which requires that personal data held for any purpose should be adequate, relevant and not excessive in relation to that purpose. By the end of July, this particular



information should be completely removed from the PNC.

Public sector

Within the public sector, the Registrar's Office had an active role and provided advice in relation to data protection implications of local government reorganisation, as well as NHS reorganisation. Elizabeth France stressed the importance of thinking about the data protection implications and the requirements of the Act at the time of introduction of new databases or a new information system.

Two particular cases, already mentioned in the last year's Tenth Report, remained very much in the Registrar's focus.

The Child Support Agency (CSA) was the single largest organisation about which complaints were received by the Office. More than 400 complaints related to the CSA and most of these were about the Agency's practice to disclose financial information to those party to a maintenance assessment.

The Registrar's concern about Regional Electricity Companies (RECs) disclosing customer information obtained in the course of the REC's business has not disappeared. On the contrary, the situation has somewhat worsened and resulted in six preliminary notices and one formal registration refusal notice having been served. Currently, a working group including representatives of the RECs and the Registrar's Office is assessing the impact of the data protection principles generally and, in particular, the fair obtaining requirement on uses of customer information by the RECs.

Complaints and caseload

The Report gives some interesting statistics as to the number and types of complaints as well as to the time taken for handling complaints and investigations.

The total number of complaints received from individuals in the previous twelve months was 2,814, which is a slight decrease in comparison to the 1993/94 figures. The great majority of complaints relate to private sector practices (72%).

In a breakdown between various sub-sectors and areas of activities, the following were the principal causes of complaints in descending order:

- consumer credit 32%
- direct mail 10%
- Child Support Agency 7%
- local government 4%
- central government 2%
- police 2%
- health 1%

The Registrar welcomed the trend shown for complaints to be more substantial than in the past. This is partly due to "progress made by industry sectors generally in responding to the requirements of the Data Protection Act," and partly to "efforts of the Registrar's Office and others to make known to individuals how to seek

Registrar's Mission Statement

"We shall promote respect for the private lives of individuals and in particular for the privacy of their information by:

- implementing the Data Protection Act 1984
- influencing national and international thinking on privacy and personal information."

redress themselves for problems such as unwanted direct mail and credit reference."

The Registrar's Office almost achieved its target to speed up the process of and time involved in investigation. Thus, just under a third of complaints is investigated within the first three months and a similar number between 3 to 6 months. Under a quarter of complaints require between 6 to 12 months to investigate. However, it still takes over a year to investigate 17% of complaints.

The main reason for such variations in time taken for investigation is the different levels of complexity of the cases. Many complaints require further information, documents, contacts with and



visits to both complainants and data users concerned.

Elizabeth France is keen to "provide more prompt and informative first response to new complainants," by notifying complainants very quickly whether the Registrar would be able to help in resolving a problem. The Office has sent to all complainants a leaflet *Your complaints: what happens when you complain to the Data Protection Registrar* with the intention of explaining the complaints handling procedure. Nearly a third (31%) of complaints are investigated within 3 months and over a quarter (29%) are investigated in from 3 to 6 months.

Not all of the complaints raise specific data protection issues which require detailed investigation. Sometimes, the Registrar merely gives advice and information about the problem, or advises the complainant to seek help elsewhere. The figures show that just over a half of the

complaints (58%) are investigated in terms of data protection compliance.

Influencing national and international thinking

Elizabeth France expressed her determination to continue to be closely involved and influence national and international projects having an impact on privacy and data protection.

National issues

Following the Government's *Green Paper on Identity Cards*, the Registrar has publishing its own information booklet *Identity cards: putting you in the picture*. The booklet is aimed at individuals to help them consider and debate the many issues involved and it invites their response. Also, the Office organised a one day workshop on the issue of identity cards in an attempt to stimulate public debate.

Complaints about credit, the largest group in the private sector

The UK Registrar has always carefully monitored personal data handling practices within the credit sector, due to a large number of complaints from individuals. There is a general trend of a decrease in the number of complaints about this issue. However, 876 or around one-third (32% in 1994/5) of all complaints are still about issues concerned with consumer credit. To put this figure into context, it should be viewed against the 750,000 access requests per year to the consumer credit reference companies.

Lesley Bett, Head of Complaints, heads a department of two complaints managers, 10 complaints case officers and one complaints analyst who handles the more complex cases.

Of all the complaints received in the last year, they judged that 58% were worthy of investigation. As far as the credit information category is concerned, complaints about third party data have virtually disappeared. This formerly common problem was where a credit information company recorded an individual's credit record by reference to their address and so the record could refer to previous occupants or other occupants at the same address.

However, several credit information problems remain:

1. accuracy of the data.
2. problems of disassociating the credit records of an individual from another individual with the same forename, for example, a father and son, at the same address.
3. the length of time information should be held about an individual. For example, for how long should data about an individual's bankruptcy be held on a credit information company's file? How does the company decide whether it is still relevant after a certain period?

On all these issues, if individuals cannot obtain a correction or a satisfactory response to their problem, they may complain to the Data Protection Registrar who will obtain redress for the individual. At the same time, the Registrar builds up a fuller picture of industry practices for the benefit of consumers as a group. The Registrar plans to soon issue a new guidance note on credit information (PL&B February 1995 p. 20).

The credit information industry is also regulated by the Office of Fair Trading under the Consumer Credit Act 1974. For further information, see *Guide to Credit Scoring*, 1993 (Credit Industry Working Party on Credit Scoring, c/o FLA, 18, Upper Grosvenor Street, London, W1X 9PB) and *Helping You to Understand Your Credit File* (Consumer Help Service, CCN Group, PO Box 40, Nottingham, NG7 2SS).



All these efforts are intended to sound out public opinion and help the Registrar prepare a formal response to the Government.

The Registrar closely follows implementation of the Government's *White Paper on Open Government*, setting out a code of access to information held by central government. This document, among other things, proposed a new statutory right of access by individuals, subject to certain exemptions, to their manual records in the public sector, enforceable by the Registrar.

International developments

Progress with the adoption of the EU Data Protection Directive has been closely monitored within the Registrar's Office.

The Registrar welcomes the Directive and the opportunity for changes in the UK law through new primary legislation. The Office has issued a briefing note setting out the Registrar's preliminary thoughts on the Directive and some of its provisions. The paper is included in an Appendix to the Report.

In view of the Directive's adoption in July 1995 and the three year implementation period for new UK legislation, the Registrar Office is keen to commence a formal consultation exercise with the representatives of various data users. The Registrar expects to go through this exercise in the month of September in order to prepare a formal response and recommendation to the Home Office.

Apart from the General Directive, the Registrar is seeking to influence the other two significant measures coming from Brussels - directives on telecommunications and distance selling.

Finally, the draft Europol Convention, establishing the European Police Office, has been examined by the Registrar, identifying many data protection issues. A paper summarising the Registrar's submissions to the House of Lords on these issues is included in an Appendix to the Report.

The year ahead

Elizabeth France has identified the following key objectives for her office in the next twelve months:

- to introduce a new IT system for registration by early 1996 (page 16);
- to reconsider the registration process, agree on a new approach and begin its introduction;

- to improve access to the Office for telephone callers by introducing automated facilities for ordering publications and direct dialling capabilities;
- to prepare promotional material to encourage an increase in registration under the Act once the simplified procedure is in place;
- to issue guidance to data users on document image processing, direct marketing and credit reference;
- to issue new advice to the public on what the Office does
- to respond formally to the Government's Green Paper on identity Cards by September this year
- to prepare a consultation paper as the basis of advice to Government on the introduction of the EU Data Protection Directive in the UK law by February next year.

The Appendix - last but not least

Apart from the already mentioned papers on the EU Data Protection Directive and data protection implications of the Europol Convention, the Appendix to the Report contains other interesting and useful material.

To mention but a few, there is the first "formalised" and written advice of the Registrar on the Internet and data protection. Although there are still many issues which need to be addressed, this paper is useful for many data users who have been seeking some guidance and information from the Registrar regarding their use of the Internet. The paper intended to give some basic information and initiates thinking about data protection problems and possible solutions.

Also, there is a synopsis of a presentation by Rosemary Jay, the Registrar's Legal Advisor on the effect of Section 161 of the Criminal Justice and Public Order Act 1994 amending the Data Protection Act and its impact on the current registration system (PL&B February '95 p.16).

Finally, for those interested in the issue of confidentiality and data protection, there is a background paper presented at the Registrar's conference on confidentiality in March this year.

Report published by HMSO ISBN: 0-10-266495-1, £12.25. This report was written by Bojana Bellamy, a *Privacy Laws & Business* consultant.