Timetable

The project for the development of the revision to the system will be included in a procurement exercise which is being conducted under the EC/GATT provisions.

A prospectus for the tender document will be ready for issue by the middle of 1996. Under the regulations there must then be a three month offer period, following which the Registrar will consider the responses and be in a position to appoint a provider for the services early in 1997.

The Registrar will have a Consultation Document outlining the registration proposal available for circulation in May 1996. A three month period will be allowed for responses to the proposal. The responses will then be analysed and where necessary, incorporated in the System Requirement Document which will form part of the prospectus referred to above. By early 1997, the appointed service provider will begin development of the system with a view to implementation in early 1998.

Transition

It is anticipated that current registrations will be replaced by registration in the revised form. This will be a phased process which will require careful planning and discussions with some data users. Those discussions can begin as the system is developed during 1997.

Obtaining a copy of the consultation document

The Consultation Document will be available in May 1996. It will be sent to data users, representative bodies and frequent contacts of the Office of the Data Protection Registrar.

If you would like a copy, please contact the author of this report whose contact details are: Mrs. Barbara Ridley, The Registration Project Manager, Office of the Data Protection Registrar, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 2AF, UK.
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House of Lords ruling gives a strict interpretation of "use" in the UK Data Protection Act

On 9th February, the House of Lords, the UK's supreme court, ruled that a simple retrieval of information from a computer database, without the subsequent use of that information, does not constitute the "use" of data within the meaning of the UK Data Protection Act 1984.

The facts and the charge

The case (PL&B Dec.'93 p.20) involved a police constable who, on two occasions, had made use of the police national computer to check the registration numbers of vehicles owned by debtors of clients of a debt collection business, the director of which was a friend of the constable in question. The first computer search did not reveal any personal data. Although the second computer search did reveal personal data, there was no evidence that the constable subsequently made any use of the information so obtained.

The constable was charged with offences under the Section 5(2) and (5) of the Data Protection Act 1984, i.e. to have used on two occasions personal data held in the police national computer for a purpose other than the registered purpose of policing.

Section 5(2)(b) provides that "A person in respect of whom such an entry is contained in the register shall not.....(b) hold any such data, or use any such data held by him, for any purpose other than the purpose or purposes described in the entry..." The Act further provides in Section 5(5) that any person who knowingly or recklessly contravenes the provisions of section 5(2) is guilty of an offence.

The defendant was convicted and fined on the basis that the offence was committed as soon as personal data was retrieved from the computer with the intention of using the information for an unregistered purpose, whether or not it was put to any actual use.

The convictions were quashed on appeal and the prosecution subsequently appealed to the House of Lords.

The main legal issue revolved around what constituted the "use of data" under Section 5(2)(b)

of the Act, or to put it in the words of the Court of Appeal judges: "Whether the word 'use' in Section 5 of the Data Protection Act 1984 should be construed so as to include processing the data so as to gain access to information stored within a computer without doing any further act with the information."

The ruling and the arguments

By a tight majority, the Lords decided to give the word "use" its "natural and ordinary meaning." They concluded that where personal data has been retrieved from the computer in the form of a screen display, even for an improper purpose, and it has not been put to any subsequent use, the mere retrieval cannot constitute the "use of data" within the meaning of the Section 5(2)(b) of the Act.

The only "use" was the use of the computer to retrieve the information. The retrieval of information does not constitute "using" the information so retrieved. It is simply the act of transferring the information into a different form. For an offence to be committed under Section 5(2)(b), the retrieval has to be followed by a subsequent act, either positive or negative, which would amount to the "use of data" in the natural and ordinary meaning of the word.

The police constable could have been charged, at most, with the attempt to use data for an unregistered purpose. In that case, it would have to be proved that "the defendant's action, coupled with his state of mind showed that he was committing no more than acts preparatory for the commission of an offence."

Also, in support of the strict interpretation of the word "use," the Lords also put up the argument that the Act treats "processing" differently from "using." Whilst the Act does not define "use," it gives a specific definition for "processing" which includes "extracting the information constituting the data." Thus, "using" personal data was not intended to include the various operations within the computer which fall within the definition of "processing."

The act performed by the police constable clearly falls within the definition of processing and is therefore a breach of (at least) the first data protection principle of fair and lawful processing. However, under the Act a breach of principle is not in itself a criminal offence, but the basis for the Data Protection Registrar's enforcement action - enforcement or a deregistration notice.

In this way, the Lords simply confirmed a generally accepted legal approach of a strict interpretation of criminally sanctioned statutes and provisions.

The consequences

1. Simple retrieval of data on a computer screen, without it being put to a subsequent use, is not criminally sanctioned as "use of data" under Section 5(2)(b). However, it may constitute a breach of one of the data protection principles; hence it is subject to the Registrar's enforcement powers.
2. If there is substantive proof, a person retrieving information for a subsequent improper use, can still be found guilty of an attempt to "use personal data for an unregistered purpose" under Section 5(2)(b).

R v Brown, All England Law Reports [1996] 1 All ER pp. 545-561 published by Butterworths, Halsbury House, 35 Chancery Lane, London WC2A 1EL, UK.

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Police response to R v Brown will be covered at 1996 Annual Conference

At the Privacy Laws & Business 9th Annual Conference *Data Protection Compliance: Time for Change*, at St. John's College, Cambridge, 1-3, July, John Black, Secretary, Association of Chief Police Officers' Working Group on Data Protection, Essex Police, will discuss:

> How the police have responded to the House of Lords judicial decision in R v Brown on the meaning of "use" of personal data in the Data Protection Act 1984.