



UK government introduces freedom of information policy

The long awaited freedom of information legislation will complement the existing and proposed UK data protection legislation but raises potential conflicts. *Your right to know*, the Government's White Paper on freedom of information, published in December 1997, fulfills a longstanding commitment by the Labour party to introduce an open government law following the model of the laws in Sweden, Australia, New Zealand, Ireland, the Netherlands, the USA, France and Canada. The right to personal information under Freedom of Information law will apply to all personal data held by public authorities on both computer and manual files.

The Freedom of Information Act (FOIA) would give individuals a statutory right of access to official records and information, including personal information. This effectively means that individuals would be able to exercise the right of access to personal information both under the FOIA and the Data Protection Act (DPA). As this right of access is expected to be most widely used under the FOIA, the Government intends to bring much of the existing legislation on access to government information under the new FOI Act.

The FOIA would extend access rights given under the current Data Protection Act at least in one respect - it would allow individuals to gain access to personal information on paper files. The proposed new DPA will cover only certain manual files in the short term. The FOIA would cover all types of recorded information from electronic records to tape and film.

The two Acts may conflict in other respects. While the FOI legislation aims to protect individuals against harmful disclosures, personal information would be released when it is in the public interest. The Government is now seeking views on whether individuals and companies should be allowed to appeal against disclosure of their information if it was thought to cause *substantial harm* to their interests.

On the other hand, disclosure may be prevented by Data Protection legislation if the information requested includes personal data about

other individuals. Conflicts between the two regimes would be solved in consultation between the Data Protection Registrar and the Information Commissioner, who would be established under the FOIA as an independent office holder. Ultimately, cases would go to Court.

The Data Protection Registrar has criticised the proposal for two separate enforcement authorities. She suggests that while retaining separate jurisdictions, the Registrar, the Information Commissioner and the Parliamentary Commissioner could form a collegiate body to ensure smooth co-operation on issues that do not fit under one jurisdiction. She has pointed out that the level of privacy protection should not suffer because of the FOIA.

The scope of the proposed FOI legislation is wider than expected. While FOI laws normally only apply to central government, the White Paper suggests that the whole public sector should be included. In addition to government departments, local authorities, schools, armed forces and the National Health Service, the law would cover privatised utilities, broadcasters and administrative functions of the Courts and police. However, the FOI campaign has already expressed concern over the fact that the proposed legislation does *not* apply to security and intelligence services or the law enforcement functions of the police.

Where the Act would apply, not all information would have to be released. Information that is not connected to the public functions performed by the public authority is excluded. Personnel records of public authorities would not be covered. It is also proposed that the 30-year rule on releasing historical records would remain, but would apply to fewer records than before.

The White Paper proposes that the access fee be no more than £10, the same as currently required under the DPA. Should the Government charge business more than individuals?

The White Paper, *Your right to know* Cm 3818 ISBN 0-10-138182-4, is available from the Stationery Office, Tel: 0171 873 9090, £9.90p. Also available on the Cabinet Office Home Page <http://www.open.gov.uk/m-of-g/foihome.htm> Contact: Robert Cayzer, the Freedom of Information Unit, Room 65d/1, Cabinet Office Horse Guards Rd, London SW1P 3AL, or by E-mail: foi@gt.net