

APPENDIX H

Cross industry information note on data protection

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

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THE DATA PROTECTION ACT - AND WHY IT'S IMPORTANT TO YOU

The use of personal information about people stored on computer, or in some manual files, is regulated by the Data Protection Act 1998 (DPA).

As a journalist's job can often be about using such information it is vital that you are aware of the problems the DPA presents.

Knowing about the DPA, and in particular section 55 of that Act (which is to have an enhanced public interest defence following discussions between media representatives and the Ministry of Justice), is important because breaches of it can lead to prosecution in the Crown Court (or in Scotland the Sheriff Court), a criminal record and the imposition of a heavy fine. The questions and answers in this note are designed to tell you a little more. Please make sure you read it.

What does the Act do?

It provides legal controls over the collection, use and disclosure of personal data, mostly held electronically. It gives rights to an individual about whom information is stored. And it imposes legal obligations on a person or organisation looking after the data - known in the Act as the "data controller."

The Act prohibits the obtaining or disclosure of personal data without the consent of the data controller - a practice often known as "blagging."

For example, it could be an offence to deceive an organization into providing you with personal details about

an individual taken from its computer records – such as ex-directory phone numbers - that they would not otherwise agree to supply. It could also be an offence to ask private investigators to do it for you, if you knew that they were going to obtain it by deception or other unlawful means.

You could also be breaching other laws, both criminal and civil, as well as the Editors' Code upheld by the Press Complaints Commission.

What happens if I breach the Act?

The Information Commissioner can take enforcement action, including criminal prosecution of individuals and companies. Conviction is punishable by a fine. "Blagging" personal information and phone numbers from BT, account details from banks, and income tax information from HMRC have already lead to criminal convictions.

Since October 2008, the Information Commissioner has had new powers to impose fines without the need to refer the matter to the Courts.

I sometimes need to get such personal information. In the Act, are there any exemptions or defences for journalists from the criminal offences of unlawfully obtaining and disclosing information?

In particular reference to section 55, the DPA recognises the importance of journalism and provides some special exemptions and defences to avoid conviction. But these are very limited. To avoid breaching the Act's unlawful obtaining and disclosing offences, you would, for instance, have to prove your actions were in the interests of national security, or were preventing or detecting crime, or were in the public interest in the particular circumstances.

You would also avoid conviction if you could show that you were acting in accordance with the law or a court order, or in the reasonable belief that the data controller would have

consented in the circumstances had he/she known, or was legally entitled to act as he/she did.

When in force, a new defence will also protect you if you can show that you acted for journalistic, literary or artistic purposes, with a view to the publication by any person of any such material, and in the reasonable belief that in the particular circumstances your action was justified as being in the public interest.

The Act sounds very wide ranging. What should I do if I am unsure about my own actions?

The DPA is complicated. If you are in any doubt about whether something you are intending to do involving personal data breaches the Act, you must consult a senior editor or your in-house lawyers for advice. Failure to do this beforehand could put you and your employer at risk of prosecution or other legal action.

How do I find out more?

You can find our more information from the Information Commissioner's website

(http://www.ico.gov.uk/Home/for_organisations/data_protection_guide.aspx)

Also look at the PCC's guidance note for editors on the 'data protection act, journalism and the Code'
<http://www.pcc.org.uk/news/index.html?article=ODg=>