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From: Phil Jones [mailto:Phil.Jones@ico.gsi.gov.uk]

Sent: 24 April 2004 09:39

To: Tim Toulmin

Subject: RE:

Tim

A very good point if a slightly tricky one. Where an individual is an employee & the employer is a data controller (eg a bank) there would be an offence if a corrupt (or stupid) employee consented to disclosure when the requester knew full well that the bank would not consent. However, an individual can be a data controller in his or her own right - eg a self-employed person. Indeed, we are all likely to be data controllers in our private lives in respect of any electronic records we keep of personal/household matters including financial matters. There are exemptions for those holding data for personal/household purposes - you don't need to notify, among other things. However, the personal data are not exempt from that part of the Act that contains the s55 offence. Therefore, if I am duped (for example by someone claiming to be from my bank or the inland revenue) into revealing information about my personal affairs then there might well be an argument that this involved an offence. This would depend on the line that the court took as I would have consented to the disclosure but not to disclosure to the private investigator. It might be easier if information is obtained by deception from one person in a household about another as the individual whose information was released would not have consented in those circumstances.

If you leave out individual that could mislead by suggesting the offence could only occur when duping an organisation whereas if you put it in you could mislead because it might be construed as suggesting that if an employee consents that's OK when this would only be the case when he/she is acting with the authority of the organisation. As you have included a definition of data controller in the note (and the definition addresses the point because any processing I do at work is on my employer's behalf whilst at home it is on my own behalf, so the "person" determining purpose is my employer in the first case, myself in the second) then perhaps a way round it is to say "the organisation or individual concerned (the data controller)".

Cheers

Phil