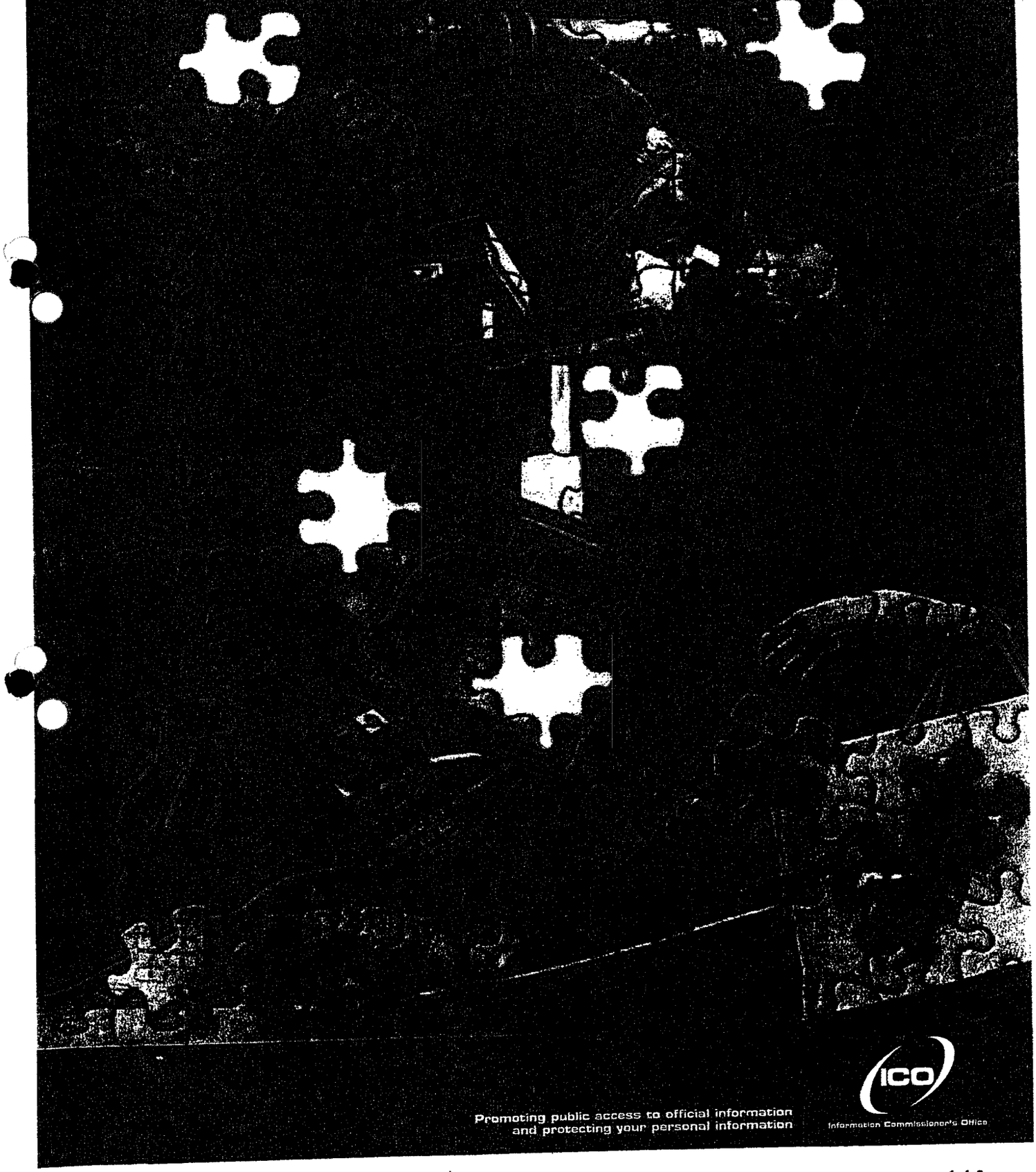
Information Commissioner's Office

What price privacy now?

The first six months progress in halting the unlawful trade in confidential personal information



Promoting public access to official information
and protecting your personal information

ICO
Information Commissioner's Office

What price privacy now?

The first six months progress in halting the unlawful trade in confidential personal information

Presented by the Information Commissioner to Parliament
pursuant to Section 52(2) of the Data Protection Act 1998

Ordered by the House of Commons to be printed 13 December 2006

London: The Stationery Office

Price: £13.50

HC 36

Contents

Foreword	3
Introduction	4
What price privacy	4
Developments since May 2006	6
The recommendations	15
Conclusions	27

Foreword from The Information Commissioner

On 10 May 2006 I put a special report before Parliament using, for the first time, powers granted to the Information Commissioner under the Data Protection Act 1998. Titled 'What price privacy?'[1] the report exposed an extensive illegal trade in confidential personal information and made recommendations to government and industry in an effort to halt a serious threat to individuals' privacy. Some of the press coverage since the report has highlighted the intrusion into the lives of high profile public figures by the media but it should not be forgotten that this trade also affects the lives of people not in the public eye and is very often unrelated to media activity.

Respect for privacy is one of the foundation stones of the modern democratic state. It is enshrined in the European Convention on Human Rights and is directly enforceable in UK courts through the Human Rights Act 1998. Failure to respect an individual's privacy can lead to distress and in certain circumstances can cause that individual real damage, mentally, physically and financially.

People care about their personal privacy and have a right to expect that their personal details are and should remain confidential. Who they are, where they live, who their friends and family are, how they run their lives: these are all private matters. Individuals may choose to divulge such information to others, but information about them held confidentially by others should not be available to anyone prepared to pay the right price.

The recommendations in the report sought to tackle the illegal trade in personal information on a number of levels. The main recommendation was the introduction of a two year prison sentence but it also called for the key players to take steps to reduce demand and raise awareness of the problem.

In the report I stated my intention to review the progress made after six months and detail the responses from the many bodies identified as having a role to play. Progress has been significant and encouraging. In particular I welcome the Government's consultation on increased sentences. Overwhelmingly the responses indicate support for the proposals. Many organisations have taken steps of their own to raise awareness and tighten security as well as more generally condemning the illegal trade. The majority of the responses and steps taken are to be commended and clearly demonstrate an understanding and commitment to deal with this problem. A few responses have been less encouraging. Here my office will continue to raise awareness and develop support for our proposals.

There is though much for us to be pleased about. I wish to thank all parties that have co-operated with my office to reach the stage that we are at today.

Richard Thomas

Richard Thomas
Information Commissioner

1 HC 1056.

Introduction

In May 2006 the Information Commissioner put a special report before Parliament using powers granted to him under Section 52(2) of the Data Protection Act 1998. Titled 'What price privacy?' the report exposed an extensive illegal trade in confidential personal information and made recommendations to government and industry to try and halt a serious threat to individuals' privacy. In the report the Information Commissioner stated his intention to review the progress made after six months and detail the responses from the many bodies identified as having a role to play. The purpose of this follow up report is to document the review and summarise the responses received.

What price privacy?

'What price privacy?' revealed evidence of systematic breaches in personal privacy that amount to an unlawful trade in confidential personal information. Putting a stop to this trade was its primary purpose.

Public bodies holding personal information about individuals include government departments and agencies, local authorities, the National Health Service and the police. In the private sector, banks and other financial institutions, supermarkets, telecommunications providers and transport operators may all hold increasing amounts of information about individuals.

Government initiatives look set to increase the amount of information collected and shared centrally, and to make it easier for individuals to gain access to their own personal details. Such moves inevitably increase the risk of security breaches by third parties. It is encouraging that these risks are appreciated by government. The Chief Executive of the NHS Connecting for Health project was amongst the first to support publicly the Commissioner's call for deterrent jail sentences.

Protection is offered in law by Section 55 of the Data Protection Act 1998, which makes it an offence (with certain exemptions) to obtain, disclose or procure the disclosure of personal information knowingly or recklessly, without the consent of the organisation holding the information. Offences are punishable by a fine only: up to £5,000 in a Magistrates' Court and unlimited in the Crown Court.

Since the Act came into force, the Information Commissioner's Office (ICO) has received a steady number of complaints from individuals who feel their privacy has been breached. Many more cases come to the attention of the ICO through joint

working protocols with bodies such as the Department for Work and Pensions, HM Revenue & Customs and police forces around the country.

Much more illegal activity lies hidden under the surface. Investigations by the ICO and the police have uncovered evidence of a widespread and organised undercover market in confidential personal information. Such evidence formed the core of the report, detailing how the unlawful trade in personal information operates: who the buyers are, what information they are seeking, how that information is obtained for them, and how much it costs.

Among the ultimate 'buyers' are many journalists looking for a story. In one major case investigated by the ICO, the evidence included records of information supplied to 305 named journalists working for a range of newspapers. Other cases have involved finance companies and local authorities wishing to trace debtors; estranged couples with one party seeking details of their partner's whereabouts or finances; and criminals intent on fraud or witness or juror intimidation.

The personal information they are seeking may include someone's current address, details of car ownership, an ex-directory telephone number or records of calls made, bank account details or intimate health records. Disclosure of even apparently innocuous personal information – such as an address – can be highly damaging in some circumstances, and in virtually all cases individuals experience distress when their privacy is breached in this way.

'What price privacy?' described the most likely scenarios where confidential information may be obtained illegally and illustrated them with real cases that the Information Commissioner has investigated.[2] The 'suppliers' almost invariably work within the private investigation industry: private investigators, tracing agents, and their operatives, often working loosely in chains that may include several intermediaries between the ultimate customer and the person who actually obtains the information.

Suppliers use two main methods to obtain the information they want: through corruption, or more usually by some form of deception, generally known as 'blagging'. Blaggers pretend to be someone they are not in order to wheedle out the information they are seeking. They are prepared to make several telephone calls to get it. Each call they make takes them a little further towards their goal: obtaining information illegally which they then sell for a specified price. Records seized under search warrants show that many private investigators and tracing agents are making a lucrative business out of this trade.

2 Paragraph 5.22 of 'What price privacy?' referred to a case involving the Royal Mail that was not prosecuted because of insufficient evidence. The Information Commissioner has accepted the Royal Mail's assertion that they were not the source of the leaked information.

To date prosecutions brought under the Act have generally resulted in low penalties: either minimal fines or conditional discharges. 'What price privacy?' reported that between November 2002 and January 2006, only two out of 22 cases produced total fines amounting to more than £5,000.[3] Other investigations led to frustrating outcomes, despite the detriment caused to individuals and to public confidence generally. Since the publication of 'What price privacy?' there have been two further successful prosecutions under Section 55 and a further individual cautioned. These have resulted in fines ranging between £3,300 and £4,200. At the time of writing one case is awaiting sentencing.

The report's central recommendation called on the Lord Chancellor to bring forward proposals to raise the penalty for persons convicted on indictment of Section 55 offences to a maximum two years imprisonment, or a fine, or both; and for summary convictions, to a maximum six months imprisonment, or a fine, or both. The aim of a custodial sentence is to discourage this undercover market and to send out a clear signal that obtaining personal information unlawfully is a crime.

To stifle demand for confidential personal information the report issued a warning to all businesses and individuals obtaining, supplying or buying personal information, that they should restrict themselves to information which they are confident has been lawfully obtained.

The report also identified and made recommendations to other main players; the Security Industry Authority, the Association of British Investigators, the Press Complaints Commission and the Office of Fair Trading.

The report invited a number of named media, financial and professional bodies to respond to specific questions about the steps they will take to help raise awareness and encourage good practice. The report also invited responses and further evidence from consumer and citizens' organisations.

Developments since May 2006

Since the publication of 'What price privacy?' events have further highlighted the illegal trade in confidential personal information. These continue to demonstrate the need for a strong deterrent and greater awareness and control by organisations.

In the news

In August 2006 two men including a prominent journalist were arrested and charged with the illegal interception of communications and conspiracy offences.

3 Whilst in May 2004 Peter Bascombe and Brays Detective Agency Limited were prosecuted, they were both acquitted at trial.

This followed an inquiry into the illegal interception of phone messages of members of the royal family, other high profile figures and celebrities. The charges have been brought under the Regulation of Investigatory Powers Act 2000 and other legislation but the circumstances appear to have parallels with the Section 55 offence and to reinforce the evidence gathered during Operation Motorman. In November 2006, both men pleaded guilty to conspiracy to intercept voicemail messages and one has pleaded guilty to intercepting voicemail messages. Sentencing will take place in 2007

In September 2006 Hewlett Packard Chairwoman Patricia Dunn was forced to step down after it emerged that investigators appointed by her to look into a leak in the HP boardroom had obtained the phone records of a number of journalists and fellow directors in the United States. In a classic case of blagging - known as 'pre-texting' in the USA - the investigators impersonated the journalists to dupe the phone companies into providing the information. The damage to the reputation of Hewlett Packard and the subsequent resignation of Patricia Dunn clearly demonstrate the risks that any reputable company takes in making use of private information obtained by illegal means.

At the Information Commissioner's Office

The Information Commissioner's Regulatory Action Division has continued their investigation and prosecution of Section 55 offences. Since May 2006 the Information Commissioner has brought two successful prosecutions under Section 55 and a further individual has accepted a caution.

Case 1 – An individual that was not involved in the private investigation industry accepted a caution for an offence under Section 55 of the Data Protection Act 1998 for information obtained from a financial institution about their spouse.

Case 2 – On 3 November 2006 Anthony Gerald Clifford pleaded guilty to 16 Section 55 offences and is expected to be sentenced in December 2006.

Mr Clifford of Chessington in Surrey ran a private investigation agency trading as MRS. Mr Clifford obtained and sold information on a number of individuals. In addition he pleaded guilty to a number of offences of procuring disclosure of information contained in personal data to another person. Mr Clifford engaged in blagging techniques including impersonating individuals to obtain their information. If his target was a woman he would have a female employee of his make the pretext call on his behalf, she has been cautioned for her involvement.

Case 3 – On 14 November 2006 Stephen and Sharon Anderson of St Ives in Cambridgeshire pleaded guilty to obtaining and selling information unlawfully whilst operating as private investigators.

Mrs Anderson pleaded guilty to 14 offences asking for a further 51 offences to be taken into consideration. Mr Anderson pleaded guilty to 11 offences and asked for a further 46 offences to be taken into consideration. Mrs Anderson was fined a total of £4,200 and Mr Anderson was fined £3,300. Each was ordered to pay a contribution to prosecution costs of £3,694.

The couple used 'blagging' techniques to obtain and attempt to obtain personal information about individuals from a number of organisations including Her Majesty's Revenue and Customs, British Telecommunications plc and various banks. On a number of occasions the 'blaggers' purported to be employees of these organisations and deceived the true members of staff into disclosing personal information about individuals.

The evidence gathered by the ICO showed that the couple had obtained account details, income tax information and telephone numbers relating to a number of different victims.

'What price privacy?' reported that 305 journalists had been identified during Operation Motorman as customers driving the illegal trade in confidential personal information. Following the report the Information Commissioner received a request under the Freedom of Information Act 2000 for further information about the publications that the 305 journalists were employed by and a breakdown of their activity. After considering the relevant exemptions information which did not identify the journalists or the publications was provided to the requester.

Having considered the matter further the Information Commissioner has decided that a further disclosure is in the public interest and in the context of a special report to Parliament is consistent with the discharge of his functions under the Data Protection Act 1998. The following table shows the publications identified from documentation seized during the Operation Motorman investigation, how many transactions each publication was positively identified as being involved in and how many of their journalists (or clients acting on their behalf) were using these services.

It should be noted that while the table is dominated by tabloid publications they are far from being alone. Certain magazines feature prominently and some broadsheets are also represented. The Commissioner recognises that some of these cases may have raised public interest or similar issues, but also notes that no such defences were raised by any of those interviewed and prosecuted in Operation Motorman.

Publication	Number of transactions positively identified	Number of journalists/clients using services
Daily Mail	952	58
Sunday People	802	50
Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	182	19
Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
Sunday Times	52	7
The People	37	9
Daily Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
Sunday Mirror Magazine	6	1
Real Magazine	4	1
Woman's Own	4	2
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	2
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1

Media coverage

'What price privacy?' attracted widespread interest from all media channels. With some journalists implicated as 'buyers' in the report, the Information Commissioner wondered whether some media groups might avoid reporting the story. To a certain extent this proved to be the case as coverage even in the broadsheets at the time of publication was limited. However, all broadsheets featured details of the report on their websites.

Despite this there has been a growing and now substantial level of positive press coverage since the launch of 'What price privacy?'. Over the past six months 32 national press articles have featured the report and highlighted the widespread illegal trade in personal information. Trade and regional press coverage has also been extremely encouraging with 54 trade and 43 regional articles covering the report.

'What price privacy?' was also covered by the broadcast media. The report's launch was featured extensively on Radio 5 Live and a subsequent news feature in August focused on the personal stories of the 'victims' of blagging. The Information Commissioner's call for a custodial sentence for those convicted under Section 55 of the Data Protection Act was highlighted on the Today programme, BBC Breakfast and the lunchtime and evening news. There was also a strong interest from the regional BBC stations.

Of particular note was the difference of approach taken by some media commentators to breaches of the law by journalists and breaches of the law by others. Whilst largely commending the Information Commissioner for seeking to clamp down on private investigators acting on behalf of the financial institutions, the legal profession and others they suggested in some cases that, despite the existence of public interest defence, journalists should be treated differently. It is important to point out that the Information Commissioner is not proposing to criminalise any conduct that is not already against the law. There is no suggestion that the action of a journalist or private investigator in seeking information from public sources or friends and neighbours to pursue a story should be made illegal. However, journalists (and many others) who either directly or through middlemen obtain personal information from public and private sector organisations by bribery, impersonation and similar means are engaging in conduct which, unless they can clearly demonstrate a public interest, has quite rightly been illegal since 1994.

We estimate that news of the report has reached an audience of over 30 million.

In the press

"People who buy and sell unauthorised personal information should face up to two years in prison rather than a fine, the Information Commissioner has said."

Financial Times, 12 May

"Crooks who peddle our personal or financial records should be jailed for up to two years, says a Government watchdog."

The Sun, 13 May 2006

"Richard Thomas this week became the first commissioner to use his special powers under the Data Protection Act to present a report to Parliament warning of the 'pernicious' and 'pervasive' trade in data."

www.techworld.com, 17 May 2006

"The British state presents a menace to individual privacy in the 21st century in two ways, as the Information Commissioner demonstrates in his commendably clear report, What Price Privacy?"

The Observer, 28 May 2006

"This is an example of a robust authority giving evidence of a problem, showing the consequences and recommending a course of action," eulogises Dahlberg [Chairman of the Security Industry Authority]. "That is the powerful way to make policy happen if you want to drive it."

Security Management Today, 1 June 2006

"The NUJ has defended the right of journalists to use all reasonable means in the pursuit of the truth where the public interest is at stake" ..."General secretary Jeremy Dears said all union members agreed to abide by the NUJ code of conduct that stresses that only straightforward means of obtaining information should be used unless overriding considerations of the public interest justified other methods."

The Journalist, 1 July 2006

"Richard Fiddis, Managing Director of Experian said... 'Whilst we would welcome increased penalties, the best way to tackle this type of fraud is to tackle it at its source'."

"Neil Munroe, External Affairs Director, Equifax said... 'It has been a concern of ours, for some time now, that the controls and restrictions on unauthorised buying and selling of personal were not stringent enough'."

Credit Management, 1 July 2006

"The Government is to begin consultation on bringing in jail terms for those convicted of trading in personal data... it follows calls for a change in the law from Information Commissioner, Richard Thomas, who in May said that hundreds of journalists were buying secret data."

Press Gazette, 24 July 2006

"The noose is tightening on those found guilty of selling data illegally, following the launch of a Government consultation this week into whether the offence should be punishable by up to two years in prison."

Precision Marketing, 28 July 2006

"You could also get a complete itemised bill until a few months ago, when the Information Commissioner threatened custodial sentences. The work was all outsourced and there was one firm that was probably making £8,000 a week. It became a basic check...Papers have their 'dark arts' reporters and many editors don't want to know, but what was a flood of stories stood up this way is now a trickle."

The Independent, 10 August 2006

"A former tabloid investigative journalist said 'The Information Commissioner's report that came out four or five months ago gave every detail, cough and spit of what journalists had been up to'. Then every single private investigator in town 'said, No more. We're not doing this for journalists'."

Press Gazette, 10 August 2006

"In a report recently published by the Information Commissioner's Office there was another frightening revelation: the existence of a 'blagger's handbook'."

The Guardian, 11 August 2006

"One private investigator revealed last week that most of his clients who wanted blagging carried out were legal or commercial firms. 'Blue chip companies are big players' he said. 'They want what they call due diligence, which means a full run down on whoever they are dealing with. But there is no information that you cannot obtain if you have the money'."

Sunday Times, 13 August 2006

"Occasionally, all newspapers that turn over stones will need to do exceptional things and need that freedom if they are to be effective watchdogs. But such investigations can't be generalised trawls for titbits, a covert sweep for something or other, even if only a Palace gossip paragraph. Condone that and the kind of seamy wheezes alleged here will poison the well for all journalism."

Observer, 13 August 2006

"Privacy shouldn't be sold to the highest bidder."

Lord Ashcroft KCMG in the Spectator, 2 September 2006

" 'Where someone lives, who they are, who their friends and family may be' is hardly confidential information. It is common currency that is easily discovered by talking to neighbours, looking at the electoral register or searching the Land Registry, as anyone is entitled to do. To propose imprisonment for reporters - and insurers, solicitors and private investigators - who obtain such details would be laughable if it were not so sinister."

The Sunday Times, 29 October 2006

"It could all too easily prevent investigative journalists looking at personal data in pursuit of a public-interest story; deter whistle-blowers from revealing malpractice; and blow wide open the confidentiality that protects the journalist and his source."

The Times, 1 November 2006

The recommendations

The recommendations in 'What price privacy?' sought to tackle the illegal trade in confidential personal information on a number of levels. The main recommendation in the report was the introduction of a two year prison sentence but it also called for key players and other potentially influential bodies to take steps to reduce demand and raise awareness of the problem.

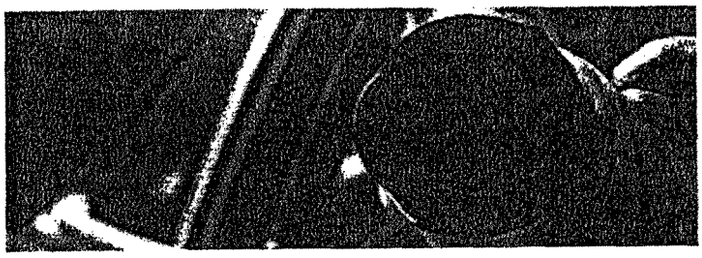
A custodial sentence

> "The Information Commissioner recommends an amendment to section 60(2) of the Data Protection Act 1998, increasing the penalty for Section 55 offences committed under the Act to a term of imprisonment not exceeding two years, or to a fine, or to both, for convictions on indictment, and to a term of not exceeding six months, or to a fine, or to both, for summary convictions. The Information Commissioner calls on the Lord Chancellor, as the Minister responsible for data protection policy, to introduce the necessary legislation into Parliament as quickly as possible."

On the 24 July 2006 the Department for Constitutional Affairs launched the Government's consultation "Increasing penalties for deliberate and wilful misuse of personal data". The consultation document makes specific reference to 'What price privacy?' and its findings and acknowledges that the current penalties contained in Section 60 of the Act are not sufficiently strong to stop the illegal trade in confidential personal data.

In line with the recommendations and reasoning in 'What price privacy?' the Government proposes to amend Section 60 of the Data Protection Act 1998 to introduce the sanction of 6 months imprisonment on summary conviction (increasing to 1 year in England and Wales when Section 154 of the Criminal Justice Act 2003 comes into force) and 2 years imprisonment on conviction on indictment. The consultation paper seeks views on whether the increased sanction is proportionate and would be an effective deterrent to those unlawfully trading in or wilfully misusing personal data.

The Information Commissioner has responded to the consultation supporting the proposals. The consultation closed on 31 October 2006 but at the time of writing the outcome is not known. Nevertheless the Commissioner is confident that the proposals will have received widespread support and looks forward to continuing dialogue with the Department for Constitutional Affairs as it seeks to take them forward.



Stifling demand

'What price privacy?' identified the main players who have it within their power to stem the underground traffic in confidential personal information by reducing demand. Specific recommendations were addressed to each organisation and their response requested.

Security Industry Authority (SIA)

'What price privacy?' identified unscrupulous tracing agents as one of the main contributors to the illegal trade in confidential personal information. All such private investigators will eventually be subject to licensing by the Security Industry Authority under the Private Security Industry Act 2001. As such the Information Commissioner recommended that:

> "...the SIA should include a caution or conviction for a Section 55 offence among its grounds for refusing or revoking the licence of a private investigation agency"

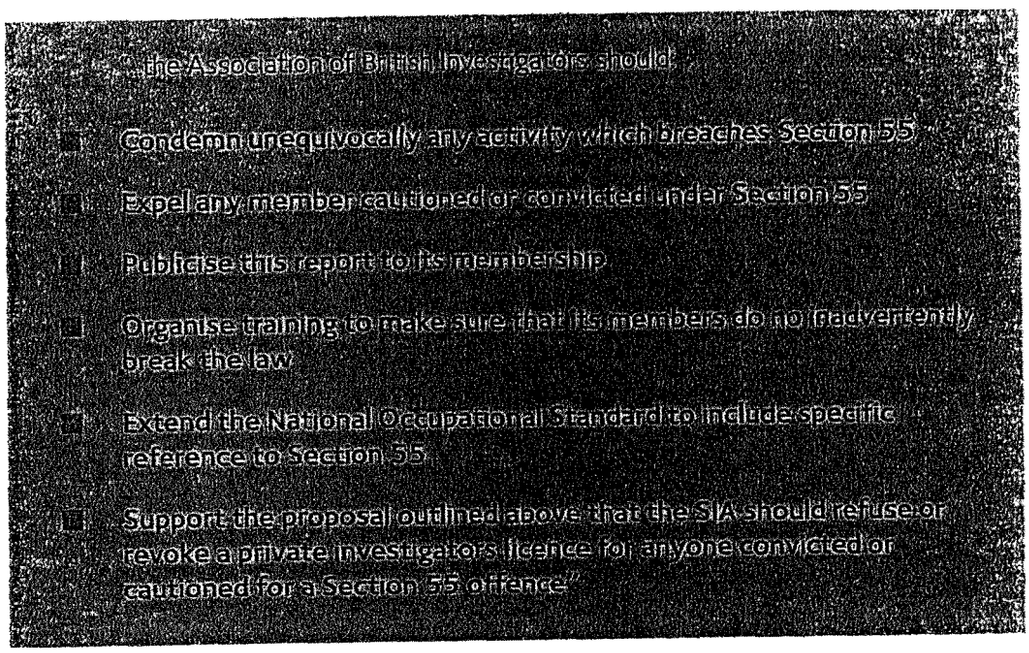
The proposed licensing of the private investigation sector will not be introduced until the publication of a Regulatory Impact Assessment which will set out proposals for licensing. The inclusion of Section 55 offences as a ground for refusing or revoking licences would form part of any consultation.

The SIA have written to the Information Commissioner supporting the report and his proposals for increased penalties. The SIA have clarified that they consider Section 55 offences as a risk associated with the private investigation sector which would merit consideration as an offence that leads to the refusal or revocation of a license. The SIA have also indicated that they are likely to consider offences under Section 55 as serious offences which may lead to the refusal of a license for longer than any sentence restrictions.

The Commissioner has written to the Home Secretary to urge that the necessary Regulatory Impact Assessment should be conducted with urgency.

Association of British Investigators (ABI)

The ABI describes itself as the leading professional body working with investigators to promote members and the profession. In a further attempt to influence private investigators the information Commissioner recommended that:



The ABI have responded positively to the Information Commissioner's recommendations. The ABI have condemned any activity by their members which breaches Section 55, have disciplinary procures in place to expel members cautioned or convicted under Section 55, have brought the report to the attention of their members using an email circular, organise data protection training for members at branch and national level, feature data protection articles in their magazine and support the proposal that that the SIA should refuse or revoke licences for anyone cautioned or convicted of a Section 55 offence. However the ABI have brought to the Commissioner's attention the fact that they do not have power to extend the relevant National Occupational Standard as it is the responsibility of the Skills for Security group.

The ABI are have called for the Information Commissioner to produce guidance on when information can legitimately be disclosed to private investigators as they believe that there is currently a lot of misunderstanding in this area with information being withheld where it could legally be disclosed. The Commissioner has previously issued guidance on debt tracing and collection and will update this in due course. He will also consider whether work on further guidance on disclosures to private investigators is warranted.

World Association of Professional Investigators (WAPI)

After the report was published the Information Commissioner received comments from WAPI and subsequently made the same recommendations to them as were put to the ABI. WAPI has stressed that the governing council is totally committed to compliance with all law and regulation, has brought the report to the attention of all its members and has a code of ethics in place where members convicted of a Section 55 offence will be expelled subject to an appeal to the governing council on the grounds that the breach was in the public interest for the prevention and detection of crime. WAPI do not believe that members should be expelled for a caution alone.

The Information Commissioner has some concerns that WAPI could go further in their condemnation of the illegal trade and could be clearer about their intention to expel those convicted or cautioned of a Section 55 offence.

WAPI consulted their membership and reported some of the responses to the Information Commissioner. Amongst their membership's concerns was that the proposed custodial sentence is contrary to the current legal climate of reduced sentences for those convicted of more serious crimes. The Information Commissioner's intention is only that the courts should have the option of a custodial sentence available to them. He would not expect the courts to impose such a sentence for every offence committed under Section 55 but only to do so where it is appropriate given the particular circumstances before them.

WAPI are concerned that the Information Commissioner is targeting the investigation sector while crime through fraud and identity theft continues to soar. In that context WAPI has called on the Information Commissioner to press Parliament for lawful access to data in appropriate situations instead of targeting investigators. The Information Commissioner acknowledges that investigators can perform a valuable service and does not wish to condone the activity of absconded debtors or others involved in illegal activity. However 'What price privacy?' revealed that middlemen employed in the private investigation trade are at the heart of the illegal market in confidential information and it is those unscrupulous investigators that the proposals seek to target.

The Information Commissioner recognises the call for lawful access to relevant personal information but also notes that there is already much information that investigators can legitimately obtain on behalf of their clients within the existing legal framework.

Press Complaints Commission and Code of Practice Committee of Editors

The Press Complaints Commission monitors and adjudicates on disputes about breaches of the Editors' Code of Practice, which sets out the conduct that the press have agreed to follow as part of a self regulatory system. The Information Commissioner fully supports effective self regulation of the press and firmly believes in freedom of expression. In an effort to ensure that all journalists behave in an acceptable way the Information Commissioner recommended that:

> "...the Press Complaints Commission (and its associated Code of Practice Committee of Editors) should take a much stronger line to tackle any involvement by the press in the illegal trade in personal information."

The Press Complaints Commission has confirmed to the Information Commissioner in writing, on public platforms and in a press release that journalists must act within the law, having regard for the Data Protection Act 1998 and the proper use of the public interest exemption on which they can rely. The Press Complaints Commission has agreed to keep repeating this message wherever the opportunity arises. The Commissioner hopes that this will be done as loudly and actively as possible.

The UK press system of self regulation means that the standards the press operate to and any associated guidance must have the approval of industry in the form of the Code of Practice Committee of Editors. The Information Commissioner has engaged directly with the Chairman and Secretary of the Code of Practice Committee of Editors. He has discussed the possibility of amending their Code of Practice to make it clear that it is unacceptable, without an individual's consent, to obtain information about their private life by bribery, impersonation, subterfuge or payment for information clearly obtained by such means. This would not apply where it can be demonstrated that such activity is justified in the public interest. Unfortunately, however, no concrete proposal have so far been brought forward.

The Commissioner has also raised the possibility of the Press Complaints Commission producing further, simple guidance for journalists with the assistance of his office. The Code of Practice Committee of Editors has indicated its support for the production of clear guidance for the attention of senior management in the industry. This guidance would be included in the Editor's Codebook which supplements the Code and be posted on the Editor's Code website. The Committee has not agreed to the change to the Code suggested by the Information Commissioner. However, the Committee has indicated that it will keep the Code under review and that the Information Commissioner can put forward a suggestion for a change to the Code through the usual channels. The Commissioner has written to the Code of Practice Committee to reiterate his suggested change to the wording of the Code.

Office of Fair Trading

The Information Commissioner was clear in 'What price privacy?' that he in no way condones the behaviour of debtors who abscond without informing their creditors and supports efforts to develop legitimate means for tracing debtors in which a proper balance is struck between the privacy rights of individuals and the legitimate interests of those to whom money is owed.

The Information Commissioner recommended that:

> "the Office of Fair Trading should amend its 2003 Debt Collection Guidance – which is directly linked to fitness to hold a consumer credit license – to include an explicit condemnation of activities that breach Section 55"

The Office of Fair Trading have unequivocally condemned any activities that breach Section 55 of the Act and confirmed that a clarification will be placed in the 2003 Debt Collection Guidance that such activity is an unfair business practice that would be taken into account when deciding on fitness to hold a consumer credit licence. The Information Commissioner will ensure that the Office of Fair Trading is made aware when there are relevant convictions of persons who hold a consumer credit licence.

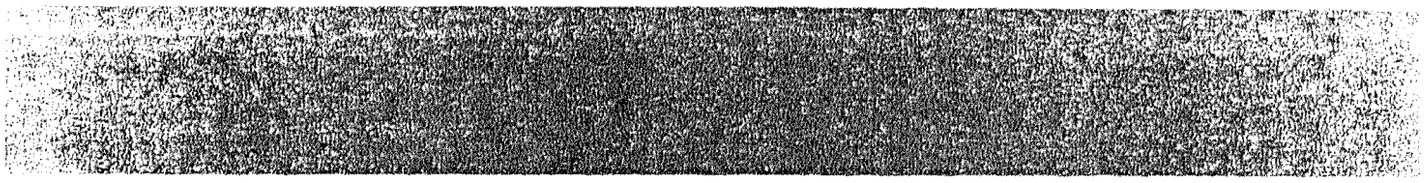
Raising awareness and standards

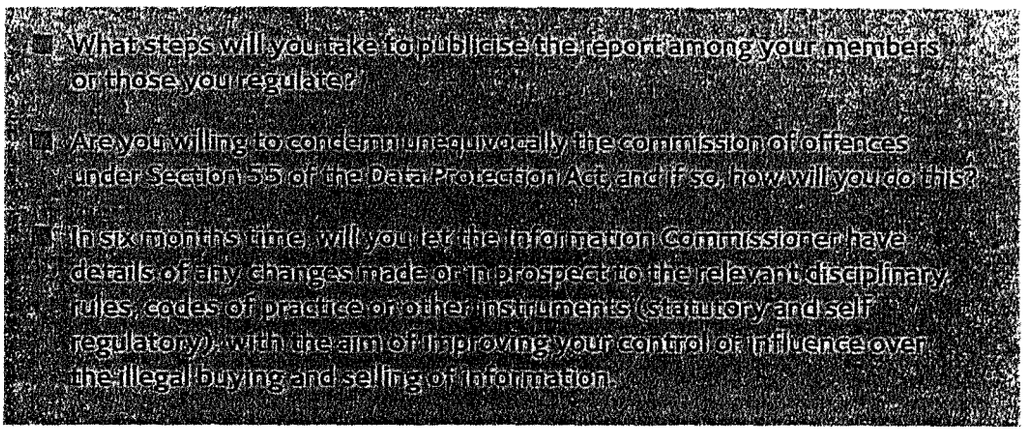
The Information Commissioner has a duty to promote good data protection practice by organisations and raise awareness amongst individuals. In order to raise awareness of the nature and the extent of the illegal trade in personal information and to encourage organisations to protect themselves and their customers the report was circulated to a range of government departments, public bodies, trade and professional associations, utility companies, telecommunications providers, financial institutions, credit reference agencies and law firms.

In addition the Information Commissioner recommended that:

> "...all relevant regulatory and professional bodies should take a strong line to tackle any involvement in the illegal trade in personal information"

Copies of the report were circulated to the media, finance and professional bodies identified in the report asking:





The responses received have been largely positive and are summarised below.

Media bodies

The **BBC** has committed to making their editorial community aware of the report at their monthly meetings and will be introducing specific guidance to require any programme or journalist purchasing personal data to seek approval from a senior editorial figure. However, the BBC has not unequivocally condemned Section 55 offences the commission of which they feel might be necessary in some cases and does not support the proposed prison sentence. The BBC believes that the proposals could potentially subject their journalists to serious criminal charges where they are acting in the public interest in the preparation or dissemination of story. The Information Commissioner has written to the BBC to remind them that he is not proposing the introduction of any new criminal offences and that there exists a defence in the Act for anyone acting in the public interest. He has urged them to reconsider their stance.

Ofcom have publicised the report on their website where they have also unequivocally condemned the illegal buying and selling of information. In addition Ofcom have demonstrated to the Information Commissioner their commitment to good information handling internally.

The **National Union of Journalists** drew attention to the report in their official trade publication which is circulated to all members and defended the right of journalists to obtain information where it is in the public interest. The Union has written to the Information Commissioner stressing their long standing commitment to journalists only obtaining information by straightforward means unless they can demonstrate that they are acting in the public interest. The Union is currently considering an addition to their code of conduct to require journalists not to publish or obtain information directly or indirectly which would breach Section 55.

In addition the Union has supported custodial sentences provided that the higher penalties are reserved for those who feed and encourage the illegal trade by instructing journalists to break the law when there is no overriding public interest to do so. The Union believes that the illegal trade is encouraged by cost cutting by the industry leading to publications devoting fewer resources to investigative journalism and also because of disillusionment amongst journalists about the Freedom of Information Act 2000 providing a ready source of information.

The Union has stressed that journalists should not be scapegoats for newspaper proprietors and managers who pressure them into breaking the law.

The **Newspaper Publishers' Association, Scottish Newspaper Publishers' Association, Newspaper Society, Scottish Daily Newspaper Society, Periodical Publishers Association** and **Society of Editors** responded to the Commissioner's recommendations as one on behalf of the newspaper and magazine industries making it clear that no newspaper publisher would condone any illegality. They have stressed that the industry takes the issues reported in 'What price privacy?' very seriously and that they perceive their role as spreading greater awareness and understanding amongst journalists of data protection issues and the potential consequences of breaching the law. Building on the data protection guidance already issued by the Press Complaints Commission (PCC) and working with the Information Commissioner (ICO) they propose to:

1. **encourage individual publishers to draw the information contained in 'What price privacy?' to the attention of senior management;**

2. **distribute through industry associations to each of their members simple guidance prepared by the ICO about the terms of the Act, and ask them to disseminate it to their journalists; and**

3. **assess what further steps need to be taken to publicise this guidance once the exercise has been completed.**

The industry recognises that the situation needs constant review and as such has indicated that the Code of Practice Committee of Editors, as mentioned above in connection with the PCC, will keep the terms of the code under review and would be ready to receive further representations from the Information Commissioner.

Attached to the industry's response to 'What price privacy?' was their submission to the Government's consultation on increasing penalties for the deliberate and wilful misuse of personal data. While the response was not directed at the Information Commissioner it is useful to note some of its key points here as the industry argues against the introduction of a possible custodial sentence as an addition to the existing sanction of fines.

The industry believes that a custodial sentence will have a serious chilling effect on investigative journalism and that given the importance to democracy of freedom of speech, and in line with the precedent of the European Court concerning the press, an overwhelming case needs to be made for the introduction of custodial sentences. The industry maintains that no such case has yet been made by either the Information Commissioner or the Government.

The industry argues that the introduction of prison sentences would require the existing public interest exemption at Section 55 to be revised. Currently to enjoy the exemption at Section 55(2)(d) journalists have to be certain that they are acting in the public interest before obtaining or procuring any personal information which does not allow for situations where they are acting in the reasonable belief that their line of investigation is in the public interest.

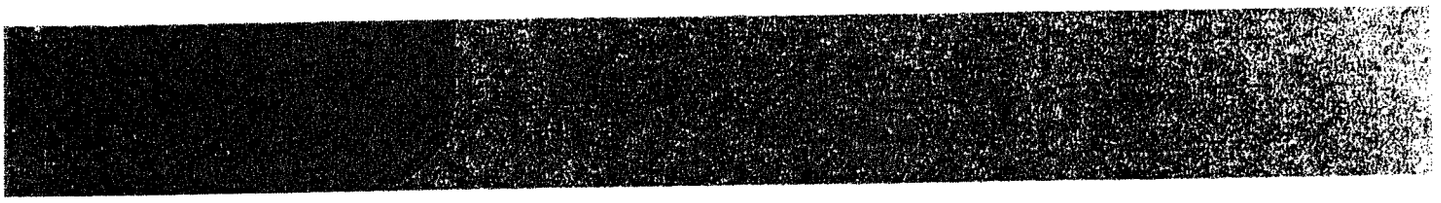
The industry proposes that the problem of journalists' involvement in the illegal trade in confidential personal information could be addressed by greater fines and more prosecutions in the Crown Court coupled with greater education for journalists about the Data Protection Act 1998.

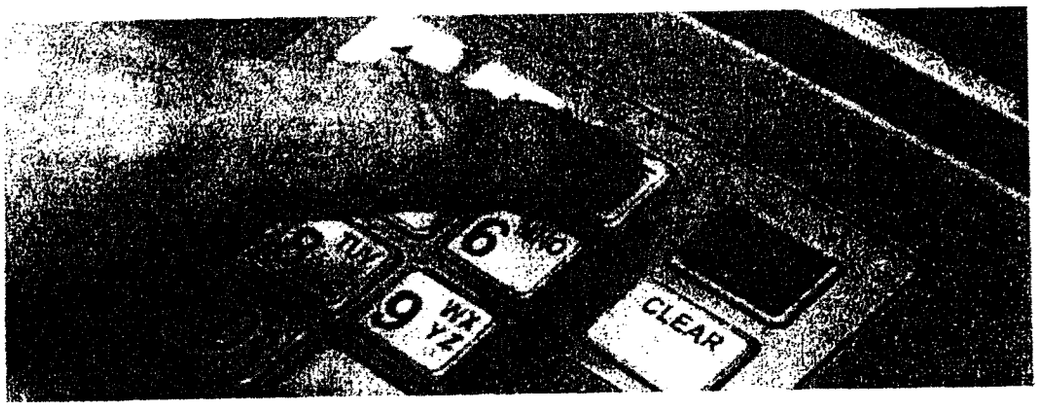
Finance industry

The **Association of British Insurers (ABI)** has indicated that insurers will not tolerate breaches of Section 55 and supports the regulation of the private investigation industry to ensure the highest ethical standards are present in investigation. All ABI members have been made aware of 'What price privacy?' and the ABI data protection working party is currently producing industry guidance on the use of private investigators in consultation with the Information Commissioner's Office.

The **British Bankers' Association (BBA)** has welcomed 'What price privacy?', supports the proposal for an increased penalty and condemns Section 55 offences unequivocally. The BBA's data protection advisory panel have made all their contacts aware of the report and of the Financial Services Authority's stance (see below). The BBA has already produced practical data protection guidance for banks which makes employees aware of their obligations and stresses the importance of security to the banking industry. In addition the BBA will be producing further guidance on keeping customer information safe and will consult with the Information Commissioner in its production.

The **Consumer Credit Association (CCA)** has circulated copies of 'What price privacy?' to all their members, have summarised the contents of the report in their newsletter and included the key findings in their regular training seminars. The CCA condemns the illegal trade in confidential personal information and their existing code of practice requires compliance with the Data Protection Act 1998.





The **Consumer Credit Trade Association (CCTA)** supports the Commissioner's proposals and condemns Section 55 offences. The CCTA are rewriting their code of practice which will include specific reference to Section 55 offences and their condemnation of them. The finished code will be circulated to all CCTA members.

The **Credit Services Association (CSA)** supports the recommendations in 'What price privacy?' and has circulated a copy to all their members with a covering letter condemning the Section 55 offences. The CSA code of practice makes clear that members must only use legally obtained information and they have amended the code to include specific reference to Section 55 offences. The CSA has also issued best practice guidance for members on Section 55.

The CSA calls for better legal access to relevant information to allow members to trace debtors and highlights that Data Disclosure Orders only apply to judgment debtors.

The **Finance and Leasing Association (FLA)** has unequivocally condemned Section 55 offences. It has publicised 'What price privacy?' by sending a link to it to all its members by email, featuring an article in its monthly newsletter and ensuring the report is on the agenda of its compliance forum. In addition the FLA is currently looking into the possibility of changes to its Lending Code to further suppress the illegal trade in confidential personal information.

The **Financial Services Authority (FSA)** has unequivocally condemned Section 55 offences. Under the Financial Services and Markets Act 2000 firms are required to meet threshold criteria in order to remain authorised. One of the threshold criteria is that firms act in a fit and proper way. The FSA have confirmed to the Information Commissioner that acting in a fit and proper way involves meeting all legal and regulatory obligations including complying with the Data Protection Act. The FSA have circulated their letter to the Information Commissioner to the trade associations of the firms they regulate to make their position clear. The Information Commissioner will be making the FSA aware of any regulated firms that are convicted of Section 55 offences.

Others

Local Government

The **Local Government Association** and **Welsh Local Government Association** will be writing to the chief executives of all local authorities in England and Wales drawing 'What price privacy?' to their attention. The letter will remind authorities that breaches of Section 55 are criminal offences and it will also call for them to be vigilant concerning attempts to obtain the information they hold. In addition the letter will set out some questions for councils to consider when employing tracing agents:

Have you pursed all available routes?

If so, what legal routes can a tracing agent pursue?

Have you asked the tracing agent what information sources will be used?

Will the work to be done outsourced - if so who to?

The **Northern Ireland Local Government Association** has circulated 'What price privacy?' to all Northern Ireland councils condemning the commission of Section 55 offences and is producing a policy on the privacy of information for councils. The **Convention of Scottish Local Authorities** has brought the report to the attention of a number of relevant professional bodies in Scotland.

Law Societies

The **Law Society** and the **Law Society Scotland** have condemned the commission of Section 55 offences and featured articles about 'What price privacy?' in their newsletters to raise awareness of the problem and the issues for solicitors. The **Incorporated Law Society of Northern Ireland** has also condemned the commission of Section 55 offences, has included an article in their journal to raise awareness of the problem and has committed itself to covering Section 55 offences in future data protection related training events.

Police

The **Association of Chief Police Officers (ACPO)** supports the proposals in the report and has unequivocally condemned the commission of Section 55 offences. In an effort to increase control over the illegal trade in confidential personal information ACPO have included unauthorised disclosures in the annual risk assessment carried out by the Police Service and the Serious and Organised Crime Agency. Furthermore in an effort to reinforce the IT monitoring that forces already have in place a code of professional standards has been developed which includes confidentiality as a key principle. Guidance to accompany the code makes clear that if officers are unsure if they should access or disclose information they should always consult with their manager or the department dealing with data protection and freedom of information. The guidance also makes it clear that information is not to be provided to third parties including requests from family and friends, approaches from private investigators and unauthorised disclosure to the media. The code and guidance are currently being considered for approval by the Police Advisory Board. In addition the Chairman of ACPO has written to the data protection officers of all forces in England, Wales and Northern Ireland drawing their attention to the report, reminding them to be vigilant, have thorough checking systems in place and create an environment where staff understand the reasons for integrity and data auditing.

The only other significant responses are from the **Association of Scottish Police Superintendents** and the **Police Federation for Northern Ireland** which have condemned the commission of Section 55 offences and made 'What price privacy?' available to members and staff. The Association of Scottish Police Superintendents has highlighted that all Scottish Police forces have polices and procedures for information security and progress investigations of data misuse vigorously. The Police Federation of Northern Ireland have stressed that their staff are contractually obliged not to disclose information to sources outside the organisation.

Consumer bodies

The Information Commissioner also circulated 'What price privacy?' to consumer bodies asking for any further evidence that they have of the illegal trade. This included the National Consumer Council and its regional equivalents, BBC consumer programmes, WHICH?, Citizens Advice and Citizens Advice Scotland. There has been no evidence presented to the Commissioner so far but he calls on these bodies to remain vigilant and where they are in possession of evidence to make his office aware of it.

Conclusions

The Information Commissioner welcomes the generally positive response from the bodies mentioned in 'What price privacy?'. The support for the report and its proposals has been substantial. The action that organisations have taken or intend to take has raised the profile of Section 55 offences while at the same time strengthening the sanctions for those that engage in this illegal and damaging activity. This is a welcome contribution towards addressing the problem of the illegal trade in confidential information.

The Government's consultation on introducing prison sentences for Section 55 offences was particularly encouraging. The Information Commissioner continues to believe that there is a pressing need for the introduction of an option for the courts to hand down prison sentences for Section 55 offences in addition to the penalties already available to them. It will though be for the courts to decide what punishment to hand down in a particular case. We would expect the prison to be reserved for only the most serious cases. We will work with the Government in support of their proposals and stand ready to provide them, or a Parliament with any further information or arguments that may be needed if the proposals are to be taken forward.

The reaction of some sections of the press - both editorial and proprietorial - that the proposals for custodial sentences should seemingly apply to others but not journalists is disappointing. The Information Commissioner fully recognises the importance of freedom of expression. But he considers that press representatives have ignored or not taken sufficiently into account the existing exemptions within the legislation to ensure that the press and other media are able to function lawfully in pursuit of legitimate investigative journalism. Public interest and other defences are already available. Freedom of speech is not freedom to break the law by bribery or deception where there is no public interest justification. It is difficult to imagine a prosecution - let alone a conviction of any journalist able to show that he or she was pursuing a story to prevent or detect crime, to expose public impropriety or was otherwise acting in the public interest. There is already prospect of a criminal conviction and an unlimited fine facing those who fish for tittle-tattle about public and private figures or who otherwise cannot justify their activities, but these deterrents clearly have not worked. It must be stressed that the proposals do not call for the creation of a new offence and will not make criminal any activity by the press or other media that is not already criminal. A further safeguard is that only the Commissioner or the Director of Public Prosecutions may bring a prosecution.

More generally, where it is in the public interest we will ensure that the Security Industry Authority, the Office of Fair Trading and the Financial Services Authority are informed about licensed or authorised organisations that have not acted in a fair and proper manner and may merit investigation and sanction under their regulatory regimes. This additional sanction should be a significant deterrent for businesses tempted to use illegally obtained information.

We are pleased that the report and the issues it raises have been widely circulated by professional bodies, trade associations and others. Whilst some responses may be a little disappointing most organisations we have contacted have commendably taken further steps to stifle the illegal trade in confidential personal information, for example by amending their codes or producing guidance. We will draw the Government's attention to the calls from some of those bodies for better legal access to relevant information in particular to trace absconded debtors.

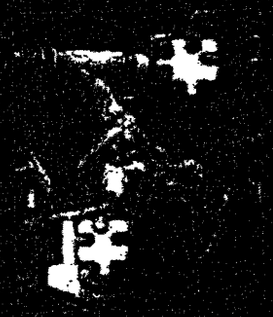
There is still further work to be done to reduce the demand for illegally obtained confidential information. This work will be ongoing. We will continue to track down and prosecute offenders. We will continue to press the Government to introduce the option of a prison sentence and see this progress report as supporting that goal. We will continue to raise awareness and we will encourage and work with any organisation that wants to raise standards or produce clear guidance on data protection obligations. In particular we will be working closely with the media on the development of relevant guidance and standards for journalists.

Printed in the UK for The Stationery Office Limited, on behalf of the Controller of Her Majesty's Stationery Office
ID5480420 12/06
Printed on Paper containing 75% fibre content minimum.

Publications Line
t: 08453 091 091

Helpline
t: 01625 545745
f: 01625 524510

e: mail@ico.gsi.gov.uk
w: ico.gov.uk



December 2006

Information Commissioner's Office,
Wycliffe House, Water Lane,
Wilmslow, Cheshire SK9 5AF

ICO/wPP2/1206/3k

Information Commissioner's Office

Published by TSO (The Stationery Office) and available from:

Online
www.tso.co.uk/bookshop

Mail, Telephone, Fax and E-mail

TSO
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline Lo-call 0845 7 023474
Fax orders: 0870 5533
E-mail: book.orders@tso.co.uk
Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ
020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD
0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS
0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD
028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT
029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers