

July '07



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Subterfuge and newsgathering for national newspaper journalists.

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Information Commissioner's Office.

RAD is responsible for the investigation of criminal offences under the DPA 1998 and all regulatory action under the Act.

RAD comprises of four units:

Audit, Enforcement, Remedies and Investigations.

- The DPA is concerned primarily with individual privacy,
- Security of personal data is a prime concern of the ICO.
- Protecting the privacy of the individual is at the heart of the Information Commissioner's responsibilities under the Data Protection Act.
- The security of electronically held personal information is becoming an increasingly serious issue.
- Current and past investigations by the ICO and police have uncovered evidence of a widespread and organised undercover market in confidential personal information.
- Of the 20 or so current live investigations over 1000 separate offences of unlawfully obtaining personal information from a variety of sources are being investigated.
- The Information Commissioner's report 'What Price Privacy?' calls for prison sentences for those who illegally buy and sell personal data.
- Sentences of up to 2 years on indictment and up to 6 months on summary conviction available for serious offences.
- Operation Motorman was an investigation into widespread unlawful obtaining of personal data involving a firm of private investigators and some 300 journalists.
- The investigation centred on 4 A4 size notebooks which recorded many transactions
- Motorman revealed many examples of unlawful obtaining of personal data by the journalists involved.

The ICO publications *What Price Privacy?* and *What Price Privacy Now?* came about as a result of several criminal investigations into allegations of offences contrary to Section 55 of the DPA 1998.



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Section 55 Data Protection Act.

55(1)

A person must not knowingly or recklessly, without the consent of the data controller,

- (a) Obtain or disclose personal data or information contained in personal data or,
 - (b) Procure the disclosure to another person of the information contained in personal data.

- 2) Subsection (1) does not apply to a person who shows:
 - a) that the obtaining, disclosing or procuring-
 - (i) was necessary for the purpose of preventing or detecting crime, or
 - (ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court,

 - b) that he acted in the reasonable belief that he had in law the right to obtain or disclose or . . . procure the disclosure . . .

 - c) that he acted in the reasonable belief that he would have had the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it, or

 - d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

Section 55(4)

A person who sells personal data is guilty of an offence if he has obtained the data in contravention of subsection (1)

Section 55(5)

A person who offers to sell personal data is guilty of an offence if

- (a) he has obtained the data in contravention of (1), or

(b) he subsequently obtains the data in contravention of that subsection.

Public Interest?

- It would be difficult to raise a public interest defence in cases where the vehicle registration number of the cleaner of a celebrity had been checked unlawfully to allow her to be door stepped by the press and asked about the 'indoors' private lives of the celebrities she worked for?

Operation Motorman revealed many examples of journalists seeking:

- information about celebrities,
- many telephone conversations – mobile telephone STD line to address and vice versa
- vehicle registration checks to find an address – then unlawful obtaining of ex. directory telephone numbers and itemised billing in particular friends and family numbers –
- criminal conviction information.

The majority of investigations conducted by the ICO have been into the activities of a small minority of private investigators who use their skills to unlawfully obtain personal information.

Our investigations have revealed that the following information is being sold on a grand scale:

- Bank account details,
- Medical records,
- Criminal records and police intelligence,
- Telephone billing and ex directory telephone numbers,
- Vehicle details – car ownership.

ICO's recent investigations also show that persons involved in this unlawful trade are making significant amounts of money and are not deterred by the current penalties.

2nd Tier Investigations.

- Investigations are currently conducting post sentence investigations looking at the manner in which 'clients' task private investigators,
- Was the request legitimate, was the cost proportionate, was the information collected unlawfully and passed on for payment?
- We anticipate in future months that prosecutions will be considered against those 'tasking' private investigators,
- We believe that over the past year or so the ICO has given fair warning on this issue.



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Journalists must be vigilant when tasking third parties to obtain information on their behalf – lawfulness, proportionality and necessity must be taken into account.

Even where the public interest may be served the question will be asked could the information have been obtained lawfully by other means?