



Our Ref. RT/LT

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

The Rt Hon Lord Falconer of Thoroton QC  
Secretary of State  
Department for Constitutional Affairs  
Selborne House  
54 Victoria Street  
London  
SW1E 6QW

9<sup>th</sup> October 2006

*Dear Secretary of State,*

**Increasing penalties for deliberate and wilful misuse of personal data**

Thank you for your letter dated 24<sup>th</sup> July 2006 inviting me to respond to the above consultation. My opinion on the need for and value of increased penalties is set out in detail in the special report 'What Price Privacy?' which is acknowledged in the consultation document. You will not be surprised that our answers to the specific questions raised by your Department in the consultation paper echo points made in our original report.

**Q1. Do you agree that custodial penalties should be available to the court when sentencing those who wilfully abuse personal data (i.e knowingly or recklessly obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller?) Please give reasons for your answer.**

Yes. The findings of 'What price privacy?' demonstrate that the current penalty regime is too low, often resulting in a derisory fine or conditional discharge which is not stemming the illegal trade in confidential personal information. Furthermore the low penalties devalue the data protection offence in the public mind and mask the true seriousness of the crime.

**Q2. Do you agree that custodial penalties will be an effective deterrent to those who seek to procure or wilfully abuse personal data (i.e knowingly or recklessly obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller?) Please give reasons for your answer.**

Yes. The custodial sentence will impress the seriousness of the crime upon individuals, organisations and the courts. It will particularly serve as a deterrent for those that could dismiss a fine as a business overhead while making considerable profit from their illegal activity.



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**Q3. Do you agree that the custodial penalties are of the right length?**

Yes.

**Q4. Do you agree that a guideline issued by the Sentencing Guidelines Council is necessary for this offence in England and Wales?**

Yes.

The only other comment I have is in relation to the partial regulatory impact assessment where it is stated that:

"The government does not however consider the creation of a new custodial sanction will increase the number of prosecutions brought forward by the prosecuting authorities"

Whilst it is unlikely that I, as a prosecutor of Section 55 offences, will bring a significantly higher number of cases it is appropriate to note that the Director of Public Prosecutions also has the power to bring prosecutions under the Data Protection Act 1998. On some occasions the Police and Crown Prosecution Service choose not to bring prosecutions under the Act instead choosing to bring proceedings under other legislation. The offences under the other legislation carry custodial sentences and are currently being used in lieu of the Section 55 offence, which better fits the circumstances of the crime. With the introduction of a custodial sentence I anticipate that Section 55 offences will increasingly be brought against those who commit offences in particular relating to the Police National Computer. However, whilst the number of data protection offences brought is likely to increase, there is likely to be a corresponding decline in prosecutions under other legislation. Therefore I anticipate that the impact on costs of a new custodial sentence will be neutral.

[Redacted]  
Yours sincerely

[Redacted]  
Richard Thomas

cc. Carl Pencil, DCA Information Rights Division.