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Information Commissioner's Of
Promoting public access to official informa
and protecting your personal informa

Rt Hon Jack Straw MP
Secretary of State for Justice and Lord Chancellor
Ministry of Justice
Selborne House
54 Victoria Street
London
SW1E 6QW

4 March 2008

Dear Secretary of State,

Criminal Justice and Immigration Bill – Clause 129

I was deeply disappointed when you told me last night that you are proposing to abandon the legislation to increase the sanctions for illegally obtaining or disclosing personal data.

I set out the case against such a proposal when I met you and Maria Eagle on 21 February. I had hoped you had been persuaded that a government amendment to withdraw clause129 from the Criminal Justice and Immigration Bill would have highly damaging consequences. I now need to place my position on the record.

Public and political concerns about the security of personal data have never been higher – and indeed are much stronger than when we published "What Price Privacy?" in 2006. This is the first legislative opportunity for the government to demonstrate how seriously it takes the safeguarding of personal information. Withdrawal of this clause at this advanced stage, when there has been no political opposition, would be widely interpreted – at best – as indifference to the problems that have surfaced in the last three months. It would be seen as a signal that the government is not prepared to give priority to tackling the problems of data insecurity or to reinforcing data protection.

To elaborate this central point:

- The primary purpose of increased penalties is to *deter* deliberate data breaches. This is aimed at staff inside organisations, at the private investigators who obtain data illegally, and at their various clients.

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Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
t: 0845 630 6060 **f:** 01625 524510 **e:** mail@ico.gsi.gov.uk **w:** ico.gov.uk

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- This is why there has been such strong support for the proposal from organisations which recognise the vulnerability of their data. National Health Service leaders, for example, have emphasised the benefits of a clear message to deter unauthorised disclosure of electronic health records. We have recently dealt with a case of DWP data being illegally obtained for a debt collecting company.

- If there is now a "U-turn" on the sanctions for deliberate breach, this must seriously undermine the long overdue measures being taken to address accidental breaches. My office has worked closely with the Data Handling Review Team led by Sir Gus O'Donnell, and I met all Permanent Secretaries on 20 February to demonstrate my support for the package that is about to be published. It is now universally recognised that good data handling, especially data security, has not been taken seriously enough and that this is largely a leadership and cultural issue. To withdraw clause 129 – which has symbolic and substantive purpose – would significantly weaken the credibility of the imminent Review.

- There is a widespread expectation amongst data controllers and their advisers that the stronger penalties will soon become law. The same is true within sectors which our report has identified as being involved with the illegal trade in personal data – including investigators, financial institutions, law firms and journalists.

- Withdrawal would damage the reinvigorated credibility and authority of data protection law and the Information Commissioner's Office. We are due to launch our Data Protection Strategy next week, which spells out that stopping the illegal trade in personal data is a top priority.

- Public confidence in the protection of their data has already been damaged by high-profile data losses. Withdrawal would increase the risks for data sharing initiatives and would sit strangely with the Identity Cards Act which already has the identical sanctions against unauthorised disclosure.

I know that your imperative is to ensure swift enactment of the Bill, but the widespread and cross-party interest in this measure may mean that an attempt to withdraw the clause would be more controversial and time-consuming than its retention. It has been discussed in many quarters for nearly two years. It was

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widely welcomed in your consultation exercise. In the last 12 months we have given evidence on the issue to various Select Committee inquiries and the reports from the Culture/Media, Health and Justice Committees have already supported our approach. We are anticipating favourable reports from a further three enquiries.

The representations against the measure from media organisations have not been convincing. In effect, they are arguing against a criminal offence which has been on the statute book for many years. They object to tougher sanctions against activities which they say do not exist or are not widespread. The louder their protests against stronger penalties, the more it suggests questionable practices. The offence is only committed when there is deliberate or reckless disclosure of personal data without the consent of the organisation which holds it. The implication of their case is that they wish to be able to break the law.

Genuine investigative journalism will be protected both by the explicit public interest defence and by the Statement of Prosecution Policy which we will publish. Despite media approaches to the Prime Minister, his speech on Liberty stated that:

> *"Clear guidance will make sure that legitimate investigative journalism is not impeded* ***but the sanctions provide a strong deterrent to protect personal privacy.***"

This is a pernicious, and largely hidden, illegal market and I am determined to stop it. You kindly agreed to reflect on the points I made. With considerable reluctance, I have concluded that – assuming it is decided to withdraw the clause – I will have no alternative but to lay another Report before Parliament under section 52(2) of the Act.

I am copying this letter to Maria Eagle, to your officials, and (for the Data Sharing Review) to Sir Gus O'Donnell.

Yours sincerely,

[redacted]

Richard Thomas
Information Commissioner