

KJT 40

Various IT glitches mean this is my fourth attempt to send this record of my meeting with the PM on Wednesday afternoon. The meeting was also attended by Sir Gus O'Donnell and Nick [?] from No. 10. I was not able to record a full note until immediately after the meeting, but Nick did so.

The PM started by saying that I had the most difficult job in the country. I said that mine was a very long way behind his.

He observed that he had long supported freedom information, referring to a speech to Charter 88 in the early 90's. He was concerned that the law provides the media with a new weapon, but acknowledged that it was widely used without great difficulty by members of the public and that decisions upholding non-disclosure rarely get attention.

He is very concerned about data losses, but thought the matter needed to be kept in perspective. Risk averse ministers and officials should not let the pendulum swing too far the other way. But he fully accepted that a culture of data protection had not been taken sufficiently seriously and welcomed ICO support for Gus O'Donnell's Data Handling Review. He recognised that the nature and sensitivity of lost data – e.g. health / criminal – was usually more important than the volumes involved.

He asked about the Walport / Thomas Data Sharing Review and was pleased that good progress is being made. He is worried about private sector data handling – referring to retailers, search engines and banks [perhaps aware of the imminent FSA report]. He worries about the mass of data collected and held for a very long time for personalised marketing by search engines and other forms of internet commerce

On the sections 55 and the Criminal Justice and Immigration Bill, he understood entirely the need for stronger sanctions. He considers that the trade in personal information is entirely unacceptable and suggested he had himself been a victim in the past. I drew attention to some of the "highlights" in What Price Privacy demonstrating the diverse nature and extent of the market. I made the point that many others besides tabloids journalists are involved and that the media cases were largely of the "tittle-tattle" variety. The PM accepted that a strong sentence is needed to deter all those involved. This is especially important after recent data losses. I made clear that this is a top priority for ICO and that I am not prepared to give up.

At the same time, he is concerned to strike the right balance with protecting freedom of the press, especially in relation to legitimate investigative journalism. Now that some time has been bought (between Committee and Report stages in the Lords) he wants a compromise position to be achieved to minimise media concerns. I said that I entirely shared the wish to protect responsible journalism. I had repeatedly made this point to the senior media representatives I had dealt with for the last 2 years and in evidence to Select Committees.

He indicated agreement that the "package" developed by the MOJ was on the right lines to achieve a compromise. The media may never "agree" to such a compromise, but they would accept it as a good second best to withdrawal of the clause. The main elements were:

- An enlarged ("reasonable belief") public interest defence. We reviewed the MoJ's proposed amendment in detail and I said it could safely go further still by deleting (ii) - the reference to publication;
- The ICO Statement of Prosecution Policy. We went through the 2nd page of our draft in some detail and he thought this was sensible. He asked how it could be made binding. I said it would have the same status as the CPS Prosecutor's Code, so that a case would be thrown out if not observed by ICO. It could provide evidence in support of a genuine public interest defence. And we may be open to Judicial Review. We are proposing to consult with the media on final content, though could not give them the last word.

I concluded by pointed out, with examples, that the media activities which we had uncovered fell a long way short of public interest journalism and that this defence had not even been attempted.

The PM concluded by saying that we had 3 weeks to get the balanced right. He seemed optimistic that this was achievable, but said that I had his personal assurance that the clause would be re-introduced if it had to be withdrawn.

Outside the main meeting, Sir Gus thought that MoJ (led by Suma) should lead the negotiations for MOJ and that ICO should not be directly involved. He said it would be necessary to portray me and the ICO as demanding "hard men", refusing to back down. I entirely agreed and accepted this approach.

I propose to write to the PM today to record some of the main points and to make clear the symbolic and substantive importance of retaining the clause.

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