

Welcome to the 8th ActNow newsletter on data protection and privacy issues in the public sector. Circulation now 770. Please check the disclaimer, virus warning and copyright notice at the end of this newsletter. Subscribe and Unsubscribe is available via a form on our website [www.actnow.org.uk](http://www.actnow.org.uk) or email [info@actnow.org.uk](mailto:info@actnow.org.uk)

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## NEW EMPLOYMENT PRACTICES DATA PROTECTION CODE

The Information Commissioner has now published part 2 of this Code. Stretching to over 100 pages this part contains guidance on what employers need to do in terms of personnel record management to comply with the 1998 Act. As with part 1 (recruitment and selection) compliance with this code is not compulsory but its contents can be taken into account by the Information Commissioner and the courts when deciding whether or not a breach of the 1998 Act has occurred. An article on part 1 of the code is on our website. Look out for a full article on the contents of part 2 and its implications.

## ACT NOW DATA PROTECTION UPDATE SEMINARS 2003

York 5th Feb National Railway Museum

Belfast 5th Mar Wellington Park Hotel

A series of seminars specifically designed for Local Government will take place in the spring next year. Recent developments in Data Protection and its application to Local Authorities will be discussed. Expert Speakers include Rosemary Jay, former chief legal adviser to the Data Protection Registrar, Paul Simpkins and Ibrahim Hasan. Subscribers to ActNow newsletter can register for these in advance of the official launch of the seminars. The cost is only £145 per delegate and places will be limited. Look at [www.actnowtraining.co.uk](http://www.actnowtraining.co.uk) for more information.

## SECOND THOUGHTS ON PUBLICATION SCHEMES

After much thought and research we've come to the conclusion that publication schemes should be much smaller than first envisaged. A 750 word article called Second Thoughts can be viewed on the front page of our website. We're also hoping very soon to post suggestions about how to answer the six questions in the mandatory approval questionnaire. These will go on our links page in the next week or so.

## SURVEILLANCE LAW ROUNDUP

Internet and e-mail misuse by employees. The recent survey of companies by Websense International and Personnel Today Magazine revealed that 72% had dealt with internet misuse in the workplace. In addition, 69% of all dismissals were associated with on-line pornography. Web chat rooms and personal e-mail browsing were the second and the third most frequent complaints. Many organisations are resorting to surveillance of email and internet usage. Is this lawful? Read On.

## RIPA

The Regulation of Investigatory Powers Act 2000 regulates the surveillance and monitoring of communications, individuals, staff and premises. It also governs the use of informants, professional witnesses and test purchases. Failure to comply with it may render evidence inadmissible or mean that your council faces action under the Human Rights Act 1998. There is also an appeal, authorisation, record keeping and inspection regime under the Act. The Act applies to all departments of the council especially audit, personnel, planning, environmental health and trading standards.

The Office of the Surveillance Commissioner is now going round local authorities inspecting their compliance with the Act. They will ask questions like; do you know when the Act applies? Have your staff been trained? Do you have a policy and procedures in place? See the website at [www.surveillancecommissioners.gov.uk](http://www.surveillancecommissioners.gov.uk) We have developed a course in this area which has been successfully delivered. Please look at the training pages on our website for more details.

## NEW RIPA CODES APPROVED

The Regulation of Investigatory Powers (Covert Surveillance: Code of Practice) Order 2002 ("the Covert Surveillance Order") and the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2002 ("the Covert Human Intelligence Sources Order") give effect to the codes of practice, approved by Parliament, on covert surveillance and covert human intelligence sources respectively.

The Orders give guidance on the necessity and proportionality considerations that the relevant authorities must take into account to ensure consistency with the European Convention on Human Rights and the Human Rights Act 1998, the level of authorisation needed and the forms to be used. Both Orders came into force on 1 August 2002 See [www.homeoffice.gov.uk/ripa](http://www.homeoffice.gov.uk/ripa)

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## E GOVERNMENT BULLETIN

The inside track on 'e-government' - modern public services using the Internet and other new technologies - for free!

All public sector managers and staff are invited to register to receive 'e-government bulletin', the leading independent email publication from Headstar that is and will always remain entirely free to receive. Every fortnight you will receive the latest on key issues relating to online public services such as security, e-democracy, online learning, and access to internet services by all parts of society. As a legally registered Data Controller we never pass on email addresses.

Simply send a blank email to: [egovbulletin-subscribe@headstar.com](mailto:egovbulletin-subscribe@headstar.com) or for more information see: <http://www.headstar.com>

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## IDENTITY CARDS v ENTITLEMENT CARDS

You may have received the document for consultation on the Government's plans for identity cards or as they touchingly call them Entitlement cards. This is a crucial component of E-government but also touches on the basic liberties of the individual. For a long but well argued account of the value of these cards look at [www.spunk.org/texts/otherpol/examples/sp000862.txt](http://www.spunk.org/texts/otherpol/examples/sp000862.txt) It's a been written a long time but does have up to date references in it and has some excellent references.

## COUNCIL TAX DATA

Regular readers will know that we have been covering the legal issues surrounding the re use of council tax data for some time in Act Now (see archive issues on our website). The Scottish Executive has produced a consultation paper entitled "Secondary Use of Non Personal Council tax Information". It is about proposals to pass laws allowing councils to provided non personal council tax data to other bodies for research purposes. It can be found at [www.scotland.gov.uk/consultations/localgov/nonpctax.pdf](http://www.scotland.gov.uk/consultations/localgov/nonpctax.pdf)

## MEDIA WATCH

The Guardian has published a three-part series of supplements focusing on privacy issues. The articles examine the ways in which information about the private lives of individuals is captured by employers, government bodies etc. how it is used, government attacks on privacy and a whole lot more. Excellent reading. The final page of the 3rd issue provides a standard letter which individuals can use to make a subject access request. Fortunately this is not available on the website but on bulletin boards there have already been reports of applications arriving in this format. The office of the Information Commissioner has an item on their website in the same vein. Go to [www.dataprotection.gov.uk/dpr/dpdoc.nsf](http://www.dataprotection.gov.uk/dpr/dpdoc.nsf) and choose "Your Rights" then choose "Your Rights and how to enforce them" and you will see a detailed paper on how individuals can use the law. The guardian supplements are on

[www.guardian.co.uk/bigbrother/privacy](http://www.guardian.co.uk/bigbrother/privacy)

In the Independent, an article considered the impact of the use of CCTV on the privacy of individuals and emphasised the importance of having a code of conduct for its use.

In the Times, Richard Morrison discussed privacy rights in the context of Mary Bell's quest to be granted a perpetual injunction in order to protect her secret identity. In the Guardian Mary Riddell supported the protection of Bell's anonymity.

[www.guardian.co.uk](http://www.guardian.co.uk) The monsters in our midst (15/9/2002)

[www.timesonline.co.uk](http://www.timesonline.co.uk) "The right to privacy" (whatever that means) (12/9/2002)

[www.independent.co.uk](http://www.independent.co.uk) Silent Witness: The rise of CCTV and the fall of privacy (10/9/2002)

## SURVEY - JUST HOW MUCH EMAIL SPAM IS OUT THERE?

A number of recent reports have suggested that as much as 35% of all internet email coming into the workplace is non-work related or spam. To put this figure to the test, the Insider has been monitoring its inbox for junk emails during the course of September. We received a total of 1300 messages - 18% contained one or more attachments and 25 separate virus attacks were detected. This works out at a rate of one virus in every 52 emails received which is pretty dire and suggests that virus scanning software and related security methods are now a day-to-day necessity rather than a luxury.

A total of 259 messages (or just under 20% of the total) were what we would classify as pure spam. These included the predictable porn site invites, health schemes (Do I look like I need viagra? - Ed), get rich schemes and outright attempts at fraud - all variations on the Nigerian 419 scam. However by far the largest number of spams (140 messages or 54% of all spam and just over 10 percent of all email traffic) were sales pitches from the IT industry trying to sell us new PCs, web site search engine services and, ironically, email security software. Get rich schemes (50 messages) were the next most popular form of spam and, interestingly given the hype surrounding the issue, porn scored the lowest rate with just 15 messages. We also received no spam of a religious/spiritual or racist nature - and nobody sent us any jokes.

Although a 20% figure for spam might seem enviable, we also monitored what might be termed self inflicted spam or, to keep with the ersatz meat/meat substitute analogy, what we christened as 'quorn'. As quorn we included out-of-the-office automatic responses to our emails -

we received 57 of them. While we appreciate that law firms need to keep their clients informed, none of the messages we sent actually required a response and it would be interesting - as well as frightening - to work out just how much of the internet's bandwidth and law firms' server capacity is taken up with these frequently redundant messages. However by far the largest amount of quorn stemmed from ezines - a total of 266 messages - that at some point we had once subscribed to because they occasionally carried an interesting story and had never got around to cancelling.

Added together, quorn accounted for 25% of all incoming email traffic and when we combined that with pure spam, the figure rose to an appalling 45%.

As a small office, we do not have an internal messaging system generating more traffic on the network but even if we take a conservative estimate of the volumes of internally produced junk mail being copied around most organisations, once the quorn is added to the spam we are looking at at least half of all email traffic being destined immediately for the trash folder. Incidentally we've received a number of reports that a useful email spam filter can be found at [www.emailfiltering.co.uk](http://www.emailfiltering.co.uk) (taken from Legal Technology Insider)

## ODPM - CONSULTATION PAPER

Access to Information in Local Government. A policy paper on the current and future framework governing access to information for Local Authorities in England. All responses to this policy paper should be sent, to arrive no later than 2 December 2002. Look at [www.local-regions.odpm.gov.uk/consult/review/pdf/access.pdf](http://www.local-regions.odpm.gov.uk/consult/review/pdf/access.pdf)

## INFORMATION COMMISSIONER REPORT 2001/2002

In July Elizabeth France, the Information Commissioner, released her annual report. Interesting figures in the report include:

12,479 complaints or requests for assessment were received in the 12 month period ended 31st March 2002, including 2,588 complaints of breaches of the Telecommunications Regulations.

The total number of complaints/requests received for the year 2000/2001 was 7,804; for 1999/2000 it was just 4335.

There were 66 offences prosecuted in 2001/2002, but only 33 convictions, 18 of which were cases of unlawfully procuring information, 12 of which were cases of data users using data for unregistered purposes.

## INFORMATION COMMISSIONER LEAVES OFFICE INFORMATION COMMISSIONER TAKES UP OFFICE

So farewell then Elizabeth France  
You always were a staunch defender  
Of the rights of the individual  
Keith's mum always said she fancied making a subject access request  
But didn't know the procedure.  
Nothing personal

(Elizabeth France left OIC on September 30th to become Telecomms Regulator. Richard Thomas takes up his post as Information Commissioner on December 2nd)

## SALE OF PERSONAL DATA

In August Alistair Fraser, trading as Solent Credit Control in Portsmouth, pleaded

guilty at East Hampshire Magistrates Court to offences of unlawfully obtaining and selling personal information, in breach of the Data Protection Act. The Magistrates fined him £1,400 and ordered him to pay £1,000 costs. He unlawfully obtained personal information from the Department for Work and Pensions. Then he sold the information to third parties.

## SALE OF THE ELECTORAL ROLL

We have been covering this subject in the last two issues. The new Representation of the People (England & Wales) (Amendment) Regulations 2002 (SI 2002 1871) Introduces new rules regarding the sale and free supply of the electoral register. It provides for an edited version of the electoral register, It introduces new restrictions on the sale of the full version of the register and it introduces new restrictions on the full register's use following its supply free of charge See our website for the background to these regulations i.e. the Robertson case

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## ACT NOW - DATA PROTECTION TRAINING FOR THE PUBLIC SECTOR

The Seventh Data Protection Principle requires all data controllers to have adequate measures in place to ensure the reliability of employees who have access to personal data. This means training is absolutely essential for such staff. So far most of delegates at our seminars who completed a feedback sheet have rated them good or excellent. Consequently we have received many requests to present the course in house. We have now improved it to incorporate FOI, HRA and RIP. If you would like us to deliver training please contact us. Organisations in an area may wish to club together so that they can share the costs and resources. The courses can be tailored for specific audiences. Our availability is limited therefore the sooner you contact us the better. Contact us or look at the website for details.

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