



Data Protection: Know Your Responsibilities

With the recent loss of 25 million child benefit records by HMRC and further reported data losses by the Foreign and Commonwealth Office, the Department for Work and Pensions and the Ministry of Defence, it is unsurprising that issues surrounding data protection have been at the forefront of recent public debate.

What these cases illustrate is that up until now the provisions of the Data Protection Act have often been ignored by public bodies, mainly through a lack of understanding of what the Act says and how important it is.

The Data Protection Act 1998 was designed to protect the privacy of individuals by regulating the processing of personal data. There are eight key principles to the Data Protection Act.

- 1 Personal data must be processed fairly and lawfully
- 2 Personal data should be obtained only for one or more specified and lawful purposes, and must not be further processed in any manner incompatible with that purpose or those purposes
- 3 Personal data must be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed
- 4 Personal data must be accurate and, where necessary, kept up to date
- 5 Personal data processed for any purpose or purposes must not be kept for longer than is necessary for that purpose
- 6 Personal data must be processed in accordance with the rights of data subjects under the Act
- 7 Appropriate technical and organisational measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
- 8 Personal data must not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Despite these provisions personal data relating to nearly half the population was lost in a clear breach of the Data Protection Act, but currently there is no effective recourse for such breaches.

A data controller who persistently breaches the Act and has been served with an enforcement notice can be prosecuted for failing to comply with the notice. This carries a maximum penalty of an unlimited fine in the Crown Court, a £5,000 fine in the Magistrates' Court.

It is a strict liability offence for a data controller to fail to notify the Information Commissioner's Office of the processing being undertaken or of any changes to that processing.

An example of where a prosecution has occurred for such a breach was in October 2005, when two debt collection companies that were trading from the same premises were fined the maximum £5,000 plus prosecution costs for failing to notify.

Furthermore it is a criminal offence to knowingly or recklessly obtain, disclose or procure the disclosure of personal information, without the consent of the data controller. So for example it is an offence to sell or offer to sell personal information if this has been obtained illegally.

Those individuals who have suffered loss by reason of any contravention of the Data Protection Act can claim damages, although in practice there are significant problems in proving causation, as losses may not occur for some time and damages are not recoverable just for distress.

These incidents have highlighted the need for compliance with the Data Protection Act. Gordon Brown has pledged that in future the Information Commissioner's Office (ICO) will have the power to make spot checks on organisations holding personal data.

There have in addition been calls to change the current legislation so that data controllers are required to notify the ICO if any data is lost or stolen and for the introduction of criminal charges for data security breaches.

Irrespective of whether such changes occur, it is clear that all organisations that hold and process data must ensure that they have sufficient systems in place to protect the data where services are being outsourced to external contractors to avoid a similar fate.

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