



Headlines this month:

- Anonymisation code
- Justice Committee report on new Regulation
- Leveson report
- Spam texts
- Irish Data Protection Office investigates potential credit report data breach
- midata
- Notification consultation
- Recent data protection breaches
- EU update

Commentary:

■ Anonymisation code

The Information Commissioner's Office has published a code of practice on managing risks associated with anonymisation emphasising how to protect the privacy of individuals.

Christopher Graham, The Information Commissioner, stated:

"We have published our code of practice on managing the data protection risks related to anonymisation to provide a framework for practitioners to use when considering whether to produce anonymised information. The code also aims to bring a greater consistency of approach and to show what we expect of organisations using this data.

"Failure to anonymise personal data correctly can result in enforcement action from the ICO."

The full code can be found at the following link:

http://www.ico.gov.uk/news/latest_news/2012/~//media/documents/library/Data_Protection/Practical_application/anonymisation_code.ashx

The code includes examples of how to achieve successful anonymisation.

Data protection law does not apply to data that is anonymised so that an individual cannot be identified. By anonymising personal data the ICO believes that society's information needs can be helped in a privacy-friendly way and that the code will help any organisation that needs to anonymise data for whatever purpose. It cites the following examples of where the code may prove of use to organisations:

- Where an organisation is required by law to publish anonymised data
- Where there is a need to provide information under the Freedom of Information Act
- Where an organisation seeks to make itself more transparent
- Where an organisations wishes researchers to use anonymised data for research or statistical purposes

■ Justice Committee report on new Regulation

The UK's Justice Committee has published its third report on the draft Data Protection Regulation stating that it needs to "go back to the drawing board"

The Information Commissioner's Office is commissioning research on the business implications of the data protection proposals. The Chairman of the Justice Committee, Sir Alan Beith MP has stated:

"... we agree with the Information Commissioner's assessment that the system set out in the draft Regulation cannot work and is a regime which no one will pay for. Therefore, we believe that the Commission need to ... devise a regime which is much less prescriptive"

The Committee sees new Regulation as necessary but believes that the nature of the draft is such that

the Information Commissioner's Office will require substantially increased resource and businesses may have many administrative burdens imposed upon them.

In response to the European Scrutiny Committee, the report states:

"... the Regulation does give data subjects essential rights that must not be compromised during negotiations, and it has the potential to make data protection compliance easier for businesses, especially small businesses, which trade across the European Union. However, we do not believe that in its present form it will produce a proportionate, practicable, affordable or effective system of data protection in the EU"

■ Leveson report

The reports ('What Price Privacy?' and 'What Price Privacy Now?') can be accessed through the following links:

http://www.ico.gov.uk/~media/documents/library/Corporate/Research_and_reports/WHAT_PRICE_PRIVACY.pdf

http://www.ico.gov.uk/~media/documents/library/Corporate/Research_and_reports/WHAT_PRICE_PRIVACY_NOW.pdf

The ICO has been criticised for missing the opportunity to act upon journalists' attitude to data laws nearly a decade ago according to the findings of the Leveson report. The report states that material uncovered by the ICO "constituted evidence of serious and systemic illegality and poor practice in the acquisition and use of personal information which could have spread across the press as a whole". It goes on to say that "In the

circumstances, an opportunity was missed to address problems in the culture, practices and ethics of the press, and to safeguard the position of victims."

The Leveson report calls for data protection legislation to be tightened and to include a two year jail sentence for those who break it.

■ Spam texts

Further to the ICO's recent focus upon spam texting where it has encouraged the public to report examples of unsolicited marketing, it has issued a fine totalling £440,000 to two owners of a marketing company. This is the first monetary penalty issued for a breach of the Privacy and Electronic Communication Regulations (PECR). The ICO's power to do so was authorised in January 2012.

The Information Commissioner has stated:

"The public have told us that they are distressed and annoyed by the constant bombardment of illegal texts and calls and we are currently cracking down on the companies responsible, using the full force of the law.

"In March we set up a survey on the ICO website so people can tell us about any unwanted texts and calls they have been receiving. So far we have received over 60,000 responses. We know the majority of these calls have been made by companies who try to remain anonymous in the hope they can profit by selling personal information to claims management companies and other marketing organisations. We are using the information provided by the public to identify those responsible"

■ Irish Data Protection Office investigates potential credit report data breach

Experian is being investigated by Irish Regulators regarding breaches of the company's databases.

The Office of the Data Protection Commissioner in Ireland has opened a preliminary enquiry further to a story on Bloomberg's Tech Blog referencing a database being invade 80 times resulting in the theft of 15,500 credit reports since 2006.

■ midata

November saw press coverage about the midata initiative, which is being driven by the Department of Business, Innovation and Skills (BIS), further to the publication of its consultation response. The initiative will compel companies to release their customer data to assist consumers in making informed decisions about their spending.

The government is likely to legislate if companies do not comply with the midata scheme. Legislation will focus on credit card, mobile phones and energy leaving open the possibility to extend legislation to other sectors if appropriate.

BIS published a consultation response regarding the midata scheme on the 19th November 2012. It states that the Government is committed to progress the scheme on a voluntary basis and if it does see the need to regulate there would be a further round of consultation.

The consultation concluded that there was broad support for the initiative i.e. consumers should be able to access their transaction and consumption data in an electronic, portable form. Respondents acknowledged that making the data would allow consumers to drive greater competition.

■ Notification consultation

The Information Commissioner's Office has been consulting on potential changes to its notification service and the public register of data controllers with a view to making it simpler for data controllers to notify and review the register.

The ICO is proposing to change the format of the register to include details of a contact person within an organisation in order that the public can approach them for information and allow companies to register online and by phone. The consultation closed on 30th November 2012 and the results should be published at the end of January 2013.

Feedback received by the ICO has prompted them to believe that the register currently does not make it easy to understand how a data controller will process personal data.

■ Recent data protection breaches

Tetrus Telecoms

An 18 month investigation has resulted in two owners of Tetrus Telecoms being fined a total of £440,000 for breach of the Privacy and Electronic Communications Regulations. A high volume of texts and messages were being sent without the consent of the recipient and without identifying the source of the texts.

The ICO's investigation found that as many as 840,000 texts were being sent each day generating a daily income of between £7,000 and £8,000.

Examples of the texts sent include:

- CLAIM TODAY you may be entitled to £3,500 for the accident you had. To claim free, reply CLAIM to this message. To opt out text STOP. Thank you.
- URGENT! If you took out a Bank Loan prior to 2007 then you are almost certainly entitled to £2,300 in compensation. To claim reply 'YES'.
- You have still not claimed the compensation you are due for the accident you had. To claim then pls reply CLAIM. To opt out text STOP
- The owners are also facing action for failing to notify the Information Commissioner's Office that Tetrus Communications was processing personal information.

Plymouth County Council

Plymouth County Council has been served with a £60,000 monetary penalty for a breach of the Data Protection Act where the details of a child neglect case were sent to the wrong person. The report contained sensitive information about two parents and four children. The ICO found that there was no secure system in place for printing reports not were steps in place to ensure reports were checked before being sent out.

Prudential

Prudential has been served with a monetary penalty of £50,000 for confusing two customers' accounts resulting in thousands of pounds ending up in the wrong account. The customers shared the same name and date of birth resulting in their accounts being incorrectly merged in March 2007 and remained so for three years. The bank had been alerted to the mistake on a number of occasions. This was the first monetary penalty issued by the ICO that did not result from a data loss.

The ICO has used this case to highlight that they received more complaints about money lenders than any other sector. 15% of the 13,000 complaints received by them in the last financial year related to lenders.

■ EU update

The below provides an EU update from a Regulatory Strategies' partner, Newgate Public Relations, in Brussels, and provides an insight into the progress of the EU's draft data protection regulation:

Update on the data protection framework

This month European policy makers began to focus on the detail of the new data protection rules in relation to data controllers, processors and service providers, as highlighted in the working documents produced by the German Green MEP steering the legislation, Jan Philipp Albrecht.

Key points of the documents include:

- On data controllers and processors, a much clearer division of duties and responsibilities is needed, as well as more debate on the concept of "joint controllers". Clarification is needed on the limits of what a processor can do without being instructed by the controller;
- Regarding Data Protection Officers, some clarification may be needed on the details about their independence, powers and duties. The threshold for a mandatory designation of a Data Protection Officer should be not only based on the size of the enterprise but mainly on the relevance of data processing;
- Data breach notifications and data security provisions need to be aligned with the e-Privacy Directive and the forthcoming Directive on attacks on information systems;

- Manufacturers and service providers need much clearer guidance and stronger incentives to implement the principles of data protection by design and by default;
- Privacy Impact Assessments need clarification and clearer guidelines;
- Codes of conduct as well as certifications and seals are generally supported, but also need incentives and clearer rules on the consequences with regard to lawfulness of data processing and liabilities, amongst other issues.

Mr Albrecht stressed that his draft report should be discussed on 17-18 December, an agreement reached by April, and the overall reform should be completed by the end of the Parliamentary mandate.

Member States will continue their own discussions on the working documents on 14-15 November, and Ambassadors will discuss the state of play in December.

Now is a key opportunity for interested organisations to contact MEPs, Member States and the European Commission with their views on the key provisions affecting their businesses, as the legislation starts to take shape.



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