



Information Commissioner's Office

**Commission on a Bill of Rights
Discussion paper - do we need a Bill of Rights?
Response from the Information Commissioner's Office**

Introduction

The Information Commissioner's Office (ICO) is pleased to respond to the discussion paper issued in August 2011 by the Commission on a Bill of Rights. The Information Commissioner is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. As such, the ICO promotes good practice in complying with both data protection and freedom of information law, and enforces the relevant legislation where necessary.

The fundamental question posed by the discussion paper is, of course, whether a UK Bill of Rights is necessary. That overarching policy question is not one that the Information Commissioner feels it appropriate to express a view on, given the political dimensions of the matter. Nevertheless, it seems clear that a decision in favour of a Bill of Rights will pose some important questions for information rights in the UK. The purpose of this short submission is therefore to identify these matters and to invite further dialogue in respect of the information rights implications of moving towards a UK Bill of Rights.

Recognising the importance of information rights

We live in an information society – one in which a solid framework of information rights and obligations (as regards both informational privacy and rights of access to official information) is an increasingly important guarantor of the rights and freedoms of individual citizens. In the ICO's view, these are matters of sufficiently fundamental importance that they should feature as part of any UK Bill of Rights. A Bill of Rights should secure rights for individuals to meet the challenges to them posed by the modern world..

The right to respect for personal informational privacy already features, of course, in Article 8 of the ECHR, and we take it as read that any transition to a Bill of Rights would include provisions about informational privacy. The Data Protection Act is, of course, limited in scope: it is not a wider privacy law, and the scope and extent of

any privacy-related rights included in a Bill of Rights would require careful consideration.

Whilst domestic data protection laws are – to some extent – underpinned by Convention rights (as well as by EU law, of course), that is not the case when it comes to the Freedom of Information Act. The creation of a Bill of Rights would provide the opportunity to embed the right of access to official information as a constitutional right rather than a legal right arising from a single statute. It might also provide an opportunity for clarification of the relationship between FOI and Article 10 of the ECHR.

Information rights and European law

As far as the relationship between domestic information rights legislation and EU law is concerned, there is a divergence between data protection and freedom of information. The Data Protection Act implements the UK's obligations under the European Data Protection Directive (which is currently under review at European level). However, the Freedom of Information Act does not arise out of the UK's Community obligations. Indeed, the UK has not signed the Council of Europe Convention on Access to Official Documents. This omission strengthens the case, in the ICO's view, for including FOI rights in a UK Bill of Rights, to ensure that such rights are safeguarded over the long term. The ICO acknowledges that rights of access to environmental information are recognised at European level and this has brought benefits to the overall FOI regime in the UK.

On the other hand, the fact that our framework of data protection legislation is grounded in EU law does not detract from the case for including data protection rights in a Bill of Rights. The Data Protection Act establishes rights which do not depend on their links to EU law for their fundamental importance to UK citizens and it would be valuable for this to be recognised by the inclusion of data protection in a Bill of Rights. Nevertheless, free-standing rights to informational privacy in a Bill of Rights could give rise to additional complexity in the interpretation of information rights law. Framing the provisions on informational privacy for inclusion in a Bill of Rights would clearly require careful consideration to ensure that the effect of those provisions would be to underpin and complement the rights that already exist at European level.

In the event that a decision is taken in favour of a UK Bill of Rights, the ICO would welcome the opportunity to be involved in more detailed discussions about the rights to be included, and about the implications for information rights more generally.