



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED

2006

To: B4U Business Media Ltd

of: 90 Broad Street
Birmingham
B15 1AU

1. The Data Protection Act 1998 (the "Act") came into force on 1st March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. Since 30 January 2001, by virtue of Section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
2. B4U Business Media Ltd is referred to in this notice as the "data controller".
3. The Commissioner has received approximately 1600 complaints from individuals about the website www.b4usearch.com which is operated by the data controller. This website offers "people searching" facilities and claims to contain "over 45 million records from the UK Electoral Roll". The website further claims that those records are "from the 2001 roll". These search facilities are offered free of charge and require no subscription or registration. Users need only enter the surname and rough location of the person they wish to trace for the system to return a list of electoral register entries that match the search criteria. The data controller has confirmed in correspondence with the Commissioner's office that the data are taken from the "2001 electoral roll", purchased in 2002 from Millennium Data.
4. The Commissioner has considered a report on the issues arising out of the complaints made to him, in particular the processing by the data controller of personal data derived from electoral registers published prior to the

bringing into force of the Representation of the People (England and Wales) (Amendment) Regulations 2002 (the “relevant data”).

5. The Commissioner served a Preliminary Enforcement Notice dated 8th May 2006 on the data controller. The Commissioner received written representations from the data controller by letter dated 22nd June 2006.
6. Section 4(4) of the Act provides that, subject to section 27(1), it is the duty of a data controller to comply with the Data Protection Principles in relation to all personal data with respect to which he is the data controller. The First Data Protection Principle states -

“Personal data shall be processed fairly and lawfully and, in particular, should not be processed unless –

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

7. The two requirements of the First Data Protection Principle that this Notice is concerned with are the establishment of one or more of the conditions for processing under Schedule 2 and the fairness of the processing of personal data. Sensitive personal data are defined in section 2 of the Act. The relevant data are not sensitive personal data.

Schedule 2

8. The only condition under Schedule 2 of the Act that is relevant in this case is that set out in paragraph 6 which states –

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

9. This condition requires an assessment to be made of both the legitimate interests of the data controller / third parties and the data subject.

Fair Processing

10. Even where a data controller is able to satisfy one of the conditions under Schedule 2 in respect of the processing of personal data, he will not comply with the First Data Protection Principle unless that data are processed fairly. The Commissioner takes the view that this overriding duty of fairness is of paramount importance when considering compliance with the First Data Protection Principle. Further, in assessing fairness the dominant consideration is the effect of the processing on the data subjects. This view was supported by the Data Protection Tribunal in the context of the

1984 Act in the cases of CCN Systems Ltd and CCN Credit Systems Ltd v the Data Protection Registrar (Case DA/90 25/49/9) and Infolink v the Data Protection Registrar (Case DA/90 25/49/9).

11. For the reasons set out in paragraphs 12 to 21 below the Commissioner is satisfied that the data controller's processing of the relevant data contravenes the First Data Protection Principle in that the data have been and are being processed unfairly and that no condition in Schedule 2 of the Act is met.
12. Prior to the bringing into force of the 2002 Regulations, copies of the full electoral register were required to be made available for sale. However, the 2002 Regulations provided for the compilation of two versions of the electoral register, "the full register" and "the edited register". The edited register does not include the details of any elector who has requested to be excluded from the register and is available for general sale without restriction.
13. Individuals have therefore been able to exercise a right not to have their details included in the edited register made available to commercial organisations since the 2002 canvass. The proportion of the public who have chosen to exercise this right has increased since that time reaching approximately 30% by the time of the 2005 electoral register.
14. The majority of the complaints received by the Commissioner about the data controller relate to the data controller's use of data derived from electoral registers compiled at a time when individuals had no choice as to whether their personal details should be included in the register made commercially available.
15. The Commissioner considers that it is inherently unfair for individuals to be compelled to provide personal information on penalty of a criminal conviction only for that information to be subsequently disclosed to commercial organisations without any express restrictions on its use.
16. Given that individuals now have a right to request that they are excluded from the edited register, it is unfair to undermine the express wishes of those who have exercised that right and the 2002 Regulations by continuing to make the relevant data available on the data controller's website.
17. The Commissioner considers that the processing of the relevant data by the data controller is unfair given that a significant proportion of the individuals whose details are contained in the relevant data will have subsequently exercised their right not to have those details included in the edited electoral register.

18. Individuals who have exercised their right under the 2002 Regulations not to have their details included in the edited register are unlikely to expect that such information would nevertheless be made available to the public on the data controller's website.
19. Individuals in sensitive occupations or industries often request exclusion from the edited register for personal safety reasons. A number of the complaints received by the Commissioner have come from serving police and prison officers.
20. The data controller could use data from the most recent electoral register or other legitimate sources to provide the services it seeks and with less impact on the rights of the data subjects.
21. In all the circumstances, the Commissioner considers that the processing of the relevant data is unfair and unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects.
22. The Commissioner has considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress to individuals is likely as a result of the relevant data being processed by the data controller in the manner described in this Notice.
- 23. In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires the data controller to cease making the relevant data available to the public on the website www.b4usearch.com, or any other website owned or controlled by the data controller, with effect from 1st August 2006. For the avoidance of doubt, the relevant data includes any data derived from any electoral registers published prior to the coming into force of the 2002 Regulations.**
24. For the purpose of this Enforcement Notice the functions of the Commissioner have been performed by the Deputy Commissioner in accordance with the provisions of paragraph 5(1) of Schedule 5 of the Act.

Right of Appeal

There is a right of appeal against this Notice to the Information Tribunal. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the notice of appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the day of 2006

Signed:

David Smith
Deputy Commissioner
Office of the Information Commissioner
Wycliffe House
Water Lane
WILMSLOW
Cheshire
SK9 5AF

ANNEX 1

THE DATA PROTECTION ACT 1998 (PART V, SECTION 40)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the Information Tribunal (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Secretary to the Information Tribunal, Arnhem House Support Centre, PO Box 6987, Leicester, Leicestershire, LE1 6ZX.
 - a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.
 - b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
 - c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.
4. The notice of appeal should state:-
 - a) your name and address;
 - b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;

- c) the grounds of your appeal;
- d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
- e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
- f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an Enforcement Notice may not require any of the provisions of the Notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the Notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the Notice contains a statement that the Commissioner considers that the Notice should be complied with as a matter of urgency.

Section 48(3) provides that where an Enforcement Notice contains a statement that the Notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the Notice, you may appeal against –

- (a) the Commissioner's decision to include the statement in the Notice,
or
- (b) the effect of the inclusion of the statement as respects any part of the Notice.

6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.
7. The statutory provisions concerning appeals to the Information Tribunal are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Information Tribunal (Enforcement Appeals) Rules 2005 (Statutory Instrument 2005, No. 14).