

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE DATED 8th December 2008

To: Leonard Cheshire Disability

of: 66 South Lambeth Road
London
SW8 1RL

1. Leonard Cheshire Disability is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 (the "Act").
2. The Commissioner has considered a request for assessment made under section 42 of the Act by *(name removed)* of *(address removed)*. The request for assessment concerned the failure by the data controller to respond within the prescribed period of 40 days to a subject access request made in compliance with the requirements of section 7 of the Act by *(name removed)* on 18 February 2007.
3. The Commissioner has considered the issues arising out of the request for assessment referred to in paragraph 2 above in addition to the correspondence entered into with the data controller concerning this case. The Commissioner has considered the data controller's compliance with the provisions of the Act in light of this matter.
4. 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 relevant provisions of the Act are the Sixth Data Protection Principle and section 7.
5. The Sixth Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"Personal data shall be processed in accordance with the rights of data subjects under the Act".

Paragraph 8(a) of Part II of Schedule 1 to the Act further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes [amongst other things] section 7 by failing to supply information in accordance with that section."

6. Section 7 of the Act provides, amongst other things, as follows:

Subsection (1)

"Subject to the following provisions of this section and to sections 8 and 9, an individual is entitled-

- (a) *to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,*
- (b) *if that is the case, to be given by the data controller a description of-*
 - (i) *the personal data of which that individual is the data subject,*
 - (ii) *the purposes for which they are being or are to be processed, and*
 - (iii) *the recipients or classes of recipients to whom they are or may be disclosed,*
- (c) *to have communicated to him in an intelligible form-*
 - (i) *the information constituting any personal data of which that individual is the data subject, and*
 - (ii) *any information available to the data controller as to the source of those data, ...”*

Subsection (2)

“A data controller is not obliged to supply any information under subsection (1) unless he has received-

- (a) *a request in writing, and*
- (b) *except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.”*

Subsection (3)

“Where a data controller –

- (a) *reasonably requires further information in order to satisfy himself as to the identity of the person making a request under this section and to locate the information which that person seeks, and*
- (b) *has informed him of that requirement*

the data controller is not obliged to comply with the request unless he is supplied with that further information.”

Subsection (4)

“Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless-

- (a) *the other individual has consented to the disclosure of the information to the person making the request, or*
- (b) *it is reasonable in all the circumstances to comply with the request without the consent of the other individual.”*

Subsection (5)

“In subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.”

Subsection (6)

“In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to-

- (a) any duty of confidentiality owed to the other individual,*
- (b) any steps taken by the data controller with a view to seeking the consent of the other individual,*
- (c) whether the other individual is capable of giving consent, and*
- (d) any express refusal of consent by the other individual.”*

Subsection (8)

“Subject to subsection (4), a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period beginning with the relevant day.”

Subsection (10)

“In this section-

‘prescribed’ means prescribed by the Secretary of State by regulations;

‘the prescribed maximum’ means such amount as may be prescribed;

‘the prescribed period’ means forty days or such other period as may be prescribed;

‘the relevant day’, in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3).”

7. The Commissioner is of the view that the data controller has contravened the Sixth Data Protection Principle in that, contrary to section 7, he has failed to have communicated to (*name removed*) within the prescribed period such information as may constitute his personal data.
8. Following correspondence between the Commissioner’s office and the data controller, the data controller did provide a partial response to the request. However, the data controller withheld some information on the basis of third party data considerations as provided by section 7(4) to 7(6) of the Act.

9. Whilst the documents also contain third party data, the Commissioner considers that on balance it is reasonable in all the circumstances to supply this information to *(name removed)* without the consent of the other individuals. The Commissioner notes, in particular, that the individuals were acting in a professional rather than a private capacity. The Commissioner is satisfied that the documents should be released in full.
10. 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 *(name removed)* is likely as a result of him not knowing what information about him is processed by the data controller and being denied the opportunity of correcting what may be inaccurate or misleading personal data about him, which may be processed by the data controller or others. The Commissioner is also mindful of the fact that *(name removed)* is reliant on the data controller for his care and accommodation.
11. **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 that the data controller shall within 28 days of the date of this Notice supply the individual referred to in paragraph 2 above with a copy of the information required to be disclosed in full to the data subject as set out in the attached Annex 1 (*annex removed*).**

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 2.

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 8th December 2008

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 2

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).