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From the Private Secretary

7 March 2008

Dear Antonia

**PRIME MINISTER'S MEETING WITH THE INFORMATION
COMMISSIONER**

The Prime Minister met Richard Thomas, the Information Commissioner, on Wednesday 5 March. They were joined by Sir Gus O'Donnell. This was an introductory meeting which covered a range of issues, including the proposals in the Criminal Justice and Immigration Bill to increase the penalty for misuse of personal data.

Freedom of Information

The Prime Minister said that he had been a longstanding supporter of Freedom of Information (Fol) and had made speeches calling for an Fol Act whilst in Opposition. He was concerned to ensure that the public were able to make full use of their right to know and that the Act was not abused by organisations, who were simply on a fishing expedition for information. Richard Thomas noted that there had been over 300,000 requests since the Act had come into force. While there were some individuals and organisations that sought to abuse the Act, the vast majority of requests were from ordinary members of the public seeking information about local public services. The Prime Minister said that was welcome.

Walport/Thomas Review

The Prime Minister asked how the Walport/Thomas Review was progressing and said he hoped that the review would engage with issues of data sharing and data protection in the private as well as public

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sector. Richard Thomas said that the review was progressing well and that he had developed a strong partnership with Mark Walport. There had been strong interest in the review from the public sector with a large number of submissions of evidence; private sector interest had been more limited, but he and Mark Walport would seek to encourage more interest in the next few weeks.

Security of personal data

The Prime Minister said that there were important lessons to be learnt from the HMRC data loss and there needed to be clear accountability in all organisations for ensuring security of personal data.

Richard Thomas agreed. He said that data protection had not been given a sufficiently high priority in organisations until recently. This was a matter for the private sector as much as the public sector. He had recently reached an agreement with the Chief Executives of major retail banks in the UK on steps they would take to improve security of personal data. He was also working closely with Sir Gus O'Donnell's Data Handling Review Team on a work programme for the public sector.

The Prime Minister said he was concerned also that departments did not become risk averse on sharing data, which was essential to improve public services. Richard Thomas agreed. Since the HMRC incident, forty data losses in the public sector had been reported to him. Some were trivial. While ensuring robust systems for data security, it was also important to maintain a sense of proportion and for there to be a measured response if losses did take place.

Increased penalty for the misuse of personal data

The Prime Minister said that the Government was committed to legislation to increase the penalty for the misuse of personal data. There was an issue with respect to reducing the size of the Criminal Justice and Immigration Bill to ensure Royal Assent by 8 May, which was complicating the passage of this legislation. There had also been difficulties in reaching a consensus between all interested parties on how to strike the right balance between individual privacy and freedom of the press. He recognised that this had been a frustrating process for the Information Commissioner and was hopeful that a way forward could be found.

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Richard Thomas said that his main concern was to take steps to deal with the illegal trade in personal data which had become a more serious problem in recent years, with networks of private detectives and others increasingly using illegal means to procure personal information about individuals. In his view, the current penalties in the Data Protection Act did not provide a sufficient deterrent to curb this activity; very often offenders only faced a small fine. He was, however, very mindful of the importance of protecting press freedom and rights of media organisations under Article 10 of the ECHR. He had engaged with editors at a senior level to reassure them about these proposals. He was happy to agree to a broad public interest defence for journalists as the Ministry of Justice had canvassed; he did not think it was necessary to include a requirement that journalists were seeking to procure personal information with a view to publication in order for them to take advantage of the special public interest defence. He was also willing to make it clear in his Statement of Prosecution Policy the criteria he would take into account when considering a prosecution and to discuss this with all interested parties.

The Prime Minister said he was grateful for the efforts the Information Commissioner was making to secure a consensus. He very much hoped that a consensus could be reached and he would ask the Ministry of Justice to work hard to find a solution satisfactory to all parties. If a consensus could not be reached in the next month, the Government would make clear its commitment to bringing forward legislation in the future after further consultation.

Comment: The Prime Minister would be grateful if your Secretary of State and Sir Suma Chakrabarti could take forward discussions on these issues with media organisations and the Information Commissioner to try to reach a consensus. In the event that a consensus cannot be reached by the end of March and the relevant clauses are withdrawn from the Criminal Justice and Immigration Bill, the Prime Minister would be grateful for advice on how to take discussions forward with a view to future legislation on the matter.

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I am copying this letter to Ciaran Martin (Sir Gus O'Donnell's office), Robert Hannigan (Cabinet Office) and colleagues here.

Yours ever



NIKHIL RATHI

Antonia Romeo, Principal Private Secretary to the Secretary of State for Justice

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