PJ/SB/X0079

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7 January 2005

Dear Tim

DATA PROTECTION ACT, JOURNALISM AND THE PCC CODE

Thank you very much for sending me a copy of the above advice note which incorporates my suggested amendments. As you know we believe there is a pressing need for guidance of this sort.

The note makes clear that it is "by way of straightforward general guidance only and should not be relied upon as legal advice". Our concern is that unless the attention of journalists and editors is drawn to the real possibility of committing offences under the DPA98 there is a real risk that the all too widespread practice of paying to obtain confidential information about people in the public eye will continue unabated. As you know the Commissioner is strongly of the view that the PCC and the principles of self regulation will be shown in a poor light unless - at the least - you are able to point to a clear public statement warning journalists and editors of the very real risks of committing criminal offences.

We acknowledge the relevant provisions in the Act are complex. That is why it is right to emphasise that the note does not purport to be detailed definitive legal guidance. There is a place for such detailed legal guidance, but it would be quite unrealistic to expect journalists to study and digest such guidance.

Our particular concern is that journalists and editors might take unwarranted comfort from the defence that "in the particular circumstances the obtaining ... was justified as being in the public interest". We fear that it might be assumed that simply because a journalist subjectively considers a particular story to be in the public interest, the prohibitions on obtaining personal information without consent can safely be ignored. We are satisfied that the courts would not accept this defence lightly. In other words they would consider that the public interest in the obtaining (and presumably subsequent publication) of the information in question would have

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to be extremely strong to justify obtaining the information dishonestly. I think your advice note strikes the right balance. It refers to the defence, but emphasises that it should not be relied upon lightly and recommends seeking legal advice.

Yours sincerely,

Philip Jones

PHILIP JONES
Assistant Commissioner