

PRESS COMPLAINTS COMMISSION

PCC and the fight against data crime

The PCC was warned it doesn't go far enough to tell journalists of the risks of illegal data gathering, writes **Marks Watts**

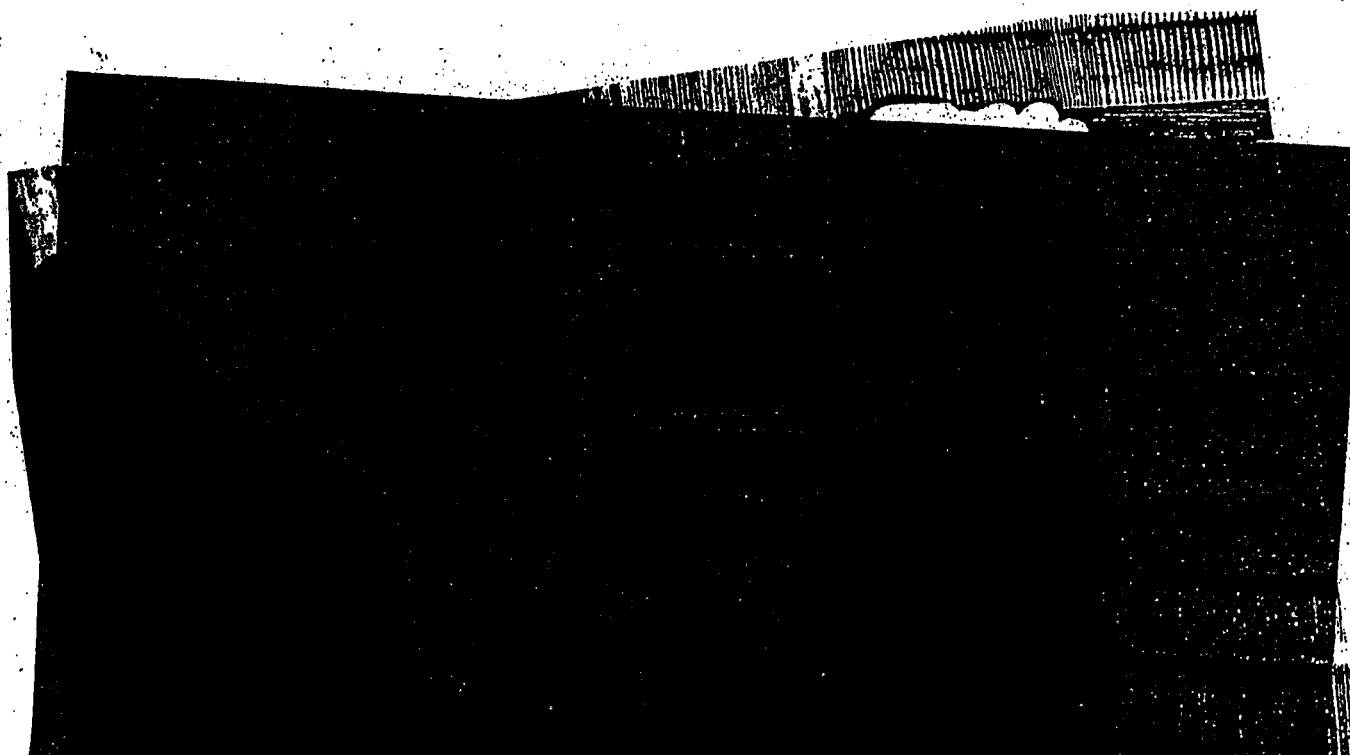
THE PRESS COMPLAINTS COMMISSION was pressured for a year to stop newspapers using private detectives to obtain confidential information illegally, newly released documents show.

The information commissioner, Richard Thomas, who regulates the Data Protection Act, wrote to the PCC urging it to warn journalists about illegal methods they often use to obtain personal details.

Although the PCC is not subject to the Freedom of Information Act, the correspondence was released under the Act by the information commissioner.

Thomas urged Sir Christopher Meyer, the PCC chairman, to produce "a clear public statement warning journalists and editors of the very real risks of committing criminal offences".

Otherwise, he said, "the PCC and the principles of self-regulation will be shown in a poor light".



PHOTOGRAPH: PHIL ADAMS. MONTAGE: JOHN HOONEY

commissioner launched a prosecution against six people working for private detective agencies.

That case was later dropped, but the conviction of a police control room employee and three private detectives for their parts in leaking information from the police national computer (PNC) to newspapers again highlighted the issue of newspapers buying confidential information illegally from bin scavengers and private detectives.

The PCC issued guidance to editors in March over the Data Protection Act, saying: "It is important for journalists to understand that [the Act] contains... controls and prohibitions on the way that information can be obtained and disclosed.

"There is a specific criminal offence of unlawful obtaining of personal data. A person must not knowingly or recklessly, without the consent of the data controller, obtain or disclose personal data or the information that it contains, or procure the disclosure to another person of the information contained in personal data.

"It is also an offence to sell or offer to sell information that has been obtained without consent."

A defence may be that it was "necessary for the purpose of preventing or detecting crime", or was "justified as being in the public interest".

The editor's code of practice advises on what may be covered by the public interest, such as detecting or exposing serious misdemeanours, protecting public health and safety and preventing the public from being misled by some statement or action of an individual or organisation.

But, the guidance adds: "Seek legal advice before assuming whether any of these defences will apply."

The newly released correspondence shows that the information commissioner believed the PCC was not going far enough.

Tim Toulmin, the PCC director, told Phil Jones, assistant commissioner, in an email of April last year: "I will have to strike a balance between urging caution and sounding too restrictive — something the newspaper people have been concerned about."

Jones sent an email to Thomas, his boss, about the PCC's second draft, saying: "Given that it is, in the

end, up to them, I intend to acknowledge that it is a great improvement on the first draft (heavily influenced by newspapers lawyers), whilst also making clear that we don't, in any sense, endorse it as we think that they could and should take a stronger line on Section 55."

Jones still wanted the PCC to strengthen its advice that a court, presented with a public interest defence, would have to decide whether the information "was of sufficient importance to override the protection afforded by the Act".

At a lunch with Meyer and Toulmin last December, Thomas learnt that the PCC guidance note had "run into the sand".

Thomas then wrote to Meyer: "My concern is that unless the attention of journalists and editors is drawn to the real possibility of committing criminal offences under the Data Protection Act 1998, 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, I am strongly of the view that the

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*Richard Thomas
information commissioner*

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. Ideally, this would be reinforced by a clear message from the PCC as to the unacceptability of journalistic law breaking.

"We were broadly content with the draft we saw earlier in the year... My particular concern is that journalists and editors might take unwarranted comfort from the [public interest] defence.

"I 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. I am satisfied that the courts would not accept this defence lightly. In other words, they would consider that the public interest in the obtaining of the information in question would have to be extremely strong to justify obtaining the information dishonestly."

Meyer replied by saying that he had asked Toulmin to "resurrect" the guidance note, adding: "It goes without saying that the [PCC] cannot condone criminal behaviour, and if the note raises awareness about what journalists must do to comply with the Act, then that will be most welcome."

However, the guidance was not altered to address the information commissioner's "particular concern" over the public interest issue.

So far, the information commissioner has not prosecuted any journalist for breaching Section 55 of the Act. If he does, the courts may decide who was right about the extent of the public interest defence.

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