

**IN THE MATTER OF THE LEVESON INQUIRY**

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SECOND WITNESS STATEMENT OF CHRISTOPHER GRAHAM**

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Wednesday 2 September 2009

Members present

Mr John Whittingdale, in the Chair

Janet Anderson  
Philip Davies  
Paul Furrelly  
Mr Mike Hall  
Alan Keen

Rosemary McKenna  
Adam Price  
Mr Adrian Sanders  
Mr Tom Watson

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**Written evidence submitted by the Information Commissioner's Office**

1. The Information Commissioner has been asked to submit written evidence to the Committee's inquiry into press standards, privacy and libel regarding "the implications of the allegation that phone tapping was widespread, the knowledge of the Information Commissioner's Office (ICO) about the police and CPS investigation and what action the Commissioner now plans to take". As members will know, the previous Commissioner Richard Thomas gave oral evidence to the Committee on 6 March 2007 about the practice of "blagging", where private investigators obtain personal information from confidential databases either by deceiving the holders of the databases as to their identity and purpose or by paying corrupt employees for the information. In such cases private investigators could be acting on behalf of journalists but the media are certainly not the only ones behind this unlawful trade.

2. It is important to distinguish between the practice of "blagging" and the interception of communications ("phone tapping") which is at the heart of the Goodman case. Blagging was the subject of two reports to Parliament by the Information Commissioner, "*What Price Privacy?*" and "*What Price Privacy Now?*". As blagging involves unlawful access to personal data held by an organisation, it is regulated by the Data Protection Act 1998 (DPA) and comes within the scope of the Information Commissioner's regulatory powers. Section 55 of the DPA makes blagging a criminal offence. The offence currently carries a maximum sentence of a fine of £5,000 in a magistrates' court or an unlimited fine in the Crown Court. In his reports to Parliament the then Commissioner argued that the possibility of a prison sentence was needed to act as a deterrent to those involved in this unlawful trade in personal information. Section 77 of the Criminal Justice and Immigration Act 2008 (CJIA) subsequently included provision for a sentence of up to two years. However this provision cannot come into effect until the Secretary of State makes a relevant order. The Commissioner is not aware of any plans by the Secretary of State to make such an order.

3. The interception of communications is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA). Unlawful interception is a criminal offence under this Act; but this offence does not come within the scope of the Information Commissioner's powers. It is the police who investigate RIPA offences and the CPS who prosecute.

4. *The implications of the allegation that phone tapping was widespread.* For the reasons outlined above the direct data protection implications are limited. It is likely that personal information that has been obtained by phone tapping will, if held electronically, be held in breach of the data protection principles because it has been obtained unlawfully. The first data protection principle requires that personal data are processed "fairly and lawfully". However a breach of the principles is not a criminal offence and the ICO would give way to the police in any investigation where both criminal offences under RIPA and civil breaches of the data protection principles come into play.

5. The use of phone tapping does though illustrate the lengths that some journalists are prepared to go to in obtaining access to confidential personal information. It demonstrates that the type of unacceptable behaviour outlined in "*What Price Privacy?*" is not confined to the practice of blagging. Furthermore it draws attention to the disparity of sentencing possibilities in that phone tapping is an imprisonable offence whereas blagging is not. The Information Commissioner remains convinced that the penalties available for conduct of this nature, whether in the form of phone tapping or in the form of blagging, need to be custodial ones if they are to have the desired deterrent effect.

6. *The knowledge of the Information Commissioner's Office about the police and CPS investigation.* The Commissioner became aware of the police investigation into phone tapping through media reports. The ICO contacted the police who agreed to keep the ICO informed of progress in their investigation. The ICO was made aware that the investigation had uncovered evidence to suggest that the voice mails of other celebrities in addition to Prince William might have been intercepted. The ICO did not take any part in the investigation. Our only involvement was to advise police on how they themselves should handle personal information uncovered in the course of the investigation so as to remain in compliance with the DPA.

7. *What action the Commissioner now plans to take:* The Commissioner will continue to monitor the commission of blagging offences involving journalists and others and to bring prosecutions where the circumstances justify this. It is though important to bear in mind that there is a defence available where any blagging can be justified "as being in the public interest". From the evidence currently available to the ICO

It appears that this illegal trade in personal information has diminished since the publication of "*What Price Privacy?*" and "*What Price Privacy Now?*", but it has not gone away. If the trade builds up again the Commissioner will consider making a formal request to the Secretary of State to use his order making power under the CIA to bring in custodial sentences. The recent reports of phone tapping by print journalists would be used to support any case the Commissioner might need to make.

8. The Commissioner would be pleased to provide further assistance to the Committee in so far as he is able to do so. There is though not much more that he can usefully add on the practice of "blagging" to the information published in "*What Price Privacy?*" and "*What Price Privacy Now?*".

July 2009

#### Further written evidence submitted by the Information Commissioner's Office

I am writing as requested to confirm the outcome of our recent telephone discussion. You asked whether the Information Commissioner's Office (ICO) had disclosed any of the invoices and ledgers seized during the Operation Motorman investigation to the press. I have made enquiries and can confirm that we have not disclosed any of this information to the press nor made it publicly available in any other way. As far as we are aware the only people who have any of this information are:

- the police, who were also involved in Operation Motorman; and
- the lawyers acting on behalf of Gordon Taylor to whom we supplied some of the information in response to a court order.

You asked whether we would be willing to supply any of the ledgers and invoices to your Committee. Whilst we are keen to assist the Committee in its inquiry it would be difficult for us to provide any of this information unless we were under legal compulsion to do so or a convincing case was made as to how this level of detail, including the identity of individuals, would materially assist the Committee. It is important to bear in mind that the ledgers and invoices were seized under search warrant powers and their disclosure, other than for the purpose of our original investigation, might well be unlawful. Furthermore they contain personal information not just about journalists but also about other individuals unconnected to the media, who appear to have been involved in the "blagging" trade. This includes the victims of that trade whose involvement may not be in the public domain and who may not want any further intrusion into their privacy.

July 2009

#### Further written evidence submitted by the Information Commissioner's Office

I refer to your letter of 27 July 2009 and must start by offering you an apology. When my Deputy Commissioner wrote to Elizabeth Bradshaw on 17 July 2009 he confirmed that we had not disclosed to the press any of the invoices and ledgers seized during the Operation Motorman investigation. This was his genuine belief at the time but it turns out that it was mistaken. We have now discovered that our press office passed limited and heavily redacted extracts to a journalist at the *Guardian* over two years ago. These were disclosed to help illustrate the *Guardian's* coverage of our report "*What price privacy now?*" It seems likely that these extracts are the same documents that have been provided to your Committee by a witness.

Your request for me to provide the Committee with the full ledgers and invoices places me in some difficulty. You will recall that none of this material refers to telephone tapping, but rather relates to the "blagging" of personal information. I nevertheless want to be as cooperative as I can be and I recognise your Committee's power to require the production of papers. I am though faced with Section 59 of the Data Protection Act 1998 (The Act). This makes it a criminal offence for me or any member of my staff to disclose any information that we have obtained for the purposes of the Act and which relates to an identifiable individual. The only exception is where the disclosure is made with lawful authority. A disclosure is made with lawful authority if, amongst other possibilities, the disclosure is necessary in the public interest, having regard to the rights and freedoms or legitimate interests of any person.

I can appreciate that there is a public interest in your Committee having sight of the full documentation to give them an insight into how the unlawful trade in personal information operates. I can also appreciate that heavily redacted extracts would not be an adequate substitute. However I have to set this against the legitimate privacy interests of those whose details are included in the invoices and ledgers. Some of the information is about celebrities or other public figures, but much of it is about individuals who may be or may have been connected to such persons but are not celebrities or public figures themselves. It includes addresses, ex-directory phone numbers and other personal details which, because they had to be obtained in an underhand manner, are clearly information that the individuals concerned would not wish to have made public.

In order to satisfy our respective responsibilities may I suggest that my staff should make the full collection of invoices and ledgers available for inspection by you as Committee Chairman or by someone you might wish to nominate to act on your behalf such as the Clerk to the Committee? Such access would of course be on the basis that the confidentiality of any personal information is maintained. This approach would

mean that, with explanations that my staff would be happy to provide, you would be able to understand the full nature and extent of the ledgers and invoices without the risk of the personal information therein being taken away or disclosed more widely. So far as redaction is concerned I have no difficulty in principle in supplying you with redacted versions of the invoices and ledgers. My concern is a practical one. The invoices fill a large cardboard box and there are four A4 ledgers that run to around 100 double sided pages each. I estimate that it would take a member of staff between one and two weeks to perform the redaction needed to remove any personally identifiable information. I also have doubts as to whether supplying redacted versions of all the ledgers and all the invoices would serve any useful purpose. We will willingly supply you with redacted extracts from the invoices and ledgers that could be made public to illustrate the form the documentation takes. However given the extent of redaction necessary it is unlikely that any greater degree of public knowledge and understanding would be achieved by simply increasing the volume of redacted information released.

I hope that I have been able to suggest a way forward that is acceptable to you and your Committee. If so please let me know so that we can start to put the proposed arrangements into place.

August 2009

*Witnesses: Mr Christopher Graham, Information Commissioner, and Mr David Clancy, Investigations Manager, Information Commissioner's Office, gave evidence.*

**Q1794 Chairman:** Good afternoon. This is a further session of the Select Committee's inquiry into press standards, privacy and libel. Once again, this is specifically focusing on the stories that have appeared in the *Guardian*, both in relation to the activities of Clive Goodman and Glenn Mulcaire but also into what is known as Operation Motorman, which is something we will be focusing on in the first session. In the first session I would like to welcome the Information Commissioner, Christopher Graham, and David Clancy, the Investigations Manager at the Information Commissioner's Office. Mr Graham, I believe you would like to make an opening statement.

**Mr Graham:** If I may, Chairman. Thank you. I became Information Commissioner on 29 June 2009. In a previous life I was a journalist. My predecessor as Information Commissioner, Richard Thomas, was very active in highlighting the unlawful trade in confidential personal information, and he gave evidence to this Committee on a number of occasions and your most recent report on self-regulation of the press supported the Information Commissioner's call for the provision of a custodial sentence as the penalty for the most serious offences under section 55 of the Data Protection Act—obtaining, disclosing or procuring the disclosure of personal information knowingly or recklessly, without the consent of the organisation holding the information. The work on this problem by the Information Commissioner's Office—the ICO—was summarised in two reports to Parliament in 2006: *What Price Privacy?* and *What Price Privacy Now?* Those reports concerned breaches of the Data Protection Act, often through what is called 'blagging'—tricking organisations into revealing confidential personal information, illegal phone tapping and hacking. The issues highlighted by the *Guardian* story of 9 July were not at issue then and would be a matter for the police under the Regulation of Investigatory Powers Act (RIPA) and not the Information Commissioner's Office. But, the continuing need for an effective deterrent to serious breaches of the Data Protection Act is underlined by the fact that the unlawful trade in confidential

personal information generally continues to flourish. My colleague, David Clancy, who was involved in the original Operation Motorman project, can tell you more about our ongoing day-to-day operations, attempting to frustrate the dealers in personal data. This is of concern to everybody, not merely celebrities or public figures, or even journalists, Chairman. I am very ready to answer the Committee's questions.

**Chairman:** Thank you.

**Mr Hall:** Chairman, could we have a copy of that now?

**Q1795 Chairman:** You would like a copy circulated now. We will take a copy. Can I just clarify for absolute certainty that your Office had no involvement in the investigation of the Mulcaire/News International activities?

**Mr Clancy:** We had no involvement whatsoever, Chairman.

**Q1796 Chairman:** That is nothing to do with the Information Commissioner's Office at all?

**Mr Clancy:** That is correct.

**Q1797 Chairman:** So we will focus entirely on Operation Motorman. First of all, you will have seen the reports in the *Guardian*, both of a few weeks ago and, indeed, this week. The principal source for those seems to be your Office, that you made available information from the inquiry to the *Guardian*.

**Mr Graham:** Not to the *Guardian*, Chairman. I do not know what the *Guardian's* source is. It is clearly information that originates from the ledgers and the invoices that we collected in Operation Motorman but we, of course, are constrained from making that information more public except for a lawful purpose, that is section 59 of the Data Protection Act. Apart from information we have released to the individuals who have contacted us saying, "I think I may be on that database, tell me about it", standard data subject requests I think they are called, back in December 2006 we did release to a *Guardian* journalist who was covering the second report, *What*

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*Price Privacy Now?*, purely as illustrative material, a sample of invoices and ledger entries, all of it redacted, simply to show that the sort of thing that was being bought and sold was identifying people's addresses from telephone numbers, accessing ex-directory numbers, accessing friends and family numbers. So that information, which we have now made available to the Committee, is particularly uninformative. It does not tell you who the customer was, who the target was, it just says, "Ex-directory search" and so on. That is one source. The second source...

**Q1798 Chairman:** This included the example which was originally given to this Committee by *The Guardian*, that did come from you.

**Mr Graham:** I think whenever you interviewed Mr Davies and he passed round some paper, that was a sample of what had been provided. I think it featured particularly News International.

**Q1799 Chairman:** Indeed.

**Mr Graham:** Our sample included a wider selection of titles. It did not give details of the journalist who was asking for the information or who the target was, or any of the personal data. I said there was a second area in which we had made information available and this was again, I think, under section 59 of the Data Protection Act, the lawful purpose being a court order in connection with solicitors acting for, I think it was, Gordon Taylor, the former footballer, who I think was suing the *News of the World*. We had to make available under a court order a quite substantial amount of information. I do not know whether David Clancy can help me here but I think it was probably in ledger form.

**Mr Clancy:** There was lots of information from the entire Motorman database, which included information contained in the various ledgers.

**Q1800 Chairman:** But it was not just restricted to Gordon Taylor, this was information covering a large number of individuals.

**Mr Clancy:** It would have been because obviously that would have been an exhibit for the court so it would contain more information.

**Mr Graham:** Again, I am obliged to assist those people who feel that under the special purposes that provide certain protection for journalism, literature and the arts, if the processing of information under those special purposes has in some way gone wrong and been abused, the Information Commissioner is charged with assisting citizens who are asserting their rights. I do not know but it may be that some of the wider information that appeared in the *Guardian* on Monday came from that source. That is purely conjecture; I do not know that. It certainly did not come directly from the Information Commissioner's Office.

**Q1801 Chairman:** Not officially anyway.

**Mr Graham:** I just think not. I cannot prove a negative.

**Q1802 Chairman:** Mr Davies is in the room but I do not imagine he is going to tell us. The very large number of names which the *Guardian* printed who have been subject to inquiries by Mr Whittamore's company, it did look as if that information came from somebody who had seen the ledgers.

**Mr Graham:** Well, it would if it had come from the Office.

**Q1803 Chairman:** But you do not think necessarily it did?

**Mr Graham:** It did not come from us, Chairman.

**Q1804 Chairman:** The names that appeared in the *Guardian* on Monday all relate to activities which took place 15 years ago, or sometimes more, and yet to quite a number of those names it came as a surprise that they were featured in Mr Whittamore's ledgers. Can you tell us why did your Office when you obtained the ledgers not tell the people who appeared in those ledgers that they had been subject to possibly illegal inquiries?

**Mr Graham:** I think if I can just step back a bit. Any regulator has to make decisions about how it approaches a breach of the legislation that it uncovers. There were, I read in the *Guardian*, I have not counted them myself, 17,000 invoices or purchase orders for personal information on people in whom the press were interested. The only evidence we had was the ledgers and the invoices. The press, of course, would have the defence under the Data Protection Act that they were pursuing a story in the public interest. My predecessor had to make the judgement whether you throw the whole resources of the organisation into going through 17,000 pieces of evidence in order to assess the nature of a story and to work out whether the Ziggy Stardust in the ledger is the Ziggy Stardust you might need to alert. The decision was taken "no, we are going to approach this by trying to end the unlawful dealing in personal confidential information at source, we are going to go for closing down these operations and we are going to report formally to Parliament." It was the first formal report that the Information Commissioner had given to Parliament under the legislation. We are going to say, "This is going on and it is going to go on until there is a real penalty in the Data Protection Act for this sort of thing". So my predecessor reported in *What Price Privacy?* the need for a custodial sentence and, indeed, this Committee agreed with him. In a case you may have seen yesterday in Nottingham Magistrates' Court, the District Judge regretted that he was only able to fine an individual who had been guilty of a pretty blatant breach of the Data Protection Act £100 plus costs, and he remarked that people would find it surprising that that is all he could do under legislation. The priority was to sound the alarm, to warn the industry, to talk to the PCC, to urge the provision of a custodial penalty, which is kind of half there, and perhaps more on that later when we get to the discussion, and what to do about the individuals concerned. I think with the benefit of hindsight what we might have done was to do what we did with the blacklist for the construction industry, the so-called

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Consulting Association, and Mr Kerr, who my colleague, Mr Clancy, ran to justice, where we closed down the business but we also, in making that very public, said, "If anyone has concerns that they may have been blacklisted and denied employment because their name is unfairly included in this register then get in touch with us and we will let you know what we have got". David, you are dealing with a few of those applications now, are you not?

**Mr Clancy:** There are over 120 individuals who subsequently obtained their information and a number of those individuals are now bringing claims before the courts in relation to their consideration that they were blacklisted from the construction industry. I think if you compare the two we have got very favourable support from the press in relation to the consulting association, but with *What Price Privacy?* it was a situation where turkeys do not vote for Christmas!

**Mr Graham:** Could I just add, Chairman, as you have said, the information that was publicised in the *Guardian* on Monday dealt with some very old information. The ledgers that I have seen include invoices from 1999. If we collected these in 2002 there is old information there and the whole point is the journalists were trying to get a contact number to ring for a quote at the end of an investigation or whatever they were going to do, so the supposition was that the individuals would already have been contacted, so they would kind of know that their ex-directory number had gone AWOL. I think though we would all agree now that we are a bit more experienced in this and we are tackling some pretty dodgy customers that in *What Price Privacy Now?* when we listed the various newspaper organisations and said that 305 journalists had been at this, we should also have said, "If anyone is concerned that there may be information or wants to know how it was obtained they should contact the Information Commissioner's Office and we will process that inquiry as we are doing with the construction industry".

**Q1805 Chairman:** To say the onus is on individuals to ask you whether or not they appear in this ledger, and thanks to your Office I have seen the ledger, as you know, and there are hundreds of names, obviously there are some who are unsurprising, leading celebrities, sportsmen and politicians, but the vast majority are people who are comparatively unknown. How would they know that they appeared there? How would they know to ask the question?

**Mr Graham:** Obviously we would have to work out what we would do, but how would I know what I could tell those individuals about what I had or how could I show it to them without showing a lot of other people's personal information? These ledgers, Chairman, as you have seen, are full of ex-directory phone numbers, mobile phone numbers, lists of friends and family and so on. It is an appalling situation. That is why Richard Thomas, my predecessor, was right to sound the alarm to Parliament and to say to the industry, "This is going on and it has got to stop. There must be that custodial sentence". We seem to have got into the

*Alice in Wonderland* situation where we are shooting the messenger. It was the Information Commissioner's Office who highlighted this whole thing; we are the good guys in this, Chairman.

**Q1806 Chairman:** I am sure my colleagues may wish to return to this but, whilst I finish the questions I have, you did not tell all the individuals and the other thing you did not do was you did not initiate prosecutions of any of the journalists named, you restricted prosecution to Mr Whittamore. Why were journalists not prosecuted when there was clear evidence that they had been knowingly commissioning illegal acts?

**Mr Clancy:** I think the difficulty would be the offence relates to "knowingly or recklessly obtaining personal information". We had in the region of 400 journalists and, to be fair to those journalists, if we were to conduct an investigation we would have to investigate all 400 and satisfy the court beyond all reasonable doubt that journalist knew that information was unlawfully obtained. If it was an ex-directory telephone number, some of those numbers could have been obtained by ringing round friends or other people that they may know and, therefore, an ex-directory telephone number may have been obtained legitimately, we could not say for sure, so there would have had to have been 400 intensive investigations carried out by the Commissioner's Office within the resources that we have got. That would mean that the Commissioner possibly could not carry out his other functions under the Act. A decision was made to go down the route of, "Let's bring this into the public arena, change the public's opinion of what's going on", and hopefully change the law so that the possibility of a custodial sentence hanging over people committing these offences would be a sufficient deterrent and protect people in the future.

**Mr Graham:** In the meantime, of course, you say the journalists were commissioning an illegal act; but we do not know that was the case because there is the defence of public interest and sometimes journalists have to do pretty undecent things to get stories that are manifestly in the public interest. The classic example, of course, is the *Guardian* and the 'cod fax' that got the evidence that put Jonathan Aitken in prison. If that had been in pursuit of some pop star's sex life everyone would have condemned it, but as it was they said, "Well, there's the public interest". We did not even know what the stories were, never mind what the defence was. So I as the Information Commissioner had to decide, given the vast range of duties that I have for freedom of information as well as data protection, where do I deploy my resources. Do I put the whole organisation on to investigating 17,000 individual pieces of paper to work out what the story was, to work out whether or not it was in the public interest, and to range against some pretty well fee-ed lawyers on the other side? Or do I say to the industry, "Put your money where your mouth is. You talk about self-regulation, do it" and then get on with a few other little issues, like the construction industry database, like the Revenue and Customs losing everybody's child benefit records, like concern

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about CCTV cameras, databases and so on, never mind the Freedom of Information Act? There is a lot to do. It would not have been good regulation for the Information Commissioner's Office to prioritise this particular bit of the jumble. That is only the journalists' bit of the jumble, we are concerned with the whole trade in personal information which is about many other issues, as David can tell you.

**Q1807 Chairman:** You say that therefore you took the decision to tell the industry to put their house in order and asked for strengthened penalties, but in that case why did you not say to individual newspapers, "These are journalists employed by you who feature in the ledger and you might like to ask them why and to justify the inquiries they made"?

**Mr Graham:** We started off by a general call to the industry which, indeed, was heeded to some extent in that the Editors' Code Committee eventually amended clause 10 of the Code, made it much tougher, and we have done a lot of work with the PCC in training editors. We have done a couple of seminars, one in London and one in Scotland, to make sure that journalists understand that this is serious. I saw a copy of the *Editors' Code Handbook* the other day and it makes it very clear that you mix with the Data Protection Act at your peril and you had better have a very solid public interest story very well documented, in order to do that. Chairman, the interesting question is why did not any of those titles that were listed in *What Price Privacy Now?* contact the Information Commissioner's Office and say, "This is terrible, 45 of our journalists apparently have been doing this thing which we utterly condemn, tell us who they are", and we then might have been able to talk turkey. Interestingly, of 305 journalists, and we listed the total in the document, we have not had a single inquiry from a journalist saying, "Am I on that list? Was I doing something wrong?"

**Mr Clancy:** That is correct.

**Q1808 Chairman:** So you published the table listing titles and numbers of journalists and you had no response from the industry seeking further information at all?

**Mr Graham:** No. I have seen a number of sessions of evidence to this Committee where the answer to some of your more probing questions is, "Ask the Information Commissioner, the Information Commissioner will know", but nobody has actually asked the Information Commissioner.

**Chairman:** Thank you.

**Q1809 Paul Farrelly:** Thank you very much, Chairman. I just wanted to come back to what happened after the Motorman inquiry. We have discussed the fact that people were not routinely informed that they had been the victim, be they ordinary people in the street or public figures, of blagging or an illegal use of databases. One example is I spoke to Peter Kilfoyle following the *Guardian* article and Peter is quite happy for me to say that he is "incandescent with rage"—those were his words—that the Information Commissioner six years on had

not told him that in this case, I understand, it was the *Daily Mail* that used the DVLA illegally to get his constituency home address for whatever reason from his licence plate number. Peter was angry that six years on you had not informed him even though he was a minister attached to the Cabinet Office at the time and there were, therefore, security implications and that he had to learn these details from a *Guardian* journalist over the telephone.

**Mr Graham:** You ask what we did after the Motorman investigation and the answer is with the Crown Prosecution Service we launched prosecutions against those who were involved in the trade. We then ran up against the very disappointing result of the very weak powers and the very weak penalties that exist in the Data Protection Act and, because of a technicality, it was even weaker than the rather pathetic financial penalties in the Act and everyone just got off with a conditional discharge. When we are invited to take further action you have got to see it against the context of a regulator that is trying to do the decent thing and has got seriously knocked back. I have already said that our experience with the construction industry database is that if we had our time over again we would do it a different way. Peter Kilfoyle's name would have sprung out. There were a lot of names of ordinary individuals that would not have rung any bells. I would have had to put a very large number of people trawling through those 17,000 pieces of paper. Even if it had been in the name of bringing some prosecutions against journalists we faced the prospect of them getting no more than a conditional discharge. The responsible thing to do was to report to Parliament to say, "Let us have this custodial sentence". I am very sorry if people feel let down by the ICO but against that I would say there was some very good investigatory work by David Clancy and his colleagues which has blown open this trade, which is still going on. The issue should not be whether the *Guardian* hires News International, it should be whether Parliament will now activate the custodial sentence that is there in abeyance in the Criminal Justice and Immigration Act and take that custodial sentence from behind the bar in the Last Chance Saloon, where it is sitting at the moment, and say, "You're going to jail if you carry on doing this". For dealers in personal information, that is the key decision.

**Q1810 Paul Farrelly:** Your position is very clear on that, as might be expected. If people approach you now and ask whether they featured in your Motorman files, will you let them have the records?

**Mr Graham:** We will look at each individual case. Obviously it has got to be somebody with proper standing; we are not going to have this as a way of investigative journalists running the story on a little bit further, it has got to be a proper process. Just as we are doing with the construction workers, we would certainly deal with these people. Please bear in mind that one of the invoices I have seen is from 1999 and it is inconceivable that somebody seeking someone's ex-directory phone number in 1999 has



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not used the number to check out the story, so the individual knows that their private number has been made public.

**Q1811 Paul Farrelly:** That is not necessarily the case and I want to come on to that. That is a leap that you cannot make, Mr Graham.

**Mr Clancy:** Can I just say that at this moment in time a number of individuals have sought access to that information that is contained within the Motorman database and that access is being processed within our Office.

**Q1812 Paul Farrelly:** Just let me be clear. If Peter Killoyle, to name one example, comes to you now and says, "I would like to see how and where my name features in the catalogue of activity in the Motorman files", will you release that information to him?

**Mr Graham:** Yes, I would have to do that. I am just looking to see the particular section in the Act that charges me with doing that. I think it is section 13.<sup>1</sup>

**Q1813 Paul Farrelly:** Can I repeat the question in terms of what happened during and after Motorman. What about the organisations that were penetrated and their security procedures subverted. The whole catalogue that Nick Davies named in his latest article on Monday, did you go to each of those organisations to give them instances of how, where and when their databases had been penetrated so that they could improve their own security procedures in the future?

**Mr Clancy:** We approached a number of organisations obviously because we obtained witness statements from those organisations and they thoroughly assisted us with our inquiries. I think it is fair to say, again, we would not go through the entire ledgers and contact every particular organisation because we end up with very intrusive investigations in relation to individuals. "Who is Peter Killoyle? Whose car is that the registration number of?" We start obtaining his personal information for our purposes and then more and more people get their hands on this personal information that should be protected. We identified with the organisations, the banks, the telecoms companies, *et cetera*, that there were problems with this. We have worked actively with some of those companies in looking at security issues and it is an ongoing thing. I think it is fair to say that most organisations that process personal information nowadays, whether it be telecoms companies, banks, or building societies, are, to a degree, insecure and will be attacked and be constantly coming under attack by private investigators and people who obtain information to sell on to insurance companies, solicitors firms and organised crime gangs for witness intervention purposes, *et cetera*, so there is a massive trade out there. In fact, you can go on to the internet today, the website [www.freelancesecurity.com](http://www.freelancesecurity.com), and you will see private investigators advertising there to say, "I want to

obtain a person's bank account information", and people will bid for that information, "I can get that for \$2,000 or £2,000 within 10 days" because the trade is still there.

**Mr Watson:** Could you repeat that address?

**Mr Clancy:** It is [www.freelancesecurity.com](http://www.freelancesecurity.com). It is a non-UK-based website, but some UK Private Investigators (PI) will bid for jobs on that website.

**Q1814 Paul Farrelly:** You mentioned witness statements and that just begs the question in my mind: were any journalists arrested following the Motorman inquiry and as a result of the parallel police actions, to your knowledge?

**Mr Clancy:** Other than for data protection purposes, there is no power of arrest under our legislation.

**Q1815 Paul Farrelly:** But that is not the question.

**Mr Clancy:** But the police may have actually arrested people in relation to the conspiracy case.

**Q1816 Paul Farrelly:** Do you know of any instances?

**Mr Johnson:** I am not aware of any arrests.

**Q1817 Paul Farrelly:** I am told there were three arrests.

**Mr Clancy:** I am not aware of those personally.

**Q1818 Paul Farrelly:** So, as far as you know, no journalists were arrested?

**Mr Clancy:** As far as I know, I am not aware of any arrests.

**Q1819 Paul Farrelly:** There are two reasons why we have asked you here today and it is because there are two things that are new now. Firstly, there are the two revelations in Nick Davies' two lengthy articles that give the public new details beyond what they already knew from your tables and in your *What Price Privacy Now?* document so that people can now judge whether the law was being broken from the information that was requested and the means by which it was accessed. Secondly, you are here because what else is new is that you were ordered by the court to provide documents in relation to the civil action brought by Gordon Taylor. Can you tell us what documents you were asked to provide in the Taylor case and how they may have been helpful to the Taylor case in relation to either the specific charges that were involved in the Goodman affair or to establish a pattern of behaviour at News International?

**Mr Graham:** I do not know whether David is going to be able to help with that, but, just before we try to answer that question, I am interested in the suggestion of 'new' information.

**Q1820 Paul Farrelly:** What is new in the public domain.

**Mr Graham:** But it is not evidence of what is going on now. What we have got is more information in the public domain legitimately or illegitimately of what was the case in 2006 when *What Price Privacy?* and

<sup>1</sup> *Witness correction:* It is actually Section 53.



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*What Price Privacy Now?* were published. We have not got any further information to share with the Committee about journalistic practices now.

**Q1821 Paul Farrelly:** That is not my question.

**Mr Clancy:** I think it is fair to say in the Taylor case that a number of documents were obtained by Mr Taylor's representatives which, they believed, would assist them to evidence the fact that News International were carrying out, in effect, a new investigation against their client and that the means that they used potentially were unfair and in breach of the Data Protection Act. Therefore, I think it is something we would build in support of evidence and it would not be evidence in relation to the actual hacking.

**Q1822 Paul Farrelly:** Can you tell us in what respects Mr Taylor's name features in the Motorman files?

**Mr Clancy:** I cannot exactly name every piece of information that is in there, but there would have been obviously references to News International at some point seeking information in relation to Mr Taylor which would not be found in the public domain.

**Q1823 Paul Farrelly:** What sort of information, from your knowledge?

**Mr Clancy:** I cannot make a particular comment in relation to that, but obviously there is a massive amount of information there in relation to his legal representative seeking access to that information, and that was done via another department within our office, it was not the investigations team who managed that.

**Q1824 Paul Farrelly:** Did the documents provide details of accessing the sort of information through means which would clearly seem to be illegal?

**Mr Clancy:** I think clearly, if it was information which was contained within ledgers, it would be evidence to say, "This is the particular activity of journalists. They're obtaining information which cannot be obtained normally", such as vehicle registration details, telephone conversations, converting their telephone number into an address, ex-directory numbers.

**Mr Graham:** What it does not contain is usually the technique used, though in one or two cases it does say on the face of the purchase order or the ledger log, "blag", but it does not say, "hack" or "tap". So we do not know how this information would have been obtained, except where it specifically says, "blag", which of course is just ringing up and pretending to be somebody else.

**Q1825 Paul Farrelly:** But, just in respect of the Taylor case, which is one of the reasons why you are here again, there is evidence within the Motorman files of potentially illegal activity in relation to getting information connected, or to do, with Gordon Taylor?

**Mr Clancy:** Yes.

**Q1826 Paul Farrelly:** I just wanted to wrap up and just explore the reasons for not publishing the Motorman files in the public interest and whether you got this decision correct. Is it correct that individuals or organisations that have been targeted can only get that information now when they are being told by, in this case, a particular assiduous *Guardian* journalist? Is it satisfactory that people will only be able to get access to those records if they are generally determined or wealthy enough to take out a civil action and get court orders to instruct you to provide those details? Also, just in terms of the natural justice, have you considered whether your refusal to publish those, be it in redacted form, is undermining the process of press self-regulation? Let me give you an example from the latest article on Monday. In his article, Nick Davies talks of a case brought by, I assume it is a lady, Syrila Collins-Plante, "who complained to the PCC that *The Sunday People* had invaded her privacy and harassed her in search of a story about the boxer, Lennox Lewis, phoning her repeatedly until a police officer asked the newspaper to stop. The PCC ruled that her privacy had not been breached—without knowing that her private address and phone number had been blagged out of BT by Whittamore's network." Now, in other spheres that would count as a miscarriage of justice, so have you considered whether your refusal to publish the data, be it in redacted form or not, is actually undermining press self-regulation?

**Mr Graham:** If I published it in a redacted form, it is of no use to man or beast. You could have pages and pages of material that you have already got from me, but it is supremely uninformative, so that does not help us. If I publish it in a non-redacted form, I am publishing personal information that the Data Protection Act is there to stop, so in sort of general terms of publication I am between a rock and a hard place. I am specifically charged under section 59 of the Data Protection Act under penalty of a criminal offence, myself as Information Commissioner, my predecessors and staff, if we make available information that we collect in the course of our duties, except for a lawful purpose, so the question then is: what is a lawful purpose? If you are confronted with a court order, that is manifestly a lawful purpose. Now, I am not saying everyone has got to go off and get a court order to have a look at this stuff. I have already said that we will follow the precedent that we have established with the consulting database and help people who may be worried about it. And you mentioned the former Minister, Mr Kilfoyle; I think I had better contact him and say, "Can we sort this out?" It does not have to be by court order if people have good reason to come along. I showed the Chairman the files the other day.

**Q1827 Paul Farrelly:** Indeed, and how does that square with your duties?

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*Mr Graham:* Because it was for assisting a parliamentary committee and I thought that, once your Chairman had seen what we were talking about, he would see the difficulty that I was in. So it would not have to be by court order. But we are not playing games here. I have statutory responsibilities to do things and also not to do things. What the Information Commission has been concerned to do is to flag up the issue, as I have said. Now, in relation to self-regulation, I have just come from being Director General of the Advertising Standards Authority, which of course is a self-regulatory body, so I know about this sort of thing. I would not presume to tell the PCC what to do, nor do I know the circumstances of this case, but it is perfectly open to the PCC to go back to the titles who were defending that particular charge and say, "We think we've been misled and we want to have a look at this again" in the same way as this Committee is doing.

**Q1828 Paul Farrelly:** But it is making decisions without the full knowledge of the facts. Can I just take issue with your assertion, Mr Graham, that a redacted form would be of no use to man or beast. Can I suggest that what would be very helpful in the public interest, it would certainly act as a very strong deterrent and it would allow those people in the general public, be they the man or woman in the street or public figures, to know whether they have been targeted and by whom, if you published the files in the following form: with the name of the journalist and the newspaper group involved, the kind of information requested, the person targeted, but not to the extent that the information is actually in the meticulous files kept by Mr Whittamore, and not the response to the information. That would be very helpful in the public interest and certainly would be very useful. It would mean that anybody bringing a complaint, for instance, the PCC, would know whether they have been targeted and the PCC would know it as well, just to take one example.

*Mr Graham:* I just think that is not what I am here to do. If I listed the names of all the journalists, I am in danger of guilt through association. I do not know whether some of those journalists' enquiries, for example, the head of the list in the *Guardian* referred to *The Observer*, and I do not know whether *The Observer* was dealing in the tittle-tattle and sex life of some popstar or whether it was a major scandal involving Ministry of Defence contracts, but those names would be up there with people who were simply dealing with celebrity gossip, but, having considered this, perhaps I had better go away and consider it further. At first blush—

**Q1829 Paul Farrelly:** I used to work for *The Observer*.

*Mr Graham:* And they did tittle-tattle?

**Q1831 Paul Farrelly:** I imagine *The Observer* did not do tittle-tattle and I imagine that the journalists, to the extent that they are still working for *The*

*Observer* or are now working for other news organisations, will have their public interest defences there.

*Mr Graham:* Is it not also a gross invasion of privacy, Mr Farrelly, to list all the subjects of enquiry? They may not want it placed in the public domain that they were. It might be, you know, "no smoke without fire", and we are talking about principals, their wives, their families, their girlfriends, their friend and family numbers, but this is just not what the Information Commission is here to do. We are here to stop the child benefit records going missing, we are here to help administer the Freedom of Information Act and we are here to deal with data-sharing between government departments. There is a lot to do and, if this Committee really wants me to devote the resources I should be spending on that to an after-the-event, line-by-line investigation of 17,000 pieces of paper, I think it is the wrong priority. What I want you to do and Parliament to do is to activate that section of the Act and introduce the custodial sentence. That will shut this down at a stroke. David, you were talking to one of these merchants the other day about it, were you not?

*Mr Clancy:* Yes, we speak to private investigators quite a lot and we have had situations where, when executing a search warrant, we find information which has been unlawfully obtained and the individual turns round and says, "Maximum fine £5,000? I'll write the cheque out now". Alternatively, at this moment in time a section 55 offence is not a recordable offence, it does not appear on the PNC, but I had a PI phone me up the other day to say, "I've been convicted. Does it appear on the PNC because my wife wants to go to Florida with the kids to see Mickey Mouse and I don't want to go if I'm going to get stopped on the plane because it's a conviction?" I had to tell him that it is not recorded and it is up to him whether he declines it. If we had that custodial penalty, it is as simple as that, it is a deterrent and people will go and find employment elsewhere doing stuff where they cannot get a custodial penalty.

*Mr Graham:* It is not just in this sort of sleazy world of husbands trying to find out what their wives are really worth in divorce proceedings, which is the one that is up on the site you mentioned at the moment, because the husband wants to reopen a consent order to get a better deal under the divorce settlement and he thinks his wife has been hiding assets from him. Charming stuff. But it is also things that interest the Serious Organised Crime Agency, SOCA, it is about witness intimidation, it is about jury-tampering. That is the sort of thing you can buy. Parliament, I think, was seduced by the siren voices of Fleet Street, saying that this was going to have a chilling effect on investigatory journalism, despite the fact that the journalist simply has to establish that the story was a serious story. I am not going to go after somebody who is doing something manifestly in the public interest, but I will go after people who play fast and loose with data protection legislation to no good purpose. I need that custodial sentence in place and I need it now.

**Q1830 Chairman:** When you say that Parliament was seduced by siren voices, Parliament was not given an opportunity because, as we understand it,

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the Prime Minister received a call from Paul Dacre, Les Hinton and, I think, *The Daily Telegraph*, a sort of concerted lobby, and, as a result, the Government changed its policy.

**Mr Graham:** Well, I think that the issue goes so much wider than journalism that a strong recommendation from this Committee might put some backbone into it.

**Q1831 Janet Anderson:** I just wanted to pursue that, Mr Graham, and really a lot of the points I wanted to raise have been dealt with. The Chairman has said that he feels the Government did essentially what was a U-turn on this particular clause in the Criminal Justice and Immigration Bill which would have imposed a custodial sentence as a result of pressure from Fleet Street. Are you aware that that was the case, and do you know whether the ICO at the time strongly objected to that?

**Mr Graham:** Well, the position of the ICO at the time is set out in *What Price Privacy?* and *What Price Privacy Now?* I am afraid we are getting into territory I cannot comment on because I simply was not there. I only started on 29 June and I was not concerned with the higher politics of all this.

**Q1832 Janet Anderson:** But will you be lobbying the Government now that you are in post to restore that particular clause in some way because they have actually made it into a suspended clause and it is not quite clear what is needed to reactivate it? Will you be lobbying to make sure that it is reactivated?

**Mr Graham:** Yes, I contacted the Ministry of Justice last night and said that this would be the burden of my song before the Committee, and I understand it would involve a ministerial order. I do not think it even involves further parliamentary consideration. It is designed to be there as a Sword of Damocles. The trouble is that the threat is a wasting asset. The extent to which everyone is on their best behaviour at the moment is, I think, because of the Goodman falling and because of all the talk about custodial sentences. But anyone reading the papers today, seeing that you get £100 plus £100 costs and the judge regretting that he cannot do more is pretty much an invitation to get back to the old business, so I think we really do need to have that custodial sentence in place.

**Q1833 Janet Anderson:** So you would like that to be a recommendation of this Committee to the Government that they reactivate that clause?

**Mr Graham:** I would very much welcome that, and it would only be repeating what you said in your previous Report, that you were convinced that the custodial sentence was necessary.

**Q1834 Philip Davies:** I understand your point about the custodial sentence, but, given that we do not seem to be able to keep murderers, rapists and even terrorists in prison, I think your chances might be slim, to be perfectly honest. Just on this point of deterrent, I was intrigued by your earlier answer to the Chairman about why you did not take any action previously, and the answer that you gave was that

you were filing it under "Too difficult" or "Too time-consuming" perhaps, that there were 400 separate investigations you would have to carry out and, therefore, you just did not bother because there was too much to go at. Surely, whatever the penalties are, if something is taking place on such a wide scale that you cannot investigate it, it does not matter what the penalties are because nobody will ever be brought to justice anyway because, if it is so wide-scale, you are just going to file it under "Too time-consuming".

**Mr Graham:** We are not filing it under "Too difficult" or "Too time-consuming". Every regulator you deal with has to make decisions and choices. The Better Regulation approach urges us all to be proportionate and to pick our battles. When I was at the Advertising Standards Authority, I used to be infuriated that the Office of Fair Trading were not always willing to pick up the cases I wanted them to pick up. You know, you have to make choices. The question of the penalty is its deterrent effect; it is the big stick in the cupboard. As David has said, if people have to factor that risk in, it is a business that it is not worth being in, and the example he gave was of somebody concerned that his criminal record would show up and that would even spoil the family holiday in Florida. The problem at the moment is that it is simply a business cost and you just write it off against expenses; it is peanuts. Now, we need the big stick in the cupboard. At the moment, all we have got in the cupboard is a sort of promissory note, saying, "If it happens again, we will send off for a stick". Now, that is not a deterrent. So, if we have the custodial sentence in place, then I confidently believe that the sort of operation we have been talking about of people dealing in confidential, personal information for no good purposes will stop at a stroke because it just will not be worth it, it will not be sufficiently profitable to make it worthwhile. At the moment, it is very profitable, thank you very much, and any fines you get in the magistrates' court you simply dock off as expenses.

**Q1835 Philip Davies:** But what you said in your earlier answer seemed to indicate that, if somebody acts alone and there is one example of it, you will deal with it because there is only one to deal with and, if it is totally widespread and it is endemic across the whole board and there is so much of it, then you just have not got the resources to deal with it.

**Mr Graham:** No—

**Q1836 Philip Davies:** That appeared to be what you were saying.

**Mr Graham:** No, Mr Davies, you are misrepresenting what I said. I said that it was so big, with 17,000 individual items, 305 journalists and Lord knows how many titles, that the appropriate response was to make a big issue of it, to produce format reports to Parliament, to call for a change in the law, to get the PCC moving to call on the industry and so on and so on. That is how you can deal with information in the mass. Individual applications from individuals, saying, "Assist me with what you may or may not have got on the file",

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I can deal with. What I cannot deal with is going through forensically to the standard of proof to work in a court of law 17,000 particular instances and attaching them to stories and then working out whether the story was or was not in the public interest and working out whether my lawyers would be able to beat their lawyers. That simply would have been irresponsible given everything else that Parliament has charged the Information Commissioner's Office with doing. I think the public would be outraged if they thought we were so up ourselves that we were just looking at journalists and not looking at the wider societal problems of witness intimidation, jury-tampering, people getting in the way of the course of justice in family proceedings and all these other things which are the big issue which we have it in our power to deal with. I do not want to get drawn into a battle between two newspaper groups and nor, I suggest, should the Committee.

**Q1837 Philip Davies:** Do you not think that the public might be outraged if you were aware of lots of things that were going wrong, but you were not doing anything about them because they were too time-consuming to deal with and you were looking at other things instead?

**Mr Graham:** But, as I have said, that is not what I said. We were tackling it at source in dealing with the dealers in the information and at the top by dealing with legislation. We were let down. We were let down by the courts who did not seem to be interested in levying even the pathetic penalties they had at their disposal, we were rather let down by Parliament in the end because nothing came of the legislation and I think, frankly, we were let down by the newspaper groups who clearly did not take it as seriously as the ICO.

**Q1838 Mr Watson:** I am hopefully going to try and get your ideas for what we could do as a Committee to satisfy ourselves that this will not happen again, and you have raised a very important point about what legislation can be enacted to make that happen. I would like to tease you a little bit on whether you think that self-regulation in this area is working and, in particular, the test that a journalist has to make about public interest, how that is assessed and whether there could be self-regulatory rules that make sure that they are not just at it.

**Mr Graham:** I do not think it is the job of the Information Commissioner to offer a view on self-regulation of the press. I have already said that, coming from my previous job only a few weeks ago as Director General of the Advertising Standards Authority, I think effective self-regulation can be an extremely effective way of proceeding, but perhaps that is for another day. The idea of a public interest defence for the legitimacy of journalistic activity is absolutely fundamental and it is not just to do with the PCC, it is a defence under the Data Protection Act, and in my role I will, both under the Data Protection Act and the Freedom of Information Act, have to take many decisions, balancing sometimes competing interests in deciding where the public

interest lies. I gave the example of the famous *Guardian* investigation into the Aiken family's stay in that French hotel and the subterfuge that was employed to extract the bill from the vaults in the hotel, a very exciting story, and anyone who has been involved in journalism, as I have, would say that that was a legitimate piece of activity, so sometimes you do slightly doubtful things in a good cause. I suppose the issue is whether the undoubtedly doubtful things are simply in the cause of fluff and tittle-tattle.

**Q1839 Mr Watson:** Given that there is a public interest defence in the Data Protection Act, presumably what is in the public interest will be defined by case law?

**Mr Graham:** There will be similar cases which will no doubt inform, but I think every case has to be looked at on its merits. Of course it is a truism, is it not, that the public interest is not necessarily what interests the public?

**Q1840 Mr Watson:** Indeed.

**Mr Graham:** But it is very difficult to give you a view separate from specific cases.

**Q1841 Mr Watson:** If, because of resource problems or time or because you are trying to get corporate change, you do not bring any cases, it is very hard for people, for journalists working in the field, to know where they stand in terms of making that public interest test in the work they do. Is that not right?

**Mr Graham:** Well, it should not be for the Information Commissioner to go round prosecuting journalists because we do have the PCC and there is the Editors' Code and, since they have amended clause 10, these are clearly breaches of the Editors' Code, so I would expect the PCC would be dealing with that.

**Q1842 Mr Watson:** It is unlikely that the PCC would, and in fact I do not think they have the power to, bring a prosecution for people who break—

**Mr Graham:** They should not need to bring a prosecution because compliance with the Editors' Code is part of a journalist's employment contract. If people want to get tough, they can. I think our job is to attempt to get rid of the suppliers. You are talking about dealing with the punters, but I say there are other people to deal with the punters, not the ICO.

**Q1843 Mr Watson:** But the evidence you have in front of you shows that there was law-breaking on an industrial scale from the newsrooms of some of the major newspapers in the United Kingdom.

**Mr Graham:** But the only evidence, Mr Watson, that I have got is the ledgers and the invoices. I do not know what the story was in many cases and I do not know what the defence would be, so you would be asking me to switch the focus of the Information Commissioner's Office from some very important work into something that could perhaps be better done by the PCC.

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**Q1844 Mr Watson:** I understand the point you make. What I am trying to do is ascertain responsibility in the system for getting this right. Let me try it another way. Are you convinced that these practices have now ended in newsrooms up and down the country?

**Mr Graham:** I am not in a position to know. We did not know before Motorman. Motorman, and Dave will correct me if I am wrong here, was not at our investigation. We were riding on the back of—

**Mr Clancy:** Of a police investigation. It is very much like the work that we do on a day-to-day basis. We will get information, execute search warrants on premises and then we find, in some cases, vast amounts of information. I think the Anderson case was one such case whereby we had a couple based in St Ives who were prolific bloggers. They would obtain bank account information and information from any organisation for a price on a massive scale and, once we go in there, we see that. There may be another Whitamere out there, we do not know, so we cannot comment on whether the press are still using these practices or not, but our view is that, if we had a custodial penalty and there is the issue of vicarious liability of directors, perhaps that would focus the minds—

**Q1845 Mr Watson:** You have said this before. You have repeated this on numerous occasions now and I understand that is the point you make, but what I am trying to understand is that the decision you took, which, by the way, I think was the right decision, to blow this open, bring it into the public domain and try and effect massive change in the way journalists run about their work, I can understand why in a resource-sensitive area that is what you did, but what I cannot understand is why you have not gone back to see whether that has been successful or not or what gauge of success there is.

**Mr Clancy:** How can we measure it? Do we go to editors and say, "Have you come across any examples of journalists that have stepped over the line?"

**Q1846 Mr Watson:** Okay, so the only response you have got is, "We would like a custodial sentence for people who've broken the law", so presumably you are still getting people raising these issues with you, providing you with leads and evidence?

**Mr Clancy:** These are non-press-related. This is the issue. You are focusing on the press and we are focusing on the trade.

**Q1847 Mr Watson:** I understand this is not necessarily your responsibility, but I would like to tease you a little bit. Is there anyone in this country who would know whether these practices are still going on other than editors and journalists in the newsrooms?

**Mr Graham:** Well, editors and journalists must know; it is a self-regulatory system. Our free press in this country is not regulated by statute, except in relation to defamation and a few other offences. It is a self-regulatory system and, for example, we have had evidence this afternoon that, on the face of it, the PCC was misled. Now, I do not think it is really up to the Information Commissioner to get involved. We are

looking at the dealers, you are interested in the punters, and I do not think we are ever going to agree, but there is a role for both sides. If we put the dealers out of business, then the punters will have to go elsewhere.

**Q1848 Mr Watson:** There is a supply and demand here, I accept that. I am not trying to tell you how to do your job. I am trying to find out how we can be certain that this is not going to happen again. Is it your view that editors have a responsibility for this particular case and perhaps they should write to the people involved who are on the ledgers to apologise or put the matter right and let them know a bit more information? As you rightly say, it might not be your job to do that, but do you think that they have got a responsibility to do that?

**Mr Graham:** Well, why do we not get past square one and have some of these newspaper editors and proprietors reacting to *What Price Privacy Now?* published in December 2006 and say, "This is a bad business. Let's hear more"?

**Q1849 Mr Watson:** Do you think it might be helpful if you were to give them the names of the journalists that they employed that you have on your files, given that they have not requested the names of the people?

**Mr Graham:** I want them to engage with the problem, however they do it. I do not know what my next step should be, but I do not want to make up policy in front of the Committee.

**Q1850 Mr Watson:** So, when they tell us that they think that they have thoroughly investigated the matter and they have put it right, do you think they could possibly have done that if they do not know the list of journalists that you have got on your files?

**Mr Clancy:** I think there might be information which would identify some of those journalists because some of the invoices quite clearly indicate that there have been blags in relation to particular stories and invoice numbers. Surely, their records should be able to cross-reference that to a particular journalist, and sometimes the invoices cross-reference the stories, so editors could examine their business and perhaps identify which journalists were or were not.

**Q1851 Mr Watson:** I think you could perhaps be a little proactive just to ensure that they have certainly done that or that they certainly have the information about the people who were at it.

**Mr Graham:** I understand what the Committee is saying, but you are not dealing with a regulator who is not proactive; we are proactive on a very wide front. Before another committee, I will be being asked, "What are you doing about child benefit records? What are you doing about tightening up security with credit reference agencies? What about the banks?" and so on. There are lots of ways we could spend our time.

**Mr Watson:** In a previous life, I did have some responsibility for data-sharing, so I am pleased that I am questioning you and not being questioned by you. Actually, I think that you have probably got the argument for the custodial sentence, not because of

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the journalists' enquiries, but because of these poor construction workers who have been denied their livelihoods over many decades because the construction industry has colluded with private investigators illegally, so you make a strong point and I am sure that in our deliberations we can take that in.

**Q1852 Adam Price:** You said, Mr Graham, in your opening remarks that the blagging industry, to dignify that term, continues to flourish. Are you talking generally or do you think it is continuing to flourish in relation to newspapers also using these services?

**Mr Graham:** We have got no evidence about the newspapers' use of these private investigators beyond what we published in *What Price Privacy Now?* which came to us because of the Motorman investigation. I do not want the Committee to feel that the Information Commissioner's Office was under siege from complaints from members of the public about the behaviour of the newspapers, decided to raid a particular private investigator and then, lo and behold, a few years later everything is hunky-dory. We just do not know.

**Q1853 Adam Price:** You do make raids and in any of those recent raids have any newspapers shown up as punters, to use your term?

**Mr Clancy:** I can honestly say that we have not identified any information which would indicate that newspapers or members of the press have obtained information. That is not to say it was not there because all we may find is an oblique reference to information which has been obtained and passed through to a name, a name we will not know, and individuals may not identify who that is, so we cannot say for certain whether we have come across information which is not clearly identified, as in the Motorman case where there has been information in relation to a particular newspaper and a particular reporter.

**Q1854 Adam Price:** So there could have been a journalist who knew that, but it was not clearly flagged up as a journalist?

**Mr Clancy:** Yes.

**Q1855 Adam Price:** Nick Davies, in his article, referred to a dozen or more private eyes that have been working in this field and you simply do not know who they are?

**Mr Clancy:** Other than the ones that will already have been identified by Motorman and the other inquiries. There are hundreds of investigators out there.

**Q1856 Adam Price:** He refers to the former actor who uses his skills as a mimic to blag the same database, and I have heard references to that former actor, in fact I have even seen the name somewhere. Are you saying you do not know who that is?

**Mr Clancy:** Again, we have had references to the former actor ourselves, but we have not been able to identify him. We have had references to "a Man in a

Van", who is a man who operated in South Wales out of a vehicle because he felt he could not be traced in that respect, using mobile phones, and he kept all his records in a vehicle.

**Q1857 Adam Price:** So, to be clear, you have heard references, which I have seen, from various sources of a former actor and you do not even know his name?

**Mr Clancy:** No.

**Q1858 Adam Price:** The former detective who was bounced out of the police for corruption and has spent years carrying cash bribes from newspapers to serving officers, I have seen references to that allegation before, but you do not know who that is?

**Mr Graham:** It may be in Nick Davies's book which was published a couple of years back. Quite a lot of this is recycled from that rather exciting chapter about the 'dark arts', essential reading for all journalists.

**Q1859 Adam Price:** You read the chapter in his book, so did you have any thoughts about maybe stealing some of that? It shows up that this is part of a wider problem and you have said that yourself.

**Mr Graham:** I am afraid I am going to become repetitive. You simply cannot run regulatory bodies on the basis that you go chasing after every detail that a particular investigative journalist decides should be the agenda for the day when you have got other very big and important questions. I am not pleading poverty here, I am just saying that you can only do what you can do. We thought, possibly naively, that, by telling Parliament about this back in 2006 and calling for the custodial sentence, we could close the thing down. I think they still can, but it is taking too long.

**Q1860 Adam Price:** You have made that case convincingly and, as far as I am concerned, you are pushing at an open door. This is a marketplace which includes buyers and sellers and it has to be looked at as a totality, does it not? Coming back to the 305 journalists that you have not identified, you have talked about criminal sanctions as the ultimate deterrent and I can understand that, particularly in relation to private investigators, but the newspaper industry or a part of it trades on destroying people's reputations, but it is very, very protective of its own reputation and that is why journalists do not tend to do stories about other journalists maybe. If some eminent former or current journalist is saying, "This is the biggest scandal that has attached itself to the newspaper industry", surely the best thing to do would be to publish those names, and those journalists which have a legitimate public interest defence can use that and *The Observer* can defend its corporate reputation, but, if there are journalists, as you suggest, who sanctioned purchase orders and invoices which clearly have the word "blagging", well, *prima facie* were they not involved in criminal activity?

**Mr Graham:** Not if the story was in the public interest.



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**Q1861 Adam Price:** But that is the point, that they can say that, surely? How are we to know? Unless you publish those names, how will we ever know how far this went? I read a story in *Private Eye* that claims that an editor of a national newspaper was actually on the list. I do not know whether that is true. I have heard that another editor was on that list. Now, surely, when the editors, who are meant actually to be policing the Code of the PCC, are on the list, we need to know what is their defence and what is the background to this. This is very, very serious. If we cannot trust the newspapers, which are such an important part of democratic society, to obey the law, then that takes away one of the key foundations of democratic society, so it is actually very, very important. You have the information, so surely you should put it out there? You believe in freedom of information.

**Mr Graham:** Well, putting it out there. This is the sort of personal data which would be exempt from the Freedom of Information Act, so you cannot just say, "Well, we'll publish 305 names and see what happens". Under the Data Protection Act, there are a number of possible defences. Under the Regulation of Investigatory Powers Act, it is an absolute offence and there is not a journalistic defence. Where this story started on 9 July was all about hacking and phone-tapping, which is an offence under RIPA, and we now seem to be off in a completely different domain where the ICO cannot help you because that is not what we do. So we are now back talking about what we do do, which is dealing with blagging, but there is a public interest defence. I would say the only person who could say what the public interest defence of an individual story could be would be the editor or the managing editor of a newspaper, and I have been a managing editor and I know what it involves. But we do not even know what the stories were, never mind whether they were in the public interest. What I have suggested is that it would have been a good idea in December 2006, and it is not too late now, for the titles who were named in that report to get in contact with me and say, "We're very concerned that 35 or 45 of our journalists appear to have been dealing with this deeply suspect individual. Can we talk about it?" At that point, I would share with a properly authorised editorial figure in a newspaper group the names that were on that list just on the basis that that is what the situation appeared to be in 2006.

**Q1862 Adam Price:** Seeing as you have some kind of joint and shared responsibility, you have argued, with the PCC, why do you not engage in a joint approach with the PCC, sharing the news with the editors and asking the PCC as well to be involved with a proper new investigation as to what lies behind these individual requests and, if there are any which are dubious, then obviously further action may be necessary?

**Mr Graham:** We have a co-operative relationship with a number of bodies and those reports, *What Price Privacy?* and *What Price Privacy Now?*, suggested a programme of action for a whole series of other regulators, self-regulatory bodies, trade

associations and so on. But you are focusing on the PCC. We do not have any formal relationship with them, but I just accept that they do press standards and we do data protection and, where those two things cross over, then we probably need to talk. You have already spoken to the PCC. I have said I am very happy to deal with editors who ring me up to find out more, but there is no question of my being able to give a blanket publication of 305 names that were doing something in 2006; that would be a breach of section 59 of the Data Protection Act and, for that, I am criminally liable and I am not going to do it.

**Q1863 Adam Price:** So a list of names that was possibly involved in breaching other people's privacy you cannot release because you would be breaching their privacy?

**Mr Graham:** Without lawful authority.

**Q1864 Mr Hall:** In your opening statement, I sort of got the impression that you were saying that the problem about blagging, hacking, tapping and illegal access to DVLA records was an ongoing thing which, it subsequently emerges, the private investigators are doing and not the journalists.

**Mr Graham:** The journalists never were. It was always the journalists—

**Q1865 Mr Hall:** Who employed them?

**Mr Graham:**—as the clients of.

**Q1866 Mr Hall:** So they commissioned the work?

**Mr Graham:** The only evidence we ever had was of journalists commissioning the identification of individuals and their addresses, their ex-directory phone numbers, their friends and family details, their car registrations and other things.

**Q1867 Mr Hall:** Then you went on to say that in the Motorman case there was not any suggestion that hacking or tapping had taken place. Is that correct or did I misunderstand that?

**Mr Graham:** We have not got evidence.

**Mr Clancy:** There is no evidence whatsoever.

**Q1868 Mr Hall:** Have you reviewed the evidence that has been presented to you?

**Mr Clancy:** We looked at the evidence and the evidence clearly indicated that there were no transcripts of any calls whatsoever, it was just information in relation to telephone numbers, *et cetera*. They may have obtained those telephone numbers and subsequently hacked them, but we cannot say.

**Q1869 Mr Hall:** In previous questions from various members of the Committee, you then tried to establish the scale of the abuse that journalists carry out in this field, and the evidence that you have submitted to the Committee is that there is no evidence that you can see about whether this is an ongoing practice.



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*Mr Graham:* There is no evidence that we hold beyond the evidence which contributed to *What Price Privacy?* and *What Price Privacy Now?* in 2006, which was well investigated.

**Q1870 Mr Hall:** I just want to be clear that that is what you said.

*Mr Graham:* I have not got anything else, so I cannot help you further.

**Q1871 Mr Hall:** So your evidence to the Committee is that the practice of private investigators continuing in this illegal activity is ongoing and is a serious problem?

*Mr Graham:* Yes.

**Q1872 Mr Hall:** But we do not know who the clients are anymore?

*Mr Graham:* Well, we know some of the clients because of the example we have given.

**Q1873 Mr Hall:** But they are not journalists?

*Mr Graham:* We have not got any further evidence of journalistic involvement beyond 2006.

**Q1874 Mr Hall:** Does that strike you as the news industry having actually cleaned up its act or as confirming the evidence that we have been given in this Committee that the government case was a one-off, rogue journalist acting *ultra vires* without the knowledge of his editor?

*Mr Graham:* But, if I could just say, that related to a different case.

**Q1875 Mr Hall:** It was a completely different case.

*Mr Graham:* That was the royal correspondent to the *News of the World* and that was hacking and tapping.

**Q1876 Mr Hall:** I know it is a completely different case, but we were told it was a one-off.

*Mr Graham:* I do not think it was ever suggested that the 305 journalists were a one-off, if that is possible. It was simply suggested that, since nobody seemed to know what the stories were they were engaged on, there may have been a public interest defence.

**Q1877 Mr Hall:** If you have read the transcripts of the previous sessions we have taken evidence, we have clearly had two editors, the former editor of the *News of the World* and the current editor of the *News of the World*, saying that the government case was a one-off. Mr Coulson, who was not aware that there were any, was surprised that there was one. Then, Mr Myler said that he had conducted a serious investigation and concluded that this was a solo incident, if you like. That is what has been said on the record, and my question to you is that he could have come and asked the Information Commissioner about the 305 journalists who are recorded as being engaged in some kind of activity, whether any of these other reporters were involved in that and that did not happen.

*Mr Graham:* It did not happen, but it was not the same thing. You were asking the *News of the World* management about the phone-tapping and offences—

**Q1878 Mr Hall:** We asked them about a whole series of activities.

*Mr Graham:* Well, the answers that they gave you, as I read in the transcript, were in relation to whether Mr Goodman was a one-off or symptomatic and they said that this was a one-off and nobody knew about it, but that does not say anything about the 305 journalists.

**Q1879 Mr Hall:** Would they not ask the Information Commissioner whether the 305 journalists, which you have a record of, were employed by the *News of the World*?

*Mr Graham:* But they did not need to ask us because it was published in December 2006. There is a table in *What Price Privacy Now?* and it lists a total of journalists.

**Q1880 Mr Hall:** And who they work for?

*Mr Graham:* Yes, 305 journalists, and top of the list is the *Daily Mail*. There are 58 journalists or clients using services and the number of transactions positively identified was 952 and it goes down the list.

**Mr Hall:** Can you find the *News of the World*?

**Q1881 Chairman:** It is 23.

*Mr Graham:* This is all what you looked at in your last inquiry. It is 19 journalists or clients, 162 stories, the *Observer* with four journalists or clients and 103 transactions, so some very assiduous journalists on the *Observer* asking a lot of questions, but quality not quantity. All the way down the list, the *News of the World*—

**Q1882 Chairman:** It is 23 journalists and 228 requests.

*Mr Graham:* I think these figures were updated somewhat after publication.

**Q1883 Chairman:** But 23 is the correct one.

*Mr Graham:* It is the correct figure.

**Q1884 Mr Hall:** So, just to clear another point which is made, when the PCC carried out their investigation into these in their general inquiry, they actually reached a conclusion similar to that reached by the *News of the World*, and you said in evidence that the PCC did not contact the Information Commissioner either to talk about individual journalists. Is that correct?

*Mr Graham:* Certainly the ICO was in contact with the PCC both before and after publication of those reports in 2006. We were not involved, so far as I know and I cannot think of any reason why we would be, in the most recent PCC investigation which was into the Goodman case which, I will repeat, was about hacking and not about blagging, so I would have been surprised if they had come to us and, if they had, I would have had to say, "Can't help you, chum".

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**Q1885 Mr Hall:** Because you see a very distinct difference, do you not, between the way you get information? Do you think that blagging is fine and hacking is not?

**Mr Graham:** No, I can see there is a journalistic ethics story that is common to the two and I can see that there are issues about who knew what when, but, as Information Commissioner, I have got nothing to offer you on that because we are there to uphold the Data Protection Act and we are not there to deal with the Regulation of Investigatory Powers Act, so we cannot do tapping and hacking, but we can do blagging.

**Q1886 Mr Hall:** On the 305 journalists who have actually been cited in evidence this afternoon and the refusal of you to publish the list, am I understanding this correctly, that you are refusing to publish this list because to do so would breach their rights to privacy when those 305 journalists have been involved in breaching everybody else's privacy?

**Mr Graham:** No, I am refusing to publish because it is personal information under the Data Protection Act and I would be in breach of section 59 thereof and committing a criminal offence without lawful authority when I have not seen the lawful authority,

and I really am anxious, Chairman, to invite the Committee not to shoot the messenger. The Information Commissioner has blown this thing wide open—

**Chairman:** I think we have just about covered this.

**Q1887 Paul Farrelly:** I am in somewhat of a difficulty, like other members of the Committee, in making judgments about your judgment because, unlike the Chair, we have not seen the files, but I understand that, for ease of filing, the ledgers are coded blue, green, red and yellow; primary colours plus one, as it were. Can you tell us what the green, red, blue and yellow refer to?

**Mr Clancy:** It is various newspapers.

**Q1888 Paul Farrelly:** Can you just identify the groups by colour?

**Mr Clancy:** Off the top of my head, no, I cannot do that.

**Chairman:** I think yellow was the *Mail* and the *Express*, blue was the *Times*, the *Sun* and the *News of the World*, green was the *Mail* and the *Express*, and red was the Mirror Group Newspapers. I think we have probably finished our questions, so thank you very much.

#### Supplementary written evidence from the Information Commissioner's Office

I refer to your letter of 20 October 2009. Christopher Graham is out of the office at present and has asked me to respond on his behalf.

You are right that the contents of the invoices and ledgers relating to the Operation Motorman case have been transcribed on to Excel spreadsheets and that it would be possible to make this information available to your Committee in redacted form. I assume that what you are suggesting here is the redaction of personally identifiable information but not redaction of the names of the media organisations that used the services of the private detective concerned.

Even providing information in this form could potentially place us in breach of Section 59 of the Data Protection Act. This makes it a criminal offence for the Commissioner or his staff to disclose any information that has been obtained under the Data Protection Act and relates to an identifiable person or business unless the disclosure is made with lawful authority. Lawful authority is provided where the release of information that identifies an individual or business is necessary in the public interest. We are though conscious that we have already released the names of the media organisations involved. If in the light of this you are able to assure us that the further release of information about the involvement of identifiable media organisations is necessary for your inquiry we will be satisfied that the public interest test has been met.

If we proceed to redaction of personally identifiable information there are two possibilities. First we could simply blank out all personally identifiable information such as names, addresses and telephone numbers. We estimate that this would involve around 15 days of staff time and could be completed in two weeks.

The second possibility would be to replace any blanked out information with a description eg "telephone number", "name". We estimate that this would take roughly twice as long ie 30 days of staff time with completion within four weeks.

We are prepared to proceed with either option but would ask you to bear in mind that both options involve the expenditure of public money on redaction and that, as you will have seen when you visited us, the extent of redaction required is such that the information that remains will reveal very little more than is already known to your Committee. In this connection our previous offer to provide you with redacted samples of the invoices and ledgers rather than the complete set still stands.

If you wish us to proceed with redaction I should be grateful if you could provide us with your assurance, as Chairman, that the redacted information is necessary for your Committee's inquiry together with an indication of which of the above options you have selected. We will then proceed to prepare the redacted information as quickly as we reasonably can.

*November 2009*

#### Written evidence submitted by the Metropolitan Police Service

I acknowledge receipt of your letter sent to Sir Paul Stephenson on 9 July 2009 requesting written evidence regarding News International and the tapping of telephones. The attached report deals with your request, which provides an overview of the history to this case and subsequent actions taken.

I wish you to be aware that the Commissioner has also been asked by Keith Vaz MP, on behalf of the Home Affairs Committee to provide responses to specific questions in relation to the same matter. Therefore, I have also provided his office with a copy of the same report. In addition, the report has also been provided to the Home Secretary's private office and the Chief Executive of the Metropolitan Police Authority.

Please do not hesitate to contact me if you require any further information.

*July 2009*

#### Metropolitan Police Service's response to the Culture, Media and Sport Committee

1. In December 2005, concerns were reported to the Metropolitan Police Service (MPS) by members of the Royal household at Clarence House, relating to the illegal tapping of mobile phones. As a result, the MPS launched a criminal investigation and this identified the involvement of two men, namely Clive Goodman (The Royal Editor of the News of the World newspaper) and Glen Mulcaire (A Security Consultant).

2. The two men were engaged in a sophisticated and wide ranging conspiracy to gather private and personal data, principally about high profile figures, for financial gain. This involved publishing material in the News of the World newspaper.

3. The MPS investigation found that these two men had the ability to illegally intercept mobile phone voice mails. They obtained private voicemail numbers and security codes and used that information to gain access to voicemail messages left on a number of mobile phones. It is important to note that this is a difficult offence to prove evidentially and for an illegal interception to take place, access must be gained to a person's telephone and their voicemails listened too, prior to the owner of the phone doing so. There will be other occasions where the two men accessed voicemails but due to the technology available at the time, it was not possible to prove via the telephone companies if they had accessed the voicemails prior to or after the owner of the mobile phone had done so. Hence, it was not possible to prove if an illegal interception had taken place.

4. Their potential targets may have run into hundreds of people, but the investigation showed from an evidential viewpoint, that they only used the tactic against a far smaller number of individuals.

5. The MPS first contacted the Crown Prosecution Service (CPS) on 20 April 2006 seeking guidance about this investigation, where an investigation strategy was agreed.

6. On 8 August 2006 both Clive Goodman and Glen Mulcaire were arrested and both made no comment interviews. On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to accessing voice messages left on the mobile phones of members of the Royal Household. The two were bailed to appear at the City of London Magistrates' Court on 16 August 2006 when they were sent to the Central Criminal Court for trial.

7. During searches, police seized vast amounts of material, some of which was used in evidence. It is reasonable to expect some of the material, although classed as personal data, was in their legitimate possession, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions was or how they intended to use it.

8. When Mulcaire's business premises were searched on 8 August, in addition to finding evidence that supported the conspiracy between him and Goodman regarding the Royal Household allegations, the MPS also uncovered further evidence of interception and found a number of invoices. At that stage, it appeared these invoices were for payments that Mulcaire had received from the News of the World newspaper related to research that he had conducted in respect of a number of individuals, none of whom had any connection with the Royal Household. They included politicians, sports personalities and other well known individuals.

9. The prosecution team (CPS and MPS) therefore had to decide how to address this aspect of the case against Mulcaire. At a case conference in August 2006, attended by the reviewing lawyer, the police and leading counsel, decisions were made in this respect and a prosecution approach devised.

Document 2

Our ref: CG/ind



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

[Redacted]  
House of Commons  
LONDON  
SW1A 0AA

7 December 2009

Dear [Redacted]

I am writing in response to your email of 3 December to my Deputy Commissioner, David Smith. I do not want there to be any doubt about the Information Commissioner's willingness to engage constructively with the Select Committee's work.

I was concerned to see that you and your colleagues felt that the ICO might have been economical with the truth so far as the summary spreadsheets are concerned. It is important that I first put the role of the summary spreadsheets into context. These spreadsheets were prepared for the ICO at the time of the original Motorman inquiry to enable us to handle the mass of evidence that had been seized. They are not the evidence itself nor do they contain any additional information. I can assure you that I was not in any way trying to keep their existence from the Select Committee when I gave evidence myself and I have been told that the database in question was referred to when your chairman visited our offices. However on both occasions it was the actual evidence seized by our investigators that was the focus of attention rather than the arrangements the ICO had adopted for its management.

It is also important to bear in mind the position the Information Commissioner is in. It was my predecessor Richard Thomas who went as far as he believed he could in putting information about the activities of the media before Parliament when he published *What Price Privacy?* and *What Price Privacy Now?* It is the Information Commissioner who has been instrumental in exposing the activities of the media here. We are certainly not involved in any "cover up", but we have to operate responsibly and within the law.

I suggest that it was no part of the Information Commissioner's responsibility to publish further material from Operation Motorman once he had reported to Parliament in *What Price Privacy?* and *What Price Privacy Now?* Having named the press titles mentioned in the material recovered from the private investigators, it was

[Redacted]



Information Commissioner's Office

[REDACTED]  
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our judgement that it would have been irresponsible, disproportionate and possibly illegal to have published the names of individual journalists involved – or notified the subjects of individual enquiries. We could not have done this without first establishing in each case whether or not evidence of a Sec 55 offence existed. To do so would have involved the investigation of each line of journalistic enquiry to establish whether or not a public interest defence might have been advanced. Such a speculative fishing expedition would have been wholly unjustified and a misapplication of limited regulatory resources at a time when there were and are very many concerns of greater prima facie priority competing for our attention in the data protection sphere. In the absence of such evidence, publication would have laid the Information Commission himself open to a charge of illegally disclosing without a lawful purpose information acquired in the course of an investigation, in breach of Sec 59 of the DPA.

In response to your specific questions, I can confirm the following. The ICO spreadsheet does contain 1027 lines of data. Line 1 contains a description of the column contents and lines 2 - 1028 contain data. In the light of this, our column 477 contains the information referred to in your column 476 and likewise our column 556 relates to your 557.

The significance of colour coding and abbreviations can be explained as follows. The colour identifies what information had been obtained and the abbreviation used by the ICO to identify that type of information obtained.

Yellow - XD (ex directory telephone numbers)

Grey - Veh Reg (registered keeper details)

Lt Green - Mob Conv (mobile conversion, number to subscriber details)

Orange - Area (search to identify if target lived in specific geographic location)

Dk Blue - Dir (director search at companies' house)

Purple - conversion (BT conversion as in mobile)

Dk Pink - F&F (BT friends and families)

Purple - CCJ (county court judgements)

Green - CRO (criminal record check)

/...



Information Commissioner's Office

[REDACTED]  
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White - Misc (telephone billing information, company enquiries etc)

Orange - HPI (HPI check on vehicle, outstanding finance, accidents etc)

As to any further steps, we stand by our estimate of the response implications of carrying out a proper line by line redaction. I can also confirm that we are still willing to carry this out if the Select Committee can assure us that such an exercise is necessary and consider that it would be an appropriate use of public resources. Alternatively, we would be able to carry out the simple column by column redaction that you have mentioned very much more quickly.

But, in the light of what I have already said, full redaction would result in a document which was almost meaningless while anything less would set hares running with consequences which might be either unfair or illegal or both.

*Yours sincerely,*  
*Christopher Graham*

Christopher Graham  
Information Commissioner