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THE SUNDAY TIMES

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Managing Editor

December 14, 2006

Mr Richard Thomas  
Information Commissioner  
Information Commissioner's Office  
Wycliffe House, Water Lane  
Wilmslow, Cheshire SK9 5AF

Dear Mr Thomas

I spoke yesterday with your colleague, James Ford, to express concern about the press release and report to Parliament "*What price privacy now – the first six months*" which you have just issued.

The report purports to set out the reactions to your May 2006 report "*What price privacy now*". It is said to have been released following a Freedom of Information Act request. This appears to have been from Lord Ashcroft, a regular sparring partner with the press, and someone on whose behalf the Information Commissioner's Office has previously corresponded with The Sunday Times.

In reality, as the press release and the subsequent media coverage makes clear, your aim appears to be to name newspapers and magazines identified in Operation Motorman as having purchased information from crooks, as part of a lobbying campaign to increase your powers. Readers will certainly be left with the impression that the newspapers' journalists were guilty of criminal offences – "*altogether, 305 journalists were identified as recipients of a wide range of information ... I repeat my call for a two year jail term to deter those convicted of trading unlawfully in personal information ...*". The "*Note to Editors*" in the press release names The Sunday Times as one of the publications involved, and the report itself lists The Sunday Times as involved in 52 "*transactions positively identified*" with seven "*journalists/clients using services*".

The report states that "*some broadsheets are also represented. The Commissioner recognises that some of these cases may have raised public interest or similar issues, but also notes that no such defences were raised by any of those interviewed or prosecuted in Operation Motorman*". The clear implication from this and what follows is that The Sunday Times is likely to have had no such defence. This is

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clearly defamatory of (at least) the publishers of The Sunday Times and me, its Managing Editor.

I have grave concerns about what has occurred.

- 1 It appears that the information now released was obtained by the Information Commissioner as a result of the exercise of exceptional search and seizure powers in section 50 and schedule 9 of the Data Protection Act 1998 and/or the exercise of police search and seizure powers. In any event, the purpose of the search and seizure was to obtain evidence with a view to prosecution, not to provide material for the issue of a press release for lobbying purposes over four years later.
- 2 As far as I am aware, The Sunday Times was never interviewed in relation to Operation Motorman. My understanding is that Messrs Whittamore, Boyall, Marshall and King were prosecuted under section 55 of the Act and in relation to a conspiracy to sell details relating to actor Ricky Tomlinson, actresses Jessie Wallace and Charlie Brooks, and Jade Goody's father. I am not aware that The Sunday Times had any involvement in these matters. In any event, the first that I, as Managing Editor, heard that The Sunday Times was to be named by your office as involved in criminal activity was yesterday, when your press release had already been issued. This does seem extraordinary. Certainly the media would have severely circumscribed defences in any libel action if we had not given the subjects of any story an opportunity to comment prior to publishing such allegations about them, and it would be strange indeed if a regulator was able to behave in a more cavalier fashion.
- 3 I do not know, because you have not provided the information necessary to allow The Sunday Times to defend itself, in what circumstances the seven alleged journalists entered into the 52 alleged transactions, when the transactions took place (presumably over four years ago), which present or former Sunday Times' journalists were involved, or what was obtained. I do not know whether the section 55(2) defences applied, or for that matter (given the modest number of offences apparently prosecuted) whether any of the original obtaining of this information by Mr Whittamore and others involved any criminal offence.
- 4 Neither your press release nor your current report make clear that the Motorman cases apparently resulted in four people being given only two year conditional discharges. Whilst I note the explanation given in your earlier report (at paragraph 6.7), one is still left asking why, if the activities of these individuals was so heinous and widespread, there was no Crown Court prosecution (with the penalty of unlimited fines) or why the Magistrates Court did not impose fines up to the £5,000 maximum for the thousands of section 55 offences which you appear to allege were committed.

The Sunday Times does not condone the commission of criminal offences. And it fully supports the valuable role which the Information Commissioner's Office plays in protecting the personal data of individuals and in securing rights of access to information. However, I do not believe that your conduct in this matter can be described as fair, or that it meets the standards which one should be entitled to expect

from a regulator. I should be grateful if you would please provide me with an explanation in respect of points 1 to 4 above, and your proposals to put matters right, as soon as possible.

Yours sincerely,

A large rectangular box with a thin black border, used to redact the signature of Richard Caseby.

**Richard Caseby**  
**Managing Editor**

A smaller rectangular box with a thin black border, used to redact contact information.