

RJT 41 (ICO)

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

Rt Hon Gordon Brown MP
Prime Minister
10 Downing Street
London
SW1A 2AA

7 March 2008

Dear Prime Minister,

What Price Privacy? Criminal Justice and Immigration Bill

Thank you for inviting me to meet you on Wednesday when we were able to discuss data loss issues in general and increased penalties for illegal disclosures in particular.

My office has worked closely with the Data Handling Review Team led by Sir Gus O'Donnell. I hope to be able to welcome warmly the measures in his forthcoming final report and to re-cycle them as guidance for local authorities and other parts of the public sector.

Our discussion focussed on Clause 129 of the Criminal Justice and Immigration Bill which will introduce tougher sentences to deter tackle the illegal market in personal information. I was able to tell you something of the nature and extent of this market and I was pleased to hear your condemnation. Our report—**What Price Privacy?**—documented the situation in greater detail. The government's decision, following a full MoJ consultation exercise, to increase the penalties for the existing offence is very welcome. The measure has been widely supported – notably by public and private bodies holding large data collections - and has so far had a smooth passage through Parliament.

My letter of 4 March to Jack Straw spelt out how a withdrawal of this clause would have highly damaging symbolic and substantive consequences. Public and political concerns about the security of personal data have never been higher. This is the first legislative opportunity for the government to demonstrate how seriously it takes the safeguarding of personal information. I

made clear the importance which I attach to the priority of tackling the problems of data insecurity and reinforcing sensible data protection.

We discussed the importance of not jeopardising responsible journalism. I entirely share your view that the right balance needs to be struck between protecting privacy and the public's personal information and the important principles of press freedom. The offence already requires any data breach to be knowing or reckless and I have consistently supported the existing defences for genuine investigatory journalism. The most relevant of these is the protection for anything which can be justified in public interest terms.

Much of the activity that we have exposed is not related to the media at all. Where it is, I am sceptical whether much – if any – of it could be justified as being in the public interest. That defence was not even attempted in the cases where we secured convictions. Nevertheless, I agreed with you that there may be scope to find ways to allay the fears that have arisen. We discussed some of these and I stand ready to contribute constructively to the discussions which the government is now leading. I have already shared some further thoughts with MoJ officials.

I must conclude, however, by repeating that this is a pernicious, and largely hidden, illegal market. It is highly damaging to individuals, to organisations and to society. Although I recognise the need for balance, withdrawal of the clause now would have very negative consequences. Although you assured me that the clause would be re-introduced, I do not believe that there will ever be a better legislative opportunity.

I am copying this letter to Jack Straw, Lord Hunt, Maria Eagle, Sir Gus O'Donnell and relevant officials.

Yours sincerely



Richard Thomas
Information Commissioner