

DATA PROTECTION ACT 1998
SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE
DATED 5 December 2011

To: Powys County Council

of: County Hall
Llandrindod Wells
Powys
LD1 5LG

1. Powys County Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the 'Act'), in respect of the processing of personal data by Powys County Council and is referred to in this notice as the 'data controller'.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the '1984 Act'). By virtue of section 6(1) of the Act, the office of the Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the 'Commissioner').
3. The Commissioner was informed of an incident in February 2011, in which a member of the public received, together with a document concerning her own children, a page from a child protection report on an unrelated child. The Commissioner had been notified of a similar incident in June 2010, in which the same individual received part of a 'looked-after child' document relating to another unrelated child. In both instances, the Commissioner was informed that the recipient knew the members of the other family named in the documents.
4. It appears that the incidents both occurred in a similar way, when an employee of the data controller collected printing from a shared printer and inadvertently mixed in with their own work part of a document produced by a colleague. However, it was clear that no checks had been carried out on either occasion to ensure that the correct documentation was being sent to the relevant individual, despite the fact that the employees involved regularly deal with highly-sensitive information.

5. In response to enquiries after the first incident, the Commissioner was informed by the data controller that this was a one-off error and that steps were being put in place to prevent the likelihood of a recurrence. However, the Commissioner noted at the time that, although the data controller stated it regarded data protection training as 'essential' for its social work staff, it did not make the completion of such training mandatory for those staff. This training had still not been provided at the time of the second incident, some seven months later.
6. At the end of the Commissioner's investigation into the first incident the data controller had been strongly advised to provide further training for its staff and to implement the other checks and controls then under consideration. The Commissioner also warned the data controller that he would be likely to take regulatory action if a similar incident occurred again.
7. The Commissioner has considered the data controller's compliance with the provisions of the Act in light of these matters.
8. Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller. The relevant provision of the Act is the Seventh Data Protection Principle.
9. The Seventh Data Protection Principle provides at Part I of Schedule 1 to the Act that:

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".

Paragraph 9 of Part II of Schedule 1 to the Act further provides that:

"Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to –

 - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and*
 - (b) the nature of the data to be protected."*
10. Having considered the information provided, the Commissioner is satisfied that the data controller has contravened the Seventh Data Protection Principle in that it failed to take appropriate measures to ensure the security of its data.

11. The Commissioner has also considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner took the view that the likelihood of distress is self-evident and has been demonstrated. The parents of the child whose personal data was disclosed in error were informed of the incident and threatened to make a formal complaint.
12. The Commissioner has further taken account of the effect of the incorporation in English law of the European Convention on Human Rights ('ECHR'), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that the individuals whose sensitive personal data were held on the missing personal computers all have the right to respect for private and family life, home and correspondence.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that the data controller shall ensure that:

- (1) By 31 March 2012, all staff whose roles require them to have access to personal data, as defined by section 1 of the Act, undertake formal training covering both the Act's requirements and the data controller's policies for the storage, transmission, use and disposal of personal data, and that thereafter every employee undertakes refresher training on this topic at least once every three years. All new staff shall receive this training prior to being allowed unsupervised access to personal data;**
- (2) By 31 March 2012, accurate records are maintained of the training undertaken by each employee and compliance with the above measure is monitored to ensure that no employee can continue to work with personal data unless he or she has passed the above training course within the timescale outlined in paragraph (1) above.**

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 5th day of December 2011

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

THE DATA PROTECTION ACT 1998 (PART V, SECTION 40)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.
- b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
- c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:
 - a) your name and address;
 - b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;
 - c) the grounds of your appeal;
 - d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
 - e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
 - f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the notice contains a statement that the Commissioner considers that the notice should be complied with as a matter of urgency.

Section 48(3) provides that where an enforcement notice contains a statement that the notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the notice, you may appeal against –

- (a) the Commissioner's decision to include the statement in the notice, or
 - (b) the effect of the inclusion of the statement as respects any part of the notice.
6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.
7. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).