

Data Protection Strategy Consultation

Response to the Information Commissioner's Office

Detail of Respondents

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Response

New technologies for data collection, data storage and data-mining have the potential to dramatically improve the lives of UK citizens and consumers, offering government and business the opportunity to know more about those they serve. But if these opportunities are not matched by the power to protect data about individuals from misuse, then these new advances in technology risk bringing about a net loss to society – making us less free, less equal and consequently less prosperous. This consultation is therefore a timely one and we welcome the opportunity to respond.

The Open Rights Group commends the recent efforts on behalf of the Information Commissioner to raise awareness about data protection risk, and recognises statements made by the Information Commissioner in his most recent annual report to the effect that

the public are increasingly aware of their data protection rights. Having read the Data Protection Strategy in detail, and having put it out to consultation among our supporters¹, we have drawn the following conclusions.

The present powers granted to the Information Commissioner's Office are not commensurate with the data protection risk presented by advances in data-collecting and data-mining technologies and practice. In particular, we believe that the Information Commissioner should push for the right to audit and inspect, without having obtained prior consent, any commercial, public sector or third sector organisation where poor data protection practice is suspected. The Open Rights Group understands that the Information Commissioner has already called for these stronger audit and inspection powers, and that this call has been backed by the House of Lords Science and Technology Committee². We hope that the by adding our voice and the voices of our supporters to this recommendation, such powers may more readily be granted. We support the House of Lords' recent call for a data breach notification law³, and believe that the Information Commissioner's Office should do whatever it can to push for such a law.

The Open Rights Group is concerned by the weak enforcement of the Data Protection Act to date, a piece of legislation that is the envy of many other parts of the world, particularly the USA. For example, when “[a] string of high street banks and the Post Office [break] data protection rules by dumping customers' personal details in outdoor bins”, we would expect a greater penalty than the signing of “a formal undertaking to comply with [the] Data Protection Act”.⁴ We believe that the Information Commissioner's Office should be able to impose stronger and swifter penalties, including criminal sanctions, on those who breach the Data Protection Act. We believe it is appropriate for the Information Commissioner's Office to demand powers similar to those of the Health and Safety Executive. The Data Protection Act will not be taken seriously in businesses at Board Level until this happens.

1 The Open Rights Group is a community of enthusiastic volunteers and renowned technology and policy experts, supported by a small team of core staff. We are funded by regular donations from our 500+ supporters and small, campaign-based grants. See About the Open Rights Group section at the end of this document. We asked our community to respond to the consultation via our fledgling e-consultation tool available at <http://www.openrightsgroup/consult> See <http://www.openrightsgroup.org/consult/data-protection-strategy/> for more details.

2 House of Lords Science and Technology Committee *Personal Internet Security* 10 August 2007

3 *ibid*

4 See Press Association “Banks 'dumped personal information in bins” *The Guardian* 13 March 2007 <http://money.guardian.co.uk/saving/banks/story/0,,2032962,00.html>. A list of “UK Privacy Debacles” is collaboratively maintained at http://www.openrightsgroup.org/orgwiki/index.php/UK_Privacy_Debacles

We note in the tone of the Data Protection Strategy document a reluctance to burden business, which indicates that the rhetoric⁵ of those opposed to the Data Protection Act has to a certain extent sunk in. We therefore feel it is prudent to point out the benefits that data-gathering and data-mining have offered modern business. For example, it is partly the success of the Tesco Clubcard that commentators have suggested allowed the retailer to overtake Sainsbury's as the UK's top supermarket in the 1990s⁶. It is our belief that business would be highly likely to comply with stronger regulatory pressure from the ICO rather than stop collecting personal data. The same point can be equally made about government, who see in data-sharing and data-mining the opportunity to, for example, eliminate significant waste, or heighten detection of benefit fraud.

The Open Rights Group commends the Information Commissioner's ambition to influence the legislature to deliver data protection-friendly outcomes. In the past, it appears that the Information Commissioner's Office has only been cursorily consulted by government departments during policy formation; and even then that the ICO has given advice from a regulatory perspective rather from the perspective of an advocate for privacy. We therefore welcome the Information Commissioner's study on Privacy Impact Assessments and on how they might be used in a UK context.

The Open Rights Group recognises the role individuals need to play in protecting their right to privacy. However it is also important to recognise that individuals cannot make decisions about their own interests if they are compelled to hand over personal data in order to comply with the law or gain access to basic services. Further, the ability for people to make an informed choice is very much dependent on the information available to them when they supply personal data. In principle, the idea of accreditation and awards for good practice is an attractive one, although any such scheme would need close monitoring.

The Open Rights Group recognises that data protection is an evolving field and would welcome the opportunity for continued input on the Information Commissioner's Data Protection Strategy.

5 The Data Protection Act was labelled "expensive bureaucracy" by the Conservative policy group in their recent publication *Freeing Britain to Compete*

<http://standupspeakup.conservatives.com/Reports/FreeingBritaintoCompete.pdf>

6 See "Stores at War: winning secrets" *bbc.co.uk* 4 June 1999

http://news.bbc.co.uk/1/hi/business/the_company_file/360997.stm

About the Open Rights Group

The Open Rights Group is a grassroots digital rights advocacy organisation based in the UK. It aims to increase awareness of digital rights issues, help foster grassroots activity and preserve civil liberties in the digital age. It is funded by individual donations and small grants.