

Book review

Information Rights in Practice — The Non-Legal Professional's Guide

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*Patricia Barratt reviews
Information Rights in
Practice — The Non-
Legal Professional's
Guide, by Alan Stead*

Alan Stead's book is designed for, as the subtitle says, the 'non-legal professional', particularly those in local government with little existing knowledge of information rights law. He aims to identify the main strands of law relevant to information rights, to set out the basic provisions in relation to each strand, and to show how they interact. He does this on the basis that an official dealing with, for example, a request for information, needs to have an overall picture of information rights rather than a detailed expertise.

A particularly useful and appealing aspect of Mr Stead's book is the series of examples he provides in boxes, some real and some invented. These help to bring the material to life, and underline the practical nature of his approach overall. His style is simple, direct and highly readable.

Mr Stead makes a welcome call for a more joined up approach by the public sector in dealing with information requests which, as he correctly points out, often straddle the "main information rights trilogy" — that is, the Data Protection Act 1998, the Freedom Information Act 2000 ('FOIA'), and the Environmental Information Regulations 2004 ('EIR'). The first 7 chapters — almost the first half of the book — are devoted to data protection, while Chapters 8 to 11 deal with the FOIA and the EIR jointly. This helps to highlight the many similarities between the FOIA and the EIR, though at times his joint approach is confusing.

A more substantive criticism arises in relation to Mr Stead's comments on consultation prior to release of information. According to Mr Stead, a protocol between organisations should remind partners "of the duty under section 16 of the FOIA to consult the originator before the information is released". However, there is no such duty under section 16, which merely refers to the section 45 Code of Practice, which, in turn, contains only best practice recommendations on consultation. Indeed, this is one of the main issues for private sector companies who have provided information to public authorities and who enjoy no such right of consultation. Later in the book, Mr Stead mentions again the "requirement to consult with other interested parties if

they were, say, the authors of the document". The section 45 Code only requires public authorities to consult "in some cases". Where information has been supplied by one Government department to another, the Code does say the originating department should be notified, but it only requires consultation "where appropriate".

Mr Stead also jumps into the troubled water of the question of detriment in relation to an actionable breach of confidence. He states that for a breach of confidentiality to be actionable "there has to be actual damage or potential damage to the originator". However, Philip Coppel in his authoritative *"Information Rights"* (reviewed in *Privacy & Data Protection Journal, Volume 8, Issue 6*) says "the better view is that it is an open question whether detriment to the claimant is an essential ingredient of an action for breach of confidence".

Stead also suggests it is unnecessary to apply the public interest test in relation to information provided in confidence. While it is certainly true that section 41 is an absolute exemption, it is well established that there is a public interest test built into the section 41 exemption itself in that there is a defence to a charge of breach of confidence that disclosure was in the public interest.

Mr Stead provides a useful summary of other relevant information in chapter 16, including speedy canters through the Human Rights Act, the Regulation of Investigatory Powers Act, and the Re-use of Public Sector Information Regulations, though it is perhaps misleading to suggest, as Mr Stead does, that the latter are not compulsory. While it is true that they lack teeth, they are certainly not optional.

In summary, this is a handy overview of a number of pieces of legislation in the information rights field. Written in accessible plain English, and brought to life by practical examples, it is likely to prove useful to its targeted audience.

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