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Introduction

1.1 Overview

Information rights legislation has been described in the appeal courts as being amongst the most complex laws on the UK statute books; however, it does affect all of us in some way or another. There are those who want to access information about a public authority, or personal data held about themselves by organizations. They may be concerned about the way their personal data is being handled or may want to use data about someone else to process for themselves or to share with others; they may even just be in the street and be being filmed by the town's CCTV system. Everyone is affected by the way in which companies and public authorities handle information. The following chapters will guide you through the legislation in a clear, practical way, giving a greater understanding for both requesters and practitioners in this complex subject.

A growing number of people are now involved in the implementation of the legislation, particularly in the public sector. Information rights are rapidly becoming recognized as a profession and universities are starting to provide degree courses at both honours and master's levels.

It is actually a fascinating subject, giving professionals an insight into all aspects of the organization they work for. The Acts themselves are also open to interpretation, allowing the courts and the Information Tribunal to have a wider scope in the way the legislation is interpreted.

The dangers that hide beneath the pages of the legislation are the

deadlines, which are themselves statutory, but which it is often outside the control of information rights staff to meet because other departments may have difficulty in supplying data on time.

This highlights the need, within public authorities especially, for a change in culture. Gone are the days when authorities only told people what they wanted them to know.

Excuses heard for not releasing the information include, 'They have never had it before', 'What do they want that for?', 'What's it got to do with them?'

Problems are sometimes created by the Data Protection Act 1998 being wrongly applied for non release of information. Information rights does affect the whole of the authority and, without full commitment, can eventually result in major embarrassing or even legal consequences. Towards the end of 2006 Liverpool City Council was taken to court for non compliance and received a small fine of £350. Training and awareness of all staff, especially those who make the decisions and those on the front line are essential to the operation of the authority. Information rights professionals may get pressure from top management not to release sensitive information. The Information Commissioner's Office has advised that in these cases the professionals should record their views and make sure those wanting to change their decision also write down the reasons for overruling. If there is an appeal to the Information Commissioner, then at least both views will be available for him to consider.

It is a case for concern when organizations have two, three or even four different departments covering information rights. Separate sections covering data protection, freedom of information, environmental information and records management will not work unless they all talk on a regular basis. There is even a requirement under the codes of practice for records management issued under section 46 of the Freedom of Information Act 2000, for records management to be included alongside the information rights manager. A request can easily come under at least two and occasionally three different enactments and is a lot easier to handle if all are dealt with under the one department. The following is an

example of a simple request which covers three different areas:

Dear Sir

I am concerned that you are thinking of closing Umbridgeshire Infant School. What is the decision making process behind this and where will my son be placed?

Can I also have my son's school records as I believe a move will affect him and I want to see where he is now?

Yours faithfully

Jane Brown

As you will see when you go further into the chapters, this actually covers three pieces of legislation, the Data Protection Act 1998, the Freedom of Information Act 2000 and the Data Protection Education Regulations, which it would be very difficult to collate if the function were not coordinated in one place.

In this book the chapters are organized by the various pieces of legislation for ease of reference, but do not be surprised if, when reading about, say, 'definition of personal data' you come across references to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as to separate them is almost impossible.

1.2 History

Information rights is the overarching heading for everything under the Data Protection Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Public Sector Information Regulations 2005.

Data protection started life under the Data Protection Act 1984 which related only to electronically held information and was controlled by the Data Protection Registrar. There was, at this stage, no European pressure to apply the legislation. The Act gave the Registrar very little actual power other than to criticize the authority breaching the Act. Registration was

also difficult, as each application was registered separately and it was necessary for individuals who wanted to access their own data to write to the data controller of the authority concerned specifying under which registration their data was held and, if the information they wanted spread across a number of registrations, a separate fee was requested for each one. It is no wonder that the number of requests were few and far between.

It was not until 1995 that the European Parliament issued a directive, (EC) 95/46, which strengthened the protection of personal data across Europe. Most European countries welcomed this and created new legislation; only one or two felt their own Acts were strong enough to meet the new requirements, although even these are now amending them. Fortunately the United Kingdom decided that its own legislation needed rewriting and the then Lord Chancellor's Department introduced the Data Protection Act 1998.

The Data Protection Act 1998 is unique in information rights legislation in two ways. Firstly it not only tells how to access data but also how to handle and process it, and secondly it applies to all organizations, not just the public sector.

The Environmental Information Regulations 2004 also has its history in Europe. In 1992 the first Environmental Information Regulations were created in response to the European Directive (EC) 313/90. It is unclear how frequently this was invoked by public authorities but it was certainly not as widely proclaimed as the new regulations.

The conference on climate change at Kyoto in 1997 and the Aarhus Convention on Access to Information in 2001 both encouraged freer access to environmental data and this was endorsed at the Johannesburg World Summit on Sustainable Development in August 2002.

As a result of this increased awareness worldwide, the European Community, as a signatory to the Aarhus Convention, created a new directive, (EC) 2003/4, on which the UK Environmental Information Regulations 2004, which was passed on 10 December 2004, is based. This is actually a statutory instrument and not primary law but comes under the Act which enables European law to become national statute (European Communities Act 1972, Section 2(2)).

Freedom of information has also been around for a long time in Europe

although it is unique among information rights legislation in that it is not based on European law. The United Kingdom seems to have come along on the third wave of legislation. Sweden started things rolling in the 18th century; more recently countries such as Australia, Canada, the United States of America and the Republic of Ireland brought in their legislation. Following the United Kingdom's example, other European countries such as France and Germany are watching with interest. The United Kingdom studied those that had gone before and saw a variety of approaches. Some will only accept requests from within their own country (Canada). Others insist that the request must show which legislation is applicable (Republic of Ireland). Some have a prohibitive charging scheme, such as that in the Republic of Ireland where a standard fee plus copying and postage costs for the request (around €15 is payable), a larger fee for a complaint (around €75) and over €100 for a complaint to the Commissioner. They report a drop in requests since this charging scheme was introduced. Other countries only allow a very short time to find and supply the data, around seven days in Estonia.

The Department for Constitutional Affairs, now the Ministry of Justice, report that the United Kingdom's laws are among the most accessible in the world and their introduction throughout the United Kingdom is being watched with interest by countries considering their own access to information legislation.

1.3 Summary

Information rights can be the most interesting job around. It enables practitioners to have an insight into their own authority and it is continually developing, with not only new legislation but new interpretations. The Data Protection Act has a number of case law examples whereas the other enactments are still relying on the decisions of the Information Commissioner. There are now a few Information Tribunal decisions, which can also help.

If it is a matter of interpretation, one view is as good as another, providing all the relevant issues have been taken into account and, it is suggested, have been documented. So, welcome to the fascinating world

of information rights.

The next chapter introduces the Data Protection Act 1998, this being the oldest of the main information rights trilogy.