



# Privacy & Data Protection

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## Headlines:

- Guernsey declared safe to receive data, p.14
- DPA blamed for Soham deaths, p.15
- Visitors to the US to be photographed and fingerprints taken, p.15

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## Court dramatically restricts subject access right

In a move that will dramatically reduce the Data Protection Act’s applicability to paper-based records, the UK Court of Appeal has refused an application for subject access on the basis that the information sought did not constitute ‘personal data.’

In the case of *Durant v Financial Services Authority* (2003), the Claimant, represented by Masons and Miss Kirsten Houghton (pro bono), sought access to files held by the FSA concerning a dispute that he had with Barclays Bank. The FSA, in its supervisory role,

had investigated his complaint against the bank.

The files were held by the FSA, represented by Philip Sales and David Mayhew, in paper-based manual filing systems. The court found that such filing systems did not amount to a ‘relevant filing system’ under the Act and, therefore, that the Claimant was not entitled to access to them, due to the fact that they were not akin to a computerised system in terms of ready accessibility to data.

Having determined that a purposive approach is

appropriate to the interpretation of the Data Protection Act, Lord Justice Auld stated that the purpose of the subject access rights in the Act is to enable an individual to check whether the processing of his or her personal data unlawfully infringes his or her privacy. The purpose is not, however, to provide “an automatic key to any information, readily accessible or not, of matters in which he may be named or involved.”

This case appears to restrict the scope of  
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## Employment health data code published

Employers, confused and concerned by the seemingly nonsensical restrictions in the Data Protection Act 1998 on storing and using employee health data, at last have some guidance from the UK regulator.

The fourth and final part of the *Employment Practices Data Protection Code* (‘the Code’) has been issued in draft form for a 3-month period of public consultation.

*Information About Workers’ Health* is intended to give employers clear and practical guidance about how to comply with data protection law when handling information about workers’ health.

Part 4 of the Code contains general guidance on handling health information about workers. It also contains sections dealing specifically with the operation of occupational health schemes, medical

examination and testing of workers, drug and alcohol testing and genetic testing in the workplace.

*Information About Workers’ Health* is accompanied by a volume of supplementary guidance, which provides additional information about the subjects covered in the Code itself.

There is also a short version of the Code aimed  
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