



Privacy & Data Protection

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- European Commission takes UK to Brussels, p.16
- BT admits part in porn list leak, p.16
- Website blacklists deviant hotel guests, p.18

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ICO's response lists host of flaws in legislative framework

The UK Information Commissioner's Office has identified a number of significant weaknesses in UK data protection law in its response to the Ministry of Justice' consultation on the review of EU data protection law.

Primary amongst the failings of the current legislation is the definition of 'personal data' — the ICO wants more clarity on what will and will not fall within the definition.

Also highlighted as confusing for individuals and a cause of great practical uncertainty for data controllers is the

requirement of 'consent'. The ICO advocates a clearer indication of where consent is needed in new legislation.

Addressing another pitfall, the regulator asks for the allocation of responsibilities amongst those handling personal data to reflect the changing nature of modern day business relationships. It proposes that a "more collective form of responsibility" is adopted, which would indicate increased obligations for all the parties to an agreement involving the use of personal data.

The area of international transfers, says the ICO, needs "the most" attention. Particularly, the Commissioner "has doubts" about keeping the concept of adequacy based on territories, advocating instead that adequacy should be assessed more in relation to the specific circumstances of the transfer.

Other areas in need of attention are the concept of 'sensitive personal data' and the exemption for household activity (for which "a better understanding is needed"). (The article on pages 8-11 of this edition

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ICO issues draft data-sharing code

The UK Information Commissioner's Office has launched its consultation on the Data Sharing Code of Practice.

The 40 page draft code looks at both routine data sharing as well as isolated instances where a decision is made to release data to a third party, and both public and private sector data sharing.

In addition to outlining the relevant law as it applies to both

organisations and individuals, the draft code gives nine factors an organisation must take into account when deciding whether to share personal data — including assessing the risk posed by the sharing. It explains the requirements of transparency and consent, and how to fulfill the requirements through privacy notices.

The Code also details a list of practices that

may prompt regulatory actions to be taken — which include misleading individuals about data sharing; sharing excessive or inaccurate amounts of information; and using incompatible systems to share the data, which leads to its destruction.

Compliance with the new code will not be mandatory, where it goes beyond the requirement of the Data Protection Act.

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