



Privacy & Data Protection

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Lloyds case—casts doubt on ‘once processed, always processed’

A recent decision has confirmed the intention of the UK courts to restrict the application of the Data Protection Act 1998 ('DPA') to paper-based records.

In *Smith v Lloyds TSB Bank*, the judge decided that computer print-outs containing personal data were not within the scope of the DPA. The mere fact that the information contained in documents was once held in computer form, did not mean that it was available to an individual on a subject access request.

On 23rd February, in the High Court, Justice Laddie held that information relating to a loan made by

Lloyds TSB to a company was not 'data' within the DPA because it was not stored electronically nor was part of a 'relevant filing system.'

The claimant's contentions, relying on the wording in the Data Protection Directive, that (i) the information was once processed electronically and, therefore, should be treated as within the DPA even though it was now in printed-out form, and (ii) any pile of documents containing personal information should fall within the remit of the DPA because of the ready availability of modern scanning equipment, were rejected by the judge.

According to Ashley Roughton, Mr Smith's barrister, "Mr Justice Laddie made it clear that the argument that merely because paper files could very easily be turned into a relevant filing system did not make those files disclosable; the fact that such files could be turned into relevant filing systems did not make them relevant filing systems."

"The judge also explained what the words "wholly or partially" in Article 3 of the Directive meant that it was intended to apply to situations where, say, data were held on computer by day and remained held by night, though not, technically by means of equip-

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Political cold calling—lawful?

Labour Party activists are apparently exploiting a loophole in data protection law to "cold call" people who have specifically asked not to receive unsolicited telephone calls.

Call centre workers are allegedly calling thousands of potential voters who have registered with the Telephone Preference Service to prevent unwanted calls on their private phone numbers.

Ringling numbers on the

'opt-out' list with offers or marketing information is a potential breach of the Privacy & Electronic Communications (EC Directive) Regulations 2003, as well as the Data Protection Act.

Although the Labour Party regularly calls people who have listed their numbers on the 'do not call' register to enquire how they intend to vote, it claims that doing so does not breach the legislation, because callers are not attempting to promote the party. This

argument may be somewhat sophisticated—the Office of the Information Commissioner has indicated that political parties will be caught by the legislation where they can be taken as promoting themselves.

The Tories and Liberal Democrats insist that they do not contact people on the Telephone Preference Service, even to ask about their voting intentions. The Liberal Democrats

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