

## **Guidance Note A4: Formal Powers of the Information Commissioner**

### **The role of the Information Commissioner**

1. The Information Commissioner enforces and promotes compliance with the DPA 1998, the FOI Act 2000 and the EIR. The Commissioner is an independent supervisory authority reporting directly to Parliament. Both the FOI Act and the DPA relate to information handling and his dual role allows the Commissioner to provide an integrated and coherent approach in respect of these two Acts.

2. The Information Commissioner's views are expressed as Position Statements setting out his position in relation to the issues raised, they could be a review of legislation or a criticism of a particular practice in relation to Data Protection or Freedom of Information consultations. The Commissioner routinely responds to consultation documents, issued by other organisations if the documents raise Data Protection, Freedom of Information or general privacy concerns, and issues his own consultation documents seeking a response from other organisations.

2.3 The Information Commissioner is required to promote good practice to data controllers acting in accordance with DPA98, and to this end, provides guidance, Codes of Practice and encourages others e.g. trade associations to do the same. The Commissioner may give a **Practice Recommendation** to any public authority which he does not regard as conforming to the codes of practice under s.45 and s.46 of the FOI Act.

### **Formal Powers of the Information Commissioner**

3. Under the **Freedom of Information Act 2000** the Information Commissioner can:

- If the Commissioner has received a request for a decision, or considers certain information as relevant to determine whether a public authority has complied with Part I of the Act or the Codes of Practice, he may serve an **Information Notice** on any public authority requiring it to supply that information to him.
- Where the Information Commissioner considers a complaint, he will issue a **Decision Notice** setting out his view on whether or not the Act has been complied with. Where a breach of the Act is identified, the notice will specify the steps which must be taken by the authority in order to comply with that requirement and the timescale for compliance.
- If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act, he may serve on the authority an **Enforcement Notice** requiring the authority to take particular steps within a specified time to comply with those requirements.

Failure to comply with an Information, Decision or Enforcement Notice may be dealt with as though the public authority had committed contempt of court. There is also provision for the Commissioner to obtain a warrant to search premises and seize documents or other material where this is agreed necessary by a circuit judge.

3.2 Under the **Data Protection Act 1998** the Information Commissioner can:

- In certain circumstances serve an **Information Notice** or a special information notice and assess compliance with the Acts. This requires a data controller to provide the Commissioner with specified information within a certain time period, which will help him to assess compliance.
- Where there has been a contravention of the data protection principles, to serve an **Enforcement Notice** to the data controller (which in MOD is the Secretary of State) ordering compliance within a specified time, where there is an ongoing breach of the Acts (which requires data controllers to take specified steps or to stop taking steps in order to comply with DPA98) It is an offence to fail to comply with such notices.

**Ministry of Defence Access to Information  
Guidance Note**

Version 6

January 2009

## **Appeals**

4. Appeals from these notices can be heard by the **Information Tribunal**. A complainant or a public authority may appeal to the Information Tribunal against a Decision Notice (which includes an Enforcement, Information or special information notice). A public authority may also appeal to the Information Tribunal against an Information Notice or an Enforcement Notice served on it. The Information Commissioner or applicant may appeal to the Information Tribunal against a ministerial certificate issued under s.23 or s.24 (security bodies and national security).

4.2 On hearing the appeal the Information Tribunal may uphold the Notice in its entirety, substitute an alternative Notice or dismiss the Notice. The decision of the Information Tribunal may in turn be appealed on a point of law to the High Court of Justice (England and Wales), Court of Session (Scotland) or High Court of Justice in Northern Ireland (Northern Ireland).

### **5. The Information Commissioner has limited authority and:**

- Cannot award compensation for any breach of the Data Protection Act 1998 or the Freedom of Information Act 2000 (which falls to the Data Controller or the Public Authority to consider)
- Cannot apply for an injunction to prevent the disclosure of information
- Cannot require a data controller to release any personal data other than in response to a subject access request

Further details can be obtained from the Information Commissioner's Website: <a href="http://www.ico.gov.uk">www.ico.gov.uk</a> .
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