

Information Rights Committee Minutes – 17 May 2011

Members and other attendees present

David Smith	Deputy Commissioner, Director of Data Protection (Chair)
Jonathan Bamford	Head of Strategic Liaison
Lesley Bett	Head of Internal Compliance
Simon Entwisle	Director of Operations
Susan Fox	Director of Corporate Affairs
Andrew Laing	Head of Complaint Resolution
Ken Macdonald	Assistant Commissioner – Scotland Northern Ireland
Sally-Anne Poole	Acting Head of Enforcement
Graham Smith	Deputy Commissioner, Director of Freedom of Information
Louise Webb	Head of Good Practice
Steve Wood	Head of Policy Delivery
Jonathan Kay	Corporate Governance Officer (Secretariat)

1. Introductions and apologies

- 1.1. There were apologies from Anne Jones and Paul Arnold.

2. Action points from the last committee meeting

- 2.1. The Information Rights Committee (IRC) examined the minutes of the last meeting, and adopted them.
- 2.2. IRC considered action points and matters arising from previous meetings.
- 2.3. IRC heard that Jonathan Bamford would meet with the leaders of the Information Rights Priority Area Groups to agree formats for reporting (19 April, action point 2). IRC agreed that the first reports should be brought to the July meeting.

- 2.4. Steve Wood and Simon Rice had met to discuss the Technology Support Forum (19 April, action point 4), and established a way forward to distinguish the forum from the Online Priority Area Group. IRC noted the action complete.
- 2.5. Jonathan Bamford noted that the education project was progressing (19 April, action point 5), and the tendering exercise was being designed to allow for the latest Government transparency rules.

Action point 1 – Secretariat to arrange for the minutes to be added to the ICO website and staff to be advised.

3. Key information rights developments

- 3.1. IRC noted the Information rights report presented to the last Management Board meeting. Members provided further updates on current information rights issues, risks or opportunities.

Policy Delivery

- 3.2. The recent FOIA High Court appeal by the Department of Health (DoH) on the disclosure of abortion statistics was a significant judgement.
- 3.3. The ICO's position that the statistics should be disclosed as they were not personal data was upheld. The Court also agreed with the ICO on the likelihood of identification. Subject to any appeal by the DoH, further policy work is planned including new guidance.
- 3.4. Steve Wood noted that the ICO were working closely with the Cabinet Office on possible ways to promote right to data and transparency initiatives. Steve noted that Policy Delivery would prepare a paper on the ICO's role in taking proactive disclosure forward in light of new policy developments. The ICO would also need to consider what open data disclosures it should make as a public authority; one option under active consideration is the Register of Data Controllers.

Strategic Liaison

- 3.5. IRC heard that an advice document had been published to coincide with the new Privacy and Electronic Communications Regulations (PECR) being laid in Parliament.
- 3.6. Jonathan Bamford noted that the PECR changes group was functioning well. IRC agreed and observed that the area needed careful handling - the ICO had received some

criticism since the publication of the regulations by observers who assumed the ICO to be their author.

- 3.7. IRC praised the advice document and commented on its quality. IRC thanked Katherine Vander and David J Evans for their good work on the document, and all other staff working to prepare for the regulations.
- 3.8. The Protection of Freedoms Bill continues its progress. Proposals to change the Rehabilitation of Offenders Act are also expected. These will need to take account of the conclusions of the Independent Adviser on Criminality Information Management.
- 3.9. IRC heard that any changes would have effect in relation to the CRB in England and Wales, but that separate provision would be necessary for Disclosure Scotland. Other work may be needed to update the Police Act to enable enforced subject access to be outlawed.

International

- 3.10. Proposals on the future of data protection legislation from the European Commission are expected at the end of summer.

Operations

- 3.11. Andy Laing noted that the bank holidays in April had impacted on performance, and milestones were being set to ensure that no cases more than eight months old remained by the end of June.

Regional offices

- 3.12. The regional offices are preparing for local launches of the Data Sharing code taking place on 09, 16, and 28 June. The regional Assistant Commissioners are also writing to the new Assembly Members, Members of the Scottish Parliament, and Members of the Legislative Assembly following the recent elections.

Audit

- 3.13. Audit teams have recently visited two private sector data controllers, and are currently working with the internal auditors of a large government department. A self assessment audit pilot has also been started
- 3.14. An audit guide will shortly be published giving a detailed explanation of how ICO audits work. Audit follow-up reports illustrate the difference being made by ICO audits and demonstrate progress by audited bodies.

3.15. IRC discussed data minimization questions within audit and heard these are included where they are within the scope of an audit.

Enforcement

3.16. The enforcement team is examining Sony and Apple following recent issues, and ICO will meet with both organisations.

3.17. The first tranche of FOI monitoring has been a great success, and the second is now underway and has been made public.

3.18. The hard-drive sampling project is almost complete.

3.19. The penalty in the recent ACS law case resulted in media coverage, and a fact sheet is being produced to explain the details of the case.

3.20. A report will be produced to explain and illustrate the first year of civil monetary penalties. Most so far have arisen from self reported breaches.

3.21. IRC noted that penalties were focussed on situations where there was a lack of appropriate systems and procedures, rather than breaches of principle.

3.22. It was also observed that penalty notices could serve more in the education of best practice and link to ICO's other activities.

3.23. David Smith thanked members for feedback on the PECR enforcement note. This will be revised and published later in May.

Corporate Affairs

3.24. Susan Fox noted that the ICO website was ready for the changes to cookie use resulting from the revised PECR. This had involved a lot of work.

3.25. The ICO website has also received an exemption from the Government's web convergence project until at least April 2012, although current focus is on the need to reprocur the expiring web developer contract.

Internal Compliance

3.26. Lesley Bett noted that information requests to the ICO had continued to rise following the 23% increase in the last year.

3.27. Requests relate to wages, consultants fees, and case information. Many concern current policy issues and the ICO's decision-making processes. This is especially the case in

relation to civil monetary penalties, and issues with media coverage such as Sony and Facebook.

- 3.28. IRC discussed how much information the ICO could make available proactively to meet this demand, and agreed to examine this at the next meeting.

Action point 2 – Lesley Bett to bring a paper on proactive publication of ICO casework information to the July IRC.

4. Information Rights Priority Areas

- 4.1. IRC examined the revised Priority Area Groups terms of reference, which had been amended following discussion at the last meeting.
- 4.2. The revised Terms of Reference were adopted.

5. A new approach to ICO guidance production and management

- 5.1. Steve Wood presented a paper proposing changes to the ICO's production and management of guidance. This followed a review of the ICO's guidance production which involved an audit of existing guidance and consultation within the ICO and with stakeholders.
- 5.2. The proposed changes included the production of a guide to FOI similar to the existing DP guide, the development of comparable 'spine' guidance for PECR and EIR, and a project to review existing guidance. Most guidance would be written for external use as well as internal.
- 5.3. IRC discussed its own role in commissioning and oversight of guidance, and agreed that a log of requests for advice would come to IRC. Major pieces of work such as codes of practice will be identified in business plans and come to the IRC for commissioning, and regional offices would be involved where there were regional dimensions to guidance.
- 5.4. The IRC will help co-ordinate the work and provide a forum for the prioritisation and choices that will be necessary. A role is envisaged for the Deputy Commissioners to sign off significant pieces of guidance.
- 5.5. IRC commended the review and noted the volume of work necessary and the potential impact on the office. Steve Wood will take the project forward with the Policy Delivery team and report back to the next meeting with a project plan.

Action point 3 – Steve Wood to bring a project plan for the new approach to guidance to the next IRC.

6. Consultations update

- 6.1. IRC examined the consultations report.
- 6.2. Jonathan Bamford noted the current consultation from the Home Office on the development of a Code of Practice relating to CCTV and ANPR. The ICO will be submitting a reply in the next week.

7. Any other urgent business

- 7.1. IRC discussed speaking engagements and conferences, and in particular the level of ICO resources committed to workshops.
- 7.2. IRC agreed that it should discuss speaking engagements at the June meeting.

Action point 4 – Secretariat to invite Katie Johnson to the next meeting.

- 7.3. Jonathan Bamford reminded members to forward any contributions to the June international activity report to Emma Butler.

8. Next Meeting

- 8.1. **14 June 2011, 10.30am, Room M5&6** Papers to secretariat by 12.00pm Tuesday 7 June.