

RESPONSE TO RICHARD THOMAS AND DR MARK WALPORT INDEPENDENT DATA SHARING REVIEW

THE USE AND SHARING OF PERSONAL INFORMATION IN THE PUBLIC AND PRIVATE SECTORS

SUMMARY

The Environment Agency processes a wide range of personal data, and is increasingly involved in data sharing activities. Our response to this consultation can be summarised as follows:

- We process personal data in relation to our obligations as a employer and in relation to our regulatory activities.
- We have highlighted a situation where increased data sharing would improve our ability to improve the provision of flood warnings to members of the public, but is not happening due to legal constraints.
- The Data Protection Act (DPA) works well as a piece of framework legislation, but some clarification on the meaning of certain terms is desirable.
- There is a lack of detailed data protection case studies available from which data controllers can learn. This is a barrier to improving performance.

1.0 INTRODUCTION

1.1 The Environment Agency is the leading public body for protecting and improving the environment in England and Wales. We work in the areas of air, land and water quality, waste management, conservation, flood risk and flood defence, water management, and navigation and recreation. We collect, hold and share personal data in relation to these activities.

2.0 THE CONSULTATION QUESTIONS

2.1 We have limited our response to the questions that are most relevant to the Environment Agency.

Question 1: our interest in information sharing

- ***What kinds of personal information do you collect, hold and share?***

2.2 The Environment Agency processes a wide range of personal data about individuals including staff, licence or permit holders, suspects and offenders, members of the public, enquirers and complainants. Information held will sometimes include sensitive personal data, e.g. in relation to our staff this may be about occupational health and sickness absence, trade union membership, ethnicity and religion, and relevant convictions; in relation to

people we regulate this may include allegations we are investigating, prosecutions we have taken and relevant convictions.

- **How do you collect, hold and share such personal information?**

2.3 Personal data is collected via a number of means including: on job application forms, from new starters, on licence and permit application forms, via members of the public reporting pollution incidents or signing up to receive flood warnings, and through investigation of alleged criminal activities.

2.4 Personal data is held in both paper records (e.g. HR files, site files, prosecution files) and on computer (e.g. Floodline Warning Direct, waste management licensing, fishing rod licence holders).

2.5 Some personal data is routinely shared with data processors who process personal data on our behalf, e.g. our flood warning service, including calls and mailshots, is carried out by a data processor. Other personal data may be shared on a case-by-case basis where the DPA allows, e.g. with police or local authorities investigating criminal offences, or with our contractors who are visiting sites on our behalf and need to know information about that site or site owner.

2.6 We are also required by law to make some personal data we collect available to the public on 'public registers'. We share some of this personal data with private sector organisations, e.g. for use by commercial companies as the basis of value added products. Our public registers relate to activities we regulate including: Water Abstraction, Carriers and Brokers of Controlled Waste, Waste Management Licences, and Contaminated Land. The specific details required to be published vary according to the activity in question and are set out in regulations. Some of this information is made available on our website, while other information is currently only available in hard copy format.

- **For what purposes do you collect, hold and share such personal information?**

2.7 We process personal data in relation to our obligations as an employer and in relation to our regulatory and environment protection activities. Our regulatory activities include approving and issuing licences and permits, investigating breaches of environmental law, and taking enforcement action. We also provide a flood warning service for both residential and commercial properties. Other processing of personal data may include for research purposes or improving customer service, and responding to customer enquiries.

Question 5: where public authorities do not hold enough personal information.

Question 7: where sharing of personal information would be beneficial but is not taking place.

- 2.8 The Environment Agency published its review of the 2007 summer floods in December 2007. One of the recommendations from the review was that Government should help us to pre-register more people who could receive a flood warning by allowing us to use ex-directory numbers and the full electoral roll. This was echoed by Sir Michael Pitt in his independent interim review "Learning lessons from the 2007 floods" in which he recommended that the Environment Agency should work urgently with telecommunications companies, consulting the Information Commissioner as necessary, to facilitate the roll-out of 'opt-out' telephone flood warning schemes to all homes and businesses liable to flooding, including homes with ex-directory numbers.
- 2.9 The Environment Agency currently faces barriers in gaining access to both the full electoral roll and ex-directory telephone numbers for flood warning purposes:
- We have had access to the full electoral roll for the purposes of our criminal investigations since March 2006, following the implementation of the Representation of the People (England and Wales) (Amendment) Regulations 2006 (SI no. 752). However, these regulations do not permit us to use the full electoral roll for any other purpose - to do so would be unlawful. We can therefore currently only use the edited version of the electoral roll for flood warning purposes. To gain access to the full roll for flood warning would require new regulations to be laid before Parliament.
 - Ex-directory telephone numbers are contained in the OSIS database, held by BT. If we were to ask BT for the ex-directory telephone numbers for properties in flood risk areas, they would need to consider whether they could do this in a way that would comply with the DPA. With the current legislation it would appear that the only legal basis BT would have to disclose this to us would be to get the consent of the individuals concerned. This would have large resource implications for BT. Alternatively, it may be possible to introduce legislation either allowing or requiring BT to make this information available to us for flood warning purposes.

Question 9: how well does the DPA work?

- 2.10 As a piece of framework legislation the DPA works well. However, it is the inconsistent or unclear interpretation of key words in the DPA that can cause difficulties for data controllers, e.g. the meaning of 'necessary', 'reasonable', 'substantial' or 'prejudice'.

Question 10: adherence to the second principle; value of the second principle.

- 2.11 The second principle provides data controllers with an important extra check against which to measure the impact of their current or proposed processing. This provides extra safeguards for individuals. Adherence to the second principle (and public perception that this is happening) can improve and maintain public trust in a data controller's handling of personal data. This is particularly important in the public sector where individuals may not have any choice other than to interact with a particular organisation.

Question 11: what barriers stand in the way of the effectiveness of the DPA?

- 2.12 There is a lack of detailed case studies available, equivalent to 'decision notices' under the Freedom of Information Act, from which data controllers can learn. Some decision notices under FOIA have contained useful discussions of the first and second principles, but it is unlikely that they would address other DPA issues. The data protection case study summaries included in the Information Commissioner's Annual Report are not sufficiently detailed for data controllers to learn lessons from and improve performance. It should be possible for the ICO to formulate more detailed case studies without compromising the confidentiality of the data controller or data subject.

Question 12: what further powers, safeguards, sanctions or provisions should be included in the DPA?

- 2.13 We believe that the Data Protection Act 1998 should be amended to introduce custodial penalties for the deliberate and wilful misuse of personal data. This is the recommendation we made in response to the Department for Constitutional Affairs consultation in October 2006 regarding "Increasing custodial penalties for deliberate and wilful misuse of personal data".

FURTHER INFORMATION

We would be happy to be contacted for an in-depth interview if required.

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