

Day File
RJT 7 (IC)
Information Commissioner

Reference: RJT/PJ/DZ/X0079

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8 December 2004

Dear Christopher,

Thank you very much for such a worthwhile and enjoyable lunch with Tim and yourself last week.

I was, however, extremely concerned to hear that the advice note that Tim had drafted on "Data Protection Act, Journalism and the PCC Code" had run into the sand. You explained that media lawyers had thought the advice note over-simplified the position. I am very disappointed to hear this. I am concerned that there may be a failure to appreciate the pressing need for guidance of this sort.

The note made clear it was "by way of straightforward general guidance only and should not be relied as legal advice". My concern is that unless the attention of journalists and editors is drawn to the real possibility of committing criminal offences under the Data Protection Act 1998 there is a real risk that the all too widespread practice of paying to obtain confidential information about people in the public eye will continue unabated. As you know, I am strongly of the view that the PCC and the principles of self regulation will be shown in a poor light unless – at the least – you are able to point to a clear public statement warning journalists and editors of the very real risks of committing criminal offences. Ideally, this would be reinforced by a clear message from the PCC as to the unacceptability of journalistic law-breaking.

I acknowledge the relevant provisions in the Act are complex. That is why it was right to emphasise that the note did not purport to be detailed definitive legal guidance. There is a place for such detailed legal guidance, but it would be quite unrealistic to expect journalists to study and digest such guidance.

We were broadly content with the draft we saw earlier in the year, though Phil Jones did pass a couple of suggested changes to Tim on 20 April. My particular concern is that journalists and editors might take unwarranted comfort from the defence that "in the particular circumstances the obtaining is ... was justified as being in the public interest". I

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fear that it might be assumed that simply because a journalist subjectively considers a particular story to be in the public interest, the prohibitions on obtaining personal information without consent can safely be ignored. I am satisfied that the courts would not accept this defence lightly. In other words they would consider that the public interest in the obtaining (and presumably subsequent publication) of the information in question would have to be extremely strong to justify obtaining the information dishonestly.

I hope that the draft can be swiftly revised and that the particular point I have raised will be addressed in it. Let us know if we can help further at this stage.

A handwritten signature in black ink, appearing to be 'Richard Thomas', is written above a rectangular box.

A large, empty rectangular box with a thin black border, used to redact the signature of Richard Thomas.

RICHARD THOMAS
Information Commissioner