



Our Ref. Z0065/RT/NT/LT

Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Mr Richard Caseby
Managing Editor
Sunday Times
1 Pennington Street
London
E98 1ST

2 February 2007

Dear Mr Caseby

What price privacy now?

Thank you for your letter of 14 December about "What Price Privacy Now?", our report to Parliament on the illegal buying and selling of personal information. I am now able to let you have a full response to your questions.

In your letter, you raised various points - both general and specific - about the content of this report, especially the table of publications on page 9. Our rationale for publishing that table was set out on page 8. You will understand that I have a statutory duty to promote good practice and to ensure compliance with the Data Protection Act 1998. Further, I have a duty to make available to the public such information as I feel is expedient about the operation of the Act, good practice and other matters within the scope of my functions. The Act also gives me the power to issue special reports to Parliament on any issues as I see fit in respect of those functions. My considerable concern about the trade in improperly obtained personal information prompted me to publish "What price privacy?", the first special report to be issued by the ICO, in May 2006, followed by "What price privacy now?" in December.

I do not accept your assertion that the report is defamatory of the publishers of the Sunday Times or you as its managing editor. The report makes clear that the table was drawn from documentation seized during the Operation Motorman investigation. It explicitly recognises that the transactions identified in the table could have raised public interest or similar issues. The report notes that no such defences were raised by any of the individuals questioned and prosecuted during Operation Motorman. But this does not imply that the



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Sunday Times or any other publication would not have been able to put forward such a defence in any particular case.

In response to the specific points made in your letter, my answers are set out below (for clarity, the numbers relate to the numbered paragraphs in your letter).

1. I do not agree with your suggestion that information obtained under search and seizure powers should not have been used as it was. There is no legal, regulatory or other barrier to such use. The Act specifically empowers me to make a special report, as I think fit, to Parliament with respect to any of my statutory functions. The inclusion of a list of publications in 'What price privacy now?' was in the public interest in that context. With this report we seek to secure changes to the law in a field directly relevant to our responsibilities, to improve information handling practices through effective self-regulation and to encourage an examination of the trade in personal information by a Parliamentary Select Committee.

2. Although I engaged in discussions on the wider issues with such bodies as the Press Complaints Commission and the Editors' Code Committee, I do not consider that it is necessary or customary for my office (or a similar body) in these circumstances to consult with outside bodies on the detailed content of a special report to Parliament.

3. I am not able to provide you with the identity of individual journalists or details of the transactions that were attributed to them. Our report indicated that we had not been free to provide such information in response to a Freedom of Information request and – subject to what is said below - that remains our position. The reference in the report to "positively identified" transactions refers to services provided which would be illegal in the absence of a valid defence.

4. I believe that the explanations at sections 6.7 and 6.8 of 'What price privacy?' (our original report) are clear. The low level of sentencing for section 55 offences generally was highlighted in 'What price privacy?' and its central recommendation, the proposal to introduce a custodial sentence, is intended to underline the seriousness of the offence. That report spelt out that, in the circumstances, it was not in the public interest (and we had been firmly so advised by counsel) to proceed with our own prosecutions and nor could we contemplate bringing prosecutions against the journalists or others to whom confidential personal information had been supplied.

However, we took the issues you raised very seriously and your letter prompted us to re-visit the composition of the table of publications. A detailed investigation has now revealed that we recorded the figures for the Sunday Times, and for the News of the World, incorrectly. The true figure is that there are only four cases linked with the Sunday Times, all of which involve one



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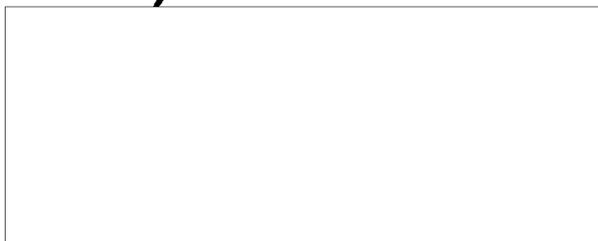
journalist. The figures for the News of the World increase to 228 and 23 respectively. In addition, two cases involving one journalist should have been listed for the Times newspaper. We have carefully checked all the figures for all the other publications identified in the table and no further error has come to light. A copy of the amended table is attached and I can confirm that this is being presented to Parliament and sent to all those on the distribution list for the report.

We have now established that this unfortunate error occurred as a result of inputting errors (which remain inexplicable) made by a contractor when transferring details of over 13,000 transactions from hand-written workbooks to a spreadsheet at the time of the original investigation. When the December report was prepared, we carried out a sampling exercise which revealed no errors and then relied upon the spreadsheet. The single workbook which gave rise to the inputting errors covered transactions for "Times, Sun and News of the World."

I make an unqualified apology for this error. Although I do not think that it makes a material difference to the overall thrust of the two reports, I recognise that such an error simply should not have happened and is unacceptable.

Of course, I must make clear that I remain firmly of the view that legislative and other action is required to stop the illegal trade in personal information. Information obtained improperly can cause significant harm and distress to individuals. The sentences recently imposed in the Goodman case send a very clear signal, which I welcome, that breaches of individuals' privacy - where there is no public interest justification - will be taken seriously by the courts.

I recognise that The Sunday Times has voiced concerns about possible threats to genuine investigatory journalism which can be justified in the public interest. This is an area of interest and relevance. We are currently developing guidance on the public interest defence to section 55 offences. We would welcome an opportunity for you (or your representative) to discuss draft guidance with us before it is finalised. This would be of genuine assistance to us and would, I hope, demonstrate that we are open to feedback and keen to help journalists to operate within the law.



Richard Thomas
Information Commissioner

Publication ^	Number of transactions positively identified	Number of journalists/clients using services
Daily Mail	952	58
Sunday People	802	50
Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	228	23
Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
The People	37	19
ly Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
unday Mirror Magazine	6	1
deal Magazine	4	1
Woman's Own	4	2
The Sunday Times	4	1
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	4
The Times	2	1
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1