

**PRESS COMPLAINTS COMMISSION**

*From the Chairman*

The Hon Nicholas Soames, MP  
House of Commons  
London  
SW1A 0AA

16<sup>th</sup> February 2011

Thank you for your letter of 10<sup>th</sup> February.

Hopefully you have been reassured by the written answers from the Minister of State to your written questions concerning the PCC.

It is disappointing that your letter fails to acknowledge the work undertaken by the PCC with regard to phone hacking. In 2007, the PCC proactively responded to the convictions of Goodman and Mulcaire by looking to establish what lessons could be learned from the unacceptable episode, and what measures could be introduced, industry-wide, to help eliminate the practice as far as possible. In doing so, we deprecated the deplorable actions of those involved, and criticised the News of the World for its lack of internal controls. In 2007, the Commission responded to the existence of a problem, and sought to raise standards; in 2011, we remain committed to achieving this aim within our proper remit.

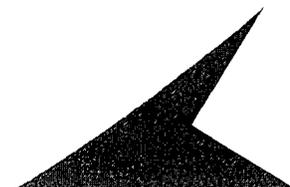
The PCC has remained concerned about the issue of phone hacking, which raises serious questions about journalistic ethics and past conduct by journalists and we are resolute in our determination to ensure future good practice in the industry. As you mention, the Commission has set up a working group, with a lay majority of experts, to consider new information which has become available, and to make recommendations. The report will be published by the PCC.

The purpose of this will be to draw together lessons learned as a result of the outcomes of the relevant police inquiries and ongoing legal actions. It will also consider the outcome of the current internal inquiry of the News of the World. The Committee will review the PCC's own previous actions in regard to this matter. The Phone Hacking Review Committee will comprise the two most recent lay Commissioners (who joined after December 2009), both of whom are experts in relevant legal fields: Ian Walden, Professor of Information and Communications Law, Queen Mary University of London and Julie Spence, former Chief Constable, Cambridgeshire Police. There will be one editorial Commissioner: John McLellan, the editor of the Scotsman.

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As I am sure you are aware, phone hacking is a criminal offence, and the Commission has been consistent in its condemnation of it. It has also been consistently clear that it is not the role of the PCC (or within its powers) to duplicate the investigations of the police, or to establish criminality. However, its role is to work to raise standards in the industry, and we are committed to take this opportunity (at the conclusion of the relevant processes) to do so in this area.

You also mention a report by the Information Commissioner and claim that this "showed beyond any doubt the extent of phone hacking". If you have read the report, you will be aware that the Report "What Price Privacy" was published after an investigation into historic (turn of the century) use of private information via a private detective agency, and is a separate issue to phone hacking. It does not address the issue of phone hacking in any way, shape or form. I attach a recent article by the Observer's Readers Editor - who has been given access to the ICO's files - who explains his own newspaper's use of the detective agency in question.

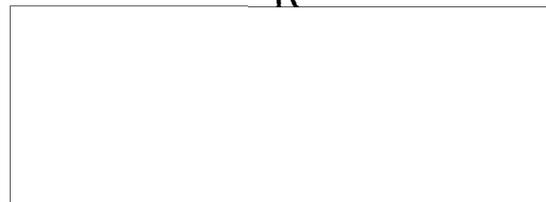
In any case, the PCC responded to that report by working with the Information Commissioner to issue guidance (see attached) and train journalists about the use of personal information. We are set to have a joint training session with the ICO this spring. The PCC was pleased to note that the Information Commissioner's Office recently said that there had been an improvement in journalists' compliance with the Data Protection Act. That was an example of the PCC proactively working to raise standards.

All newspapers subscribing to the self-regulatory system agree to abide by the Editors' Code of Practice. This Code is independently enforced by the PCC. Clause 10 of the Code concerns "clandestine devices and subterfuge". If you do have any concerns about such activity, you can of course complain to the PCC. As I am sure you are aware, the Liberal Democrats have done recently concerning articles in the Daily Telegraph.

I should point out that nationally representative polling shows that a large majority of the British public believe the PCC to be effective. I hope you will agree that the public service we perform is extremely valuable. I know that you personally have benefitted from the PCC's services in the past.

With best wishes - as I should  
add that we have twice contacted all national  
editors - in 2007 and again in 2009 - to question  
their actions regarding this whole affair

Baroness Buscombe



## 5. NEWS OF THE WORLD & PHONE HACKING ALLEGATIONS

guardian.co.uk | The Observer

### The readers' editor on... the Observer and the private investigator

Journalists from the paper have never indulged in phone-hacking but have used an outside agency to establish stories in the public interest



Stephen Pritchard  
The Observer, Sunday 13 February 2011

A [larger](#) | [smaller](#)

Scotland Yard put new heat under the *News of the World* hacking scandal last week when it announced that a new line of inquiry had suggested that messages left on the mobile phones of several high-profile figures, including the former deputy prime minister John Prescott, may have been intercepted by the paper. Lord Prescott predicted that the scandal would not be confined to one Sunday tabloid. "I think it is going to go a long way," he said. "I think it will go to a lot of newspapers who have been hacking people for a long time."

So it would be reasonable for *Observer* readers to ask if their newspaper has been involved in illegal interception, particularly after Louise Bagshawe MP told radio listeners recently that Sky News had reported that there may be evidence that the *Observer*, among other newspapers, was involved in phone hacking.

That's a serious allegation to level at a newspaper that has joined its sister, the *Guardian*, in the pursuit of this story from the start. In reply to Ms Bagshawe, the *Observer* went on the record to say: "To our knowledge, there has never been any suggestion, let alone evidence, that the *Observer* has undertaken, commissioned or in any way been involved in this activity."

So how did this allegation arise? It would seem that the phone-hacking issue has become confused with a report published in 2006 by the Information Commissioner that found several newspapers, including the *Observer*, had used the services of a private investigator. The report, "What Price Privacy Now?", did not deal with phone-hacking – which is a criminal offence with no public interest defence – but with potential offences under the Data Protection Act, to which there is a public interest defence. And no offence is committed if the information is necessary for the prevention or detection of crime.

The report sprang out of Operation Motorman, an investigation launched by the Information Commissioner's Office in 2003, in which the records of a number of investigators were seized, including those of JJ Services, run by Steve Whittamore. He worked with associates able to supply him with data from telephone accounts and DVLA records. Alongside the media, his clients included insurance companies, lenders and creditors, local authorities and parties involved in divorce cases.

Using his logs, which covered the years 1999 to 2003, the ICO devised a ranking of usage by the press, placing the *Observer* ninth in a league of 32 newspapers and magazines and identifying some 400 journalists from those titles. The documents show

Data Protection Act, Journalism and the PCC Code

### **Data Protection Act, Journalism and the PCC Code**

This note has been put together with the help of the Information Commissioner to draw the attention of journalists and editors to those provisions of the Data Protection Act 1998 (DPA) that may impact on them as they carry out their professional duties. The DPA carries within it a journalistic exemption and implicit reference to media codes including the PCC Code of Practice. As such, the Commission is from time to time asked questions about how it is applied. Therefore, the Commission has drawn together some of the questions it is most frequently asked. This note is by way of straightforward general guidance only and should not be relied on as legal advice. If you are concerned about how the Act will impact on a specific case you should seek advice from a specialist lawyer.

#### **What is the DPA designed to do?**

The DPA requires those who use information about individuals for a business purpose to observe rules of good practice when handling information to ensure that such information is used appropriately, and is accurate, relevant, and up to date. It also grants rights to the individual 'data subject' to ask for information from the 'data controller' about such 'personal data', where it came from (subject to some protection of individual sources), to whom it has been passed and, in some cases, to require that there be no further processing of relevant data.

There are various exemptions.

#### **What do 'data processing', 'personal data' and 'data controller' mean?**

Very broadly, 'personal data' is information relating to an identifiable, living human being (the 'data subject') which is held electronically and capable of being processed by computer, or held in equivalent non-computerised filing systems.

Processing personal data includes obtaining, recording, holding the information or data, or carrying out operations on it such as consulting, adapting, organizing, retrieving, disclosing (which includes publishing), erasing and destroying it.

'Data controller' is a person who 'determines the purposes for which, and the manner in which, any personal data are to be processed'.

Full definitions are contained in the DPA which can be found [here](#). Relevant case law is developing on their legal meaning as the courts consider cases brought under the Act.

### **Isn't there a journalistic exemption?**

The government recognised that the imposition of these rules without exemptions for journalistic, literary and artistic purposes ('the special purposes') would be damaging to freedom of expression. It acknowledged that journalists and the media must be allowed to process data about individuals without having their activities, including newsgathering, investigations and publication, scotched by the Act's requirements. The DPA therefore contains an exemption for personal data that is processed for the special purposes. This exempts newspapers and magazines from compliance in relation to some aspects of the processing of personal data when it is undertaken with a view to publication where this would prejudice journalism.

There are also other safeguards for the media that allow the courts to stay legal action and protect against arbitrary use of investigation and enforcement powers.

Part of the journalistic exemption relates to the public interest. What counts as the public interest?

The Act does not define what the public interest means in any context.

However, in the case of the journalistic exemption under section 32, it does say that in considering whether a data controller's belief was reasonable that publication was or would be in the public interest, regard may be had by the court to his compliance with any relevant Code of Practice, designated by order of the Secretary of State. The broadcasters' codes and the PCC Code have been designated. In the case of newspaper and magazine journalism, this therefore clearly means the PCC Code of Practice.

The Code of Practice makes clear that the public interest may be invoked to justify breaching 9 of the 16 clauses of the Code, principally relating to an individual's privacy. It says that the public interest includes detecting or exposing crime or serious misdemeanour, protecting public health and safety, and preventing the public from being misled by some statement or action of an individual or organisation. It also states that there is a public interest in freedom of expression itself, and that the Commission will have regard to the extent to which material has, or is about to, become available to the public.

The Commission has made clear on a number of occasions – not least through its case law that has been built up since 1991 – that the examples of the public interest contained within the Code do not constitute an exhaustive list. The Commission's adjudications, which can be found at

[www.pcc.org.uk](http://www.pcc.org.uk), amplify the Code and should be read in conjunction with it.

### **Are there any other rules on obtaining personal information?**

The DPA also regulates the lawful disclosure of information. This note does not deal with how that might be relevant to disclosure to the media, or how journalists might use DPA information rights, or the DPA's inter-relation with the Freedom of Information Act 2000, for which the Information Commissioner also has responsibility.

However, it is important for journalists to understand that in addition to the Act's requirements about the way that personal data can be used, the rights of data subjects and the exemptions to them, it contains some other controls and prohibitions on the way that information can be obtained and disclosed.

There is a specific criminal offence of unlawful obtaining of personal data. A person must not knowingly or recklessly, without the consent of the data controller, obtain or disclose personal data or the information that it contains, or procure the disclosure to another person of the information contained in personal data.

Both individuals and companies can be prosecuted at the instigation of the Information Commissioner or the Director of Public Prosecutions. It is also an offence to sell or offer to sell information that has been obtained without consent.

However, there are a number of exemptions – which are generally applicable and not just for journalists – from liability for the offences. Among other things, it may be a defence to argue that the obtaining, disclosing or procuring of the data or information:

- was necessary for the purpose of preventing or detecting crime;
- was justified as being in the public interest (see note on the public interest, above). A court would have to decide whether, in the circumstances, obtaining the information without the agreement of the organisation or individual concerned (the data controller) was of sufficient importance to override the protection afforded by the Act.

Moreover:

- in rare cases, there may be an exemption where the personal data in question fall within the Act's national security exemption;
- and also where the data fall within the 'manual data held by public authorities' exemption which is due to come into force on 30 November 2005.

However, it would be advisable to seek legal advice before assuming whether any of these defences will apply. There are other exemptions that may not be as likely to apply to journalists. More information can be found on the website

below.

**How can I find out more about the Data Protection Act?**

A copy of the Act can be found [here](#). For more information about how the Act has been implemented, you can visit the website of the Information Commissioner at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) or telephone the office of the Commissioner on 01625 545 700. The website also gives information about the Freedom of Information Act 2000 and its implementation.

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