

## **Data Protection Act 1998**

### **Monetary Penalty Notice**

**Dated: 12 March 2012**

**Name: Lancashire Constabulary**

**Address: Saunders Lane, Hutton, Preston, Lancashire PR4 5SB**

#### **Statutory framework**

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1. Lancashire Constabulary is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by Lancashire Constabulary and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which it is the data controller.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of the Data Protection Registrar originally established by section 3(1) (a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000 the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
3. Under sections 55A and 55B of the Act (introduced by the Criminal Justice and Immigration Act 2008 which came into force on 6 April 2010) the Commissioner may, in certain circumstances, where there has there been a serious contravention of section 4(4) of the Act, serve a monetary penalty notice on a data controller requiring the data controller to pay a monetary penalty of an amount determined by the Commissioner and specified in the notice but not exceeding £500,000. The Commissioner has issued Statutory Guidance under section 55C (1) of the Act about the issuing of monetary penalties which is published on the Commissioner's website. It should be read in conjunction with the Data Protection (Monetary Penalties and Notices) Regulations 2010 and the Data Protection (Monetary Penalties) Order 2010.

## Power of Commissioner to impose a monetary penalty

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- (1) Under section 55A of the Act the Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that –
  - (a) there has been a serious contravention of section 4(4) of the Act by the data controller,
  - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
  - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller –
  - (a) knew or ought to have known –
    - (i) that there was a risk that the contravention would occur, and
    - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
  - (b) failed to take reasonable steps to prevent the contravention.

## Background

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4. On 17 July 2011, an officer in charge of an investigation to locate a 15 year old girl in foster care had printed off her missing person's report from the data controller's SLEUTH database (the "report"). On the same day, the officer went out in a patrol car to try and locate the missing girl and it is assumed that he placed the report within his body armour allowing him to keep both hands free and that the report then fell out of his body armour and into the patrol car unnoticed. The report remained in the patrol car until 22 July 2011 when the vehicle was used by a different officer attending a domestic dispute. At some point the report dropped out of the patrol car and onto the street where the domestic dispute had occurred.

5. The report contained the name, address, telephone number, school, ethnic origin and details of the missing girl's sexuality together with the fact that she had previously been raped. The report also referred to approximately 14 other data subjects including the name of the person who raped the missing person and the names and addresses of several associates one of whom was referred to as a convicted child sex offender. On 23 July 2011, a member of the public found the report on the street where the patrol car had been the previous evening and handed it to a local newspaper that ran an anonymised article with the heading "Rape file for all to see". The story was later picked up by a national newspaper.
6. The officer who attended the domestic dispute on 22 July 2011 should have checked that the patrol car was fit for purpose before it was used. However, the report was not discovered by the officer and there was no formal written requirement for the officer to check the vehicle. Although it is not uncommon for officers to take paper files out of the station when carrying out an investigation, these files were not routinely booked in or out of the station and secure bags were not provided by the data controller. In addition, all of the documents held on the SLEUTH database are classified as "restricted" but there were insufficient safeguards in place to protect the report itself.
7. The data controller has now taken remedial action which includes informing all officers (by way of the intranet and email) that certain safeguards must be applied when taking documents out of the station; requiring supervisors to monitor staff working practices; ensuring that vehicle checks are carried out weekly; introducing a procedure for recording the location of paper files and setting up a records management working group to implement a records management policy.

### **Grounds on which the Commissioner proposes to serve a monetary penalty notice**

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The relevant provision of the Act is the Seventh Data Protection Principle which provides, at Part I of Schedule 1 to the Act, that:

*"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".*

Paragraph 9 at Part II of Schedule 1 to the Act further provides that:

*"Having regard to the state of technological development and the cost of*

*implementing any measures, the measures must ensure a level of security appropriate to -*

*(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and*

*(b) the nature of the data to be protected”.*

- The Commissioner is satisfied that there has been a serious contravention of section 4(4) of the Act in that there has been a breach of the data controller’s duty to comply with the Seventh Data Protection Principle in relation to all personal data with respect to which it is the data controller.

In particular, the data controller had failed to take appropriate organisational measures against the accidental loss of personal data such as having a specific policy setting out the safeguards that must be applied when documents are taken out of the station to include the use of secure folders or bags; booking the documents in and out of the station; regularly checking police vehicles and providing officers with specific training on the use of paper files. The Commissioner considers that the contravention is serious because the measures did not ensure a level of security appropriate to the harm that might result from such accidental loss and the nature of the data to be protected.

- The Commissioner is satisfied that the contravention is of a kind likely to cause substantial distress. Sensitive personal data was found in the street by a member of the public due to the inappropriate organisational measures taken by the data controller.

The failure to take appropriate organisational measures has the potential to cause substantial distress to data subjects whose sensitive personal data was then handed to a local newspaper that ran an anonymised article with the heading “Rape file for all to see”. The story was later picked up by a national newspaper.

In this context it is important to bear in mind that one of the affected individuals was a child in foster care and considered to be vulnerable.

- The Commissioner is satisfied that section 55A (3) of the Act applies in that the data controller knew or ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial distress, but failed to take reasonable steps to prevent the contravention.

The Commissioner has taken this view because it was not uncommon for officers to take paper files out of the station when carrying out an investigation and all of the documents held on the SLEUTH database were classified as “restricted”. Therefore the data controller would have been aware of the sensitive nature of the personal data the officers were dealing with on a daily basis. In addition, the “Code of Practice on the Management of Police Information” states that “Chief Officers should ensure that arrangements within their forces for managing police information include procedures and technical measures to prevent unauthorised or accidental access to, amendment of, or loss of police information”. ACPO guidance also recommends the appointment of a records manager and the implementation of a records management policy.

In the circumstances, the data controller knew or ought to have known that there was a risk that the contravention would occur unless reasonable steps were taken to prevent the contravention, such as having a specific policy clearly setting out the safeguards that must be applied when documents are taken out of the station to include the use of secure folders or bags; booking the documents in and out of the station; regularly checking police vehicles and providing officers with training on the use of paper files.

Further, it should have been obvious to the data controller as a police force whose officers routinely handled sensitive personal data that such a contravention would be of a kind likely to cause substantial distress to the data subjects due to the nature of the data involved.

### **Aggravating features the Commissioner has taken into account in determining the amount of a monetary penalty**

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#### *Nature of the contravention*

- Sensitive personal data relating to approximately 15 data subjects (one of whom was a vulnerable child in foster care) was accidentally lost by the data controller and handed to a local newspaper by a member of the public
- Contravention was serious because of the sensitive nature of the personal data

#### *Effect of the contravention*

- The contraventions were of a kind likely to cause substantial distress to the data subjects

### *Behavioural issues*

- Contravention was due to the negligent behaviour of the data controller in failing to take appropriate organisational measures against the accidental loss of personal data

### *Impact on the data controller*

- Data controller is a public authority so liability to pay a monetary penalty does not fall on an individual
- Sufficient financial resources to pay a monetary penalty up to the maximum without causing undue financial hardship

## **Mitigating features the Commissioner has taken into account in determining the amount of the monetary penalty**

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### *Nature of the contravention*

- Officers routinely handle sensitive personal data and no previous similar security breach that the Commissioner is aware of
- To the Commissioner's knowledge the personal data involved in the security breach has not been further disseminated by the local newspaper

### *Effect of the contravention*

- The report has been recovered by the police and its condition suggests that it was on the street for a limited period of time
- The 15 year old girl, her birth and foster parents were all informed about the security breach and offered ongoing support
- No complaints of any adverse effects have been received to date

### *Behavioural issues*

- Agreed to an ICO audit prior to security breach
- Voluntarily reported to Commissioner's office
- Detailed investigation reports compiled
- Committed to taking remedial action
- Fully co-operative with Commissioner's office

### *Impact on the data controller*

- Liability to pay monetary penalty will fall on the public purse although the penalty will be paid into the Consolidated Fund

- Significant impact on reputation of data controller as a result of these security breaches

## **Other considerations**

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- The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with the Act. This is an opportunity to reinforce the need for data controllers to review the handling of paper files containing sensitive personal data and to ensure that appropriate and effective security measures are applied

## **Notice of Intent**

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A Notice of Intent was served on the data controller dated 20 January 2012. The Commissioner received representations from the data controller in a letter from the Chief Constable. The Commissioner has considered the written representations made in relation to the notice of intent when deciding whether to serve a monetary penalty notice. In particular, the Commissioner has taken the following steps:

- reconsidered the amount of the monetary penalty generally, and whether it is a reasonable and proportionate means of achieving the objective which the Commissioner seeks to achieve by this imposition;
- ensured that the monetary penalty is within the prescribed limit of £500,000; and
- ensured that the Commissioner is not, by imposing a monetary penalty, acting inconsistently with any of his statutory or public law duties and that a monetary penalty notice will not impose undue financial hardship on an otherwise responsible data controller.

## **Amount of the monetary penalty**

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The Commissioner considers that the contravention of section 4(4) of the Act is serious and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of £70,000 (Seventy thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

## **Payment**

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The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 12 April 2012 at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.

## **Early payment discount**

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If the Commissioner receives full payment of the monetary penalty by 11 April 2012 the Commissioner will reduce the monetary penalty by 20% to £56,000 (fifty six thousand pounds).

## **Right of Appeal**

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There is a right of appeal to the (First-tier Tribunal) General Regulatory Chamber against:

- a. the imposition of the monetary penalty  
and/or;
- b. the amount of the penalty specified in the monetary penalty notice.

Any Notice of Appeal should be served on the Tribunal by 5pm on 11 April 2012 at the latest. If the notice of appeal is served late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

Information about appeals is set out in the attached Annex 1.

## **Enforcement**

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The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified in the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not



been paid;

- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for the data controller to appeal against the monetary penalty and any variation of it has expired.

In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court or any sheriffdom in Scotland.

Dated the 12<sup>th</sup> day of March 2012

Signed: .....

David Smith  
Deputy Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5A

## **ANNEX 1**

### **SECTION 55 A-E OF THE DATA PROTECTION ACT 1998**

#### **RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation notice has been served a right of appeal to the (First-tier Tribunal) General Regulatory Chamber (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
  - a) that the notice against which the appeal is brought is not in accordance with the law; or
  - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

  - a) The notice of appeal should be served on the Tribunal by 5pm on 11 April 2012 at the latest.
  - b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.
4. The notice of appeal should state:-

- a) your name and address/name and address of your representative (if any);
  - b) an address where documents may be sent or delivered to you;
  - c) the name and address of the Information Commissioner;
  - d) details of the decision to which the proceedings relate;
  - e) the result that you are seeking;
  - f) the grounds on which you rely;
- d) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
- e) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time.
5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.
6. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).