



Information Commissioner's

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Our ref: C0016/DE

Counter-terrorism Bill Team
Home Office
2 Marsham Street
London SW1P

15 October 2007

Dear Sir/Madam

The Commissioner welcomes the intention behind this exercise of ensuring that the forthcoming Counter Terrorism Bill will be taken forward on a consensual basis where possible. We are pleased that the criticisms of the legislation which has been fast tracked through Parliament since 2000 have been recognised by the Government. The Commissioner also considers that discussing the possible measures at a relatively early stage of their development is a very positive development.

Having considered the papers produced as part of this exercise there are a number of parts that we wish to comment on and these are set out below.

1. The first issue is that of using intercept material as evidence. The issue of whether intercept material is or is not admissible as evidence is not itself a matter for the Information Commissioner. However we would like to see a full debate about this proposal with a thorough evaluation of the likely benefits versus the risks involved. This is because the use of such evidence will invariably result in the processing of personal data and very likely sensitive personal data. We would wish to ensure that any proposals are compatible with the requirements of the Data Protection Act.
2. The next matter we would like to comment on are the proposals in respect of the use of DNA and fingerprint material. Firstly we would like to know more about the police counter terrorism DNA database. We understand the reasoning behind the proposed legislation in terms of ensuring that DNA samples and fingerprints obtained under the Terrorism Act 2000 can be put on the national DNA database and the national fingerprint

database and be used in the same way as material obtained under PACE. While our priority is to ensure that the material stored and used on DNA databases meets the requirements of the Data Protection Act, to aid our understanding we would like to know the reasons for having this separate counter terrorism DNA database. We do not object to the existence and use of a separate DNA database for counter terrorism purposes but our past experience has taught us that where duplicated information exists (and we presume this is what will eventually occur when there are two separate DNA databases in

existence) then there is an increased risk that errors will appear in the ostensibly identical information held in two separate places.

We do though welcome the proposal contained within paragraph 27 of the consultation paper and in particular the part making it clear that the provisions of the Data Protection Act apply to such cross referencing. In due course we would like to know more detail about how this will work in practice and especially about what the threshold is for considering such a request to be justified in the interests of national security.

3. Looking at the proposed data sharing powers again we would like further information about these plans. On reading the consultation document it is not clear which barriers to data sharing these proposals are trying to overcome. The Data Protection Act does contain exemptions designed to ensure that no barrier exists where the sharing is necessary in the contexts of criminal justice and national security. Turning to the relevant sections of the Serious and Organised Crime and Police Act 2005 (SOCPA), these make it clear that it is the Serious and Organised Crime Agency which has the powers in connection with data sharing. We would expect to see similar clarity contained within the proposed counter-terrorism legislation i.e. it will be made clear which agencies will have the proposed powers.

Furthermore while it is pleasing to see the Information Commissioner being specifically referred to in paragraph 31, this is another area where more we would like to know more about the specific proposals being considered as part of the oversight process.

4. Finally we wish to comment on the proposed terrorist notification requirement. While again not objecting *per se* to such a register, this is another area where we think that confusion may be caused by unnecessary duplication, in this

case of registers. From our perspective it would appear to sensible to have one notification register which would contain different sub-categories e.g. whether an individual was registered because of terrorism related convictions or sex related offences etc. Not only would such an approach reduce the risk of duplication it would provide flexibility for future notification requirements to be added if they were deemed necessary (perhaps, as an example, for certain types of drug dealers). Having said this though, we acknowledge that we do not have the police's knowledge of what information resources they need to manage those with convictions for terrorism and as a consequence there may be practical advantages in having a special register of terrorist offenders.

5. Overall the proposed counter-terrorism measures do seem to be a balanced and proportionate response to the increased threat that the country faces. While there are areas where we would like to know more about the proposals, it is pleasing to see that both data protection considerations and the role of the Information Commissioner have been considered in connection with these measures. Following on from this we would welcome an opportunity to meet with the relevant officials and discuss these proposals in more detail.

Yours faithfully

Data Protection Development Manager.