



EDUCATION SECTOR ALERT

Data Protection - Case Law Update August 2005

The Data Protection Act 1998 ("the Act") is not new, and most colleges and universities by now have a good understanding of it in practice. Although there have been relatively few court actions raised under the Act, a recent decision from the Court of Appeal in England has provided useful clarification of the meaning of "personal data", and may affect your practices.

The decision in question (*Durant v Financial Services Authority*) is from the Court of Appeal in England. The Court of Appeal's decisions are not binding on the Scottish courts, but are likely to be "persuasive" and followed in Scotland, especially where (as in this case) the legislation is UK-wide.

The Facts

Mr Durant had been unsuccessful in a litigation against a bank and sought disclosure of various records held by the Financial Services Authority (FSA) relating to the FSA's investigation into the bank. Mr Durant made a subject access request under the Act to obtain this information. The FSA refused to reveal detailed information about its investigation to Mr Durant.

Mr Durant contended that the definition of "personal data" in the Act covered any information retrieved as a result of a search under his name, and anything on file which had his name on it, or from which he could be identified, or from which it was possible to discern a connection with him.

The Court's Decision

The Court held that not all information retrieved against an individual's name or unique identifier was personal data within the Act. Mere mention of the individual in a document did not necessarily amount to personal data; it depended on whether the information was particularly relevant to the individual, as opposed to matters in which they were involved to a greater or lesser degree. The question was to be decided by asking whether the information was significantly biographical, and whether the individual was the focus of attention. The information must also have affected the individual's privacy in personal, family, business or professional life.

Therefore, the mere fact that a document was retrievable by Mr Durant's name did not make it his personal data, and just because information about his complaint to the FSA emanated from him did not make it his personal data.

What does this mean for your Institution?

There is the possibility that Mr Durant may appeal this decision to the House of Lords. There has also been indications from the European Commission that it is unhappy with the outcome as it believes the decision to be inconsistent with the Commission's original Data Protection Directive.

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In the meantime, the decision gives useful clarification on the definition of personal data and appears to narrow the scope of what may constitute personal data. The principles of the Act may not apply to records that were previously thought to be covered, depending on their primary focus. As with all subject access requests, colleges and universities must evaluate the nature of each request on case by case basis. However, it seems that it may now be possible to limit responses to subject access requests by applying the principles in the case.

Want to know more?

If you would like further information on anything contained in this Alert please contact

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