



# Privacy & Data Protection

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## Headlines:

- New Anti-Terrorism law, p.13
- Canada approved for data transfers, p.12
- Information Commissioner to stand down, p.13
- Spamming by Sainsbury's, p14
- A new Safe Harbor?, p15

## Inside this issue:

Cracking the Code	3
The New Data Protection Directive	5
Case Report—Robertson v Wakefield	8
English Privacy Law	9
News	12

## Data Withholding—endorsed by Court of Appeal

Website operators are free to refuse to disclose the identity of their users, stated a UK court.

ISP's and other e-commerce businesses should not be penalised when they decline a demand from a third party to disclose information identifying a customer or user, without a court order having been served on them.

The judgment was given by the Court of Appeal on 19th December, 2001 in the *Totalise Plc v Motley Fool Ltd and Interactive Investor Ltd*

case, when it decided that Interactive Investor should not be required to pay the costs of the original action for disclosure.

Totalise had wanted Interactive to reveal the true identity of one, 'Zeddust,' who had posted defamatory material about Totalise on Interactive's financial services website.

In his judgment, Lord Justice Aldous said, "There was no dispute that the information requested by Totalise was covered by the 1998 [Data Protection] Act....

The court must be careful not to make an order which unjustifiably invades the right of an individual to respect for his private life, especially when that individual is, in the nature of things, not before the court."

John Higham QC, Partner at Stephenson Harwood, the firm acting for Interactive Investor, told *Privacy & Data Protection*, "claimants who seek this sort of information assume they can use the nuclear weapons of the law in

*(Continued on page 12)*

## Directors prosecuted for breaching data protection law

Two directors have been found guilty of attempting to procure information illegally, under the Data Protection Act.

The prosecution, by the Office of the Information Commissioner, resulted in the conviction, on 18th December 2001, of Andrew Glen Cole and Paul Anthony Slocombe. Chichester Crown Court found the pair guilty of 'obtaining personal data without the consent of the data controller,' under

section 55 of the Data Protection Act 1998. The prosecution resulted from investigations made as a result of a joint initiative of the Information Commissioner's Office, the Inland Revenue and the Department for Work and Pensions.

Elizabeth France, the Information Commissioner, said, "This case is indicative of how some tracing agencies are operating outside the

law. Careful investigation is now being carried out to deal with such abuse, using those powers available to me under the Data Protection Act 1998. Now that the inter-agency group has been established, I expect more cases like this to come to court in the future."

Cole and Slocombe were conditionally discharged for two years and ordered to pay costs of £1,000 each.