



Privacy & Data Protection

Volume 5, Issue 2

December 2004

Headlines:

- Jail sentence for email spammer, p.14
- Cahoot and Morgan Stanley data breach, p.15
- The Queen’s Speech, p.16

Inside this issue:

Data Protection Compliance for HR Directors—Part IV	3
Binding Corporate Rules—a promising solution?	6
The data protection implications of data rooms	8
Durant and freedom of information	10
US privacy update	12
News & Views	14

Johnson gets documents under Civil Procedure Rules

A UK court has given a claimant access to documents under the court’s rules of disclosure, even though he was refused them under data protection law.

Surgeon David Paul Johnson, was granted access, by Mr Justice Laddie in the High Court, to personal data contained in documents held by the Medical Defence Union—the same documents that he had been seeking under the ‘data subject access right’ for two years previously.

The access was given not under the section 7 access right, but under the rules of the court that allow the disclosure of documents that are relevant to an

issue in a case. Per Mr Justice Laddie, “The fact that Mr Johnson had sought access to the very same documents through the regime created by section 7 of the DPA is more or less irrelevant.”

Following the MDU’s refusal to allow him to see documents concerning the reason for his suspension from MDU membership, Mr Johnson commenced an action against the MDU for: (i) an order under section 10(4) of the Act to prevent the MDU from improperly processing personal data about him; (ii) an order under section 14(4) for the rectification, blocking or destruction of certain data; (iii) damages under section 13; and (iv)

an interim application for an order under section 7(9) ordering the defendant to comply with his earlier access request.

Ashley Roughton, Mr Johnson’s barrister, told *Privacy & Data Protection*, “The judgment of Laddie J. makes it clear that save where a data subject access request is in issue, the usual rules of disclosure under the Civil Procedure Rules apply. This is the case even where a data subject access request has been made and determined in proceedings which then go on to deal with *other* remedies such as erasure and damages. What does not happen is that the data subject gets prior dislo-

(Continued on page 14)

Police bugging—unlawful

The European Court of Human Rights has determined that the covert recording of conversations of suspects being held by police in custody is a violation of the right to respect for private life.

The case, *Wood v United Kingdom* (Application No. 23414/02), was brought by Clayton Wood, a UK citizen, who was suspected of being involved in a series of burglaries. The police had difficulty obtaining evidence in their investigation and, therefore, decided to carry out a covert opera-

tion by arresting the suspects and detaining them together in a police cell which had been fitted with audio recording equipment. The content of their conversations were the basis of the prosecution’s case against Mr Wood.

In its judgment, the European Court of Human Rights held that the police activity breached the right to privacy contained in Article 8 of the European Convention of Human Rights.

The UK government conceded, in light of the court’s case law, that there had been no legal basis for the measures, and that there was no effective remedy under UK domestic law for that breach of Article 8.

The court accordingly found, unanimously, that the covert surveillance measures involving the applicant constituted an interference which was not “in accordance with the law” and that there was

(Continued on page 14)