



# Privacy & Data Protection

Volume 6, Issue 2

December 2005

## Headlines:

- Motorists' information for sale by the government, p.14
- Council tax data sought by Child Support Agency, p.15
- Commissioner pushes data protection audits, p.15

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## Commissioner seeks new and wider powers

Richard Thomas, the Information Commissioner, has indicated that he would like greater powers to enforce data protection laws.

In a paper presented to a recent conference, Mr Thomas said that, "The aim is to achieve better regulation by establishing a more effective and equitable regulatory regime. This should help provide better protection for the public who experience poor practice at first hand; instil greater confidence in the handling of personal information by electronic means; and achieve a level playing field for compliant organisations."

The Conference, held in

Manchester on November 29th and titled 'Data Protection—the next 21 years,' was designed to consider what data protection might look like in 2026.

The Commissioner indicated that he now needs greater powers especially in the field of electronic communications and telecoms—the enforcement of the Privacy & Electronic Communications Regulations 2003 should be a priority.

The Commissioner feels that he should be empowered to carry out audits and inspections of data processing operations without data controller consent, much like other regulators,

such as Environmental Health Officers, Trading Standards Inspectors, and Health and Safety Inspectors who all have powers to enter premises without consent.

Telecoms companies should be under a duty to supply information to the Information Commissioner's Office, when requested. "There is a very strong argument that in such circumstances the regulator should have the necessary powers to require information to allow it to fulfil its statutory duty and not be dependent on the good will of other organisations in its efforts to enforce the law."

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## Durant refused leave to appeal

The claimant in the infamous data protection case, *Durant v Financial Services Authority*, has been denied access to the highest UK court to hear his case.

On 29th November, the House of Lords refused leave to appeal to Mr Durant, the determined litigant in the most significant UK data protection case to date. By doing so, the House is allowing the decision of the Court of Appeal to stand as good law, at least for the time being.

The 2003 case of *Durant v*

*FSA* found that certain paper-based files used by the FSA did not amount to a 'relevant filing system' for the purposes of the Data Protection Act 1998. The court stated that essentially a paper-based filing system must be searchable almost as easily as a computer record in order to be caught by the provisions of the Act.

Lord Justice Auld in the Court of Appeal also took the opportunity to give his impression of what information amounts to 'personal data' under the

law—for further detail, see *Privacy & Data Protection*, Volume 4, Issue 3, page 4.

Now that the highest court in the UK has declined to deal with the issue, the *Durant* case essentially represents current data protection law in the UK—the problem for the UK is that the case does not sit comfortably with the European Commission's view of what data protection law should be.

The Commission has been keeping a close eye on the  
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