

Information Law Update - July 2010

By Ibrahim Hasan (IBA Solicitors and Act Now Training)

The Coalition Government has announced a series of legislative proposals and initiatives which will have a big impact on information law. The Prime Minister, David Cameron, has said he wants to rip off the "cloak of secrecy" around government and public services and extend transparency as far as possible.

The document entitled "The Coalition: Our Programme for Government" (the Coalition Agreement) contains a number of proposals for disclosing public sector information online on a regular and routine basis, particularly information about central government spending and contracts. This means that the public will no longer have to make (or rely on others to make) requests for information under the Freedom of Information Act 2000 (FOI) for that information.

Details of large government contracts will be published from September 2010, items of central government spending from November and local government spending over £500 from January 2011. Recently the first two tranches of data (from 2008/09 and 2009/10) on the COINS Database have been published. The Combined Online Information System includes what departments were authorised to spend, what they actually spent and what they are forecast to spend in the future. Experts are now poring over the complex files to decipher their contents. In total there are thought to be over three million separate items of information in the new release. No doubt this will lead to many more FOI requests about specific items of expenditure. Will the Government release the requested information or will it bring the shutters down by claiming the exemptions under Part 2 of the Act?

Other proposals include requiring the online publication of:

- Details of every UK project that receives over £25,000 of EU funds
- Details of all UK aid spending
- Local crime statistics
- Data about the performance of healthcare providers
- Performance data on education providers as well as past exam papers
- Further information about the costs, graduate earnings and student satisfaction ratings of different university courses
- Serious case reviews by councils, with identifying details removed
- Meeting minutes and local services and performance data of councils

Over the last few years, one of the biggest targets for FOI requests has been the salaries and expenses of public sector officials. The Government says increased transparency on senior pay will "help win back people's trust". In June, the salaries of those earning over £150,000 were revealed for the first time and in July the Cabinet Office published details of quango employees earning the same. The Decentralisation and Localism Bill will require public bodies to publish online the job titles of every member of staff and the salaries and expenses of senior officials paid more than the lowest salary permissible in Pay Band 1 of the Senior Civil Service pay scale. This is around £60,000 per year.

In section 16 of the Coalition Agreement, entitled "Government Transparency", it is stated:

“Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative application and websites.”

Like its predecessor, which enacted the Re Use of Public Sector Information Regulations 2005 (ROPSI), this Government is seeking to promote the further commercial exploitation of public sector information. It believes this will add to economic growth as the private sector collates the new information and offers it in different ways to the public through websites and mobile applications. Ministers quote research from Cambridge University that suggests such information could add £6bn to the economy. The Government proposes to create a new “right to data” so that Government-held datasets can be requested and used by the public and then published on a regular basis. All data published by public bodies will be published in an open and standardised format so that it can be used easily and with minimal cost by third parties.

What is unclear is how this proposal will fit into the existing legal framework as set out in FOI and ROPSI. The former gives access to information but does not include an automatic right to re use the information in breach of public authorities’ intellectual property rights. ROPSI contains an obligation on public authorities to consider requests for re use of such information but there is no obligation to allow re use. Perhaps the Government will force public authorities to allow re use of information unless there are good reasons for refusing?

The Government has also pledged to extend the scope of FOI to achieve greater transparency. As yet it is unclear as to what this means. The Conservative Election Manifesto contains no more detail whilst the Lib Dems pledged to extend FOI to bodies delivering monopoly public services, citing the example of Network Rail. They also promised a Freedom Bill, a draft of which is on the Lib Dems website and, which contains more clues as to how FOI could be changed in the future. It promises to remove the ministerial veto under section 53, limit the Act's exemptions and extend the right of appeal to the Information Tribunal (now the First Tier Tribunal (Information Rights)) to appeals not on a point of law.

Of course these were Lib Dem aspirations drafted at a time where even they did not envisage being in power to implement them. I doubt they are priorities for the Conservatives or considered by the Lib Dems, in the grand scheme of things, to be worth arguing over. My guess is that the new Government will extend FOI to some private bodies by way of an order under section 5 where they are exercising public functions or providing contracted out public authority functions. The previous government pledged, in March 2010, to add Academy Schools, the Universities and Colleges Admissions Service (UCAS), the Association of Chief Police Officers (ACPO) and the Financial Ombudsmen Service to the list of FOI bodies. Due to the election the statutory instrument never materialised. The new Government has just agreed an amendment to the Academies Bill to add Academy Schools to the list of FOI bodies.

In the Coalition Agreement, under the heading “Civil Liberties”, there are a number of proposals which fall in the category of data protection. These include the scrapping of the ID Cards scheme, the National Identity Register, the next generation of biometric passports and the ContactPoint database. Legislation is already in place to allow the Government to do this. However, it is important to note that recent announcements suggest that the National Identity Register and the ContactPoint database have not been scrapped altogether just yet. The Government has announced a freezing whilst it decides what to do next.

Other data protection proposals in the Coalition Agreement include:

- outlawing the fingerprinting of children at school without parental permission
- adopting the Scottish model for the DNA database
- ending the storage of internet and email records without good reason

There is also a proposal to further regulate CCTV, although it is not entirely clear as to how or why this will be done. Overt CCTV is already regulated by the Data Protection Act 1998 and its CCTV Code of Practice . Covert CCTV is regulated by Part 2 of the Regulation of Investigatory Powers Act 2000. So what is left to regulate?

A number of the bills announced in the Queen's Speech will enact many of the above proposals. The main one to look out for is the Freedom (Great Repeal) Bill which is intended to cover a wide range of subjects, to be announced in due course. This is a challenging time for information lawyers and practitioners. There will be many new laws to get to grips with but, the state of the public finances means that, there will be little if any new money to help implement them.

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