



**The Campaign for Freedom of Information**

## **Letter from Home Office minister Lord Williams of Mostyn, about confidentiality clauses in the Data Protection Bill.**



PARLIAMENTARY  
UNDER  
SECRETARY OF  
STATE

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Dear Mr Frankel

### **DATA PROTECTION BILL**

Thank you for your letter of 2 June to George Howarth about what is now clause 59 of the Data Protection Bill.

As you know, that clause gives effect to article 28.7 of the EC Data Protection Directive. That requires members and staff of national data protection supervisory authorities (in our case the Data Protection Commissioner) to be subject to what the article refers to as a "duty of professional secrecy" as regards the confidential information to which they have access. You are concerned that, having regard to the Government's proposals for a new freedom of information law, clause 59 goes further in restricting disclosures by the Commissioner and her staff than is required by the Directive.

I entirely agree that the provision made generally in the Data Protection Bill, and

not merely clause 59, should be consistent with the arrangements to be made for FOI. Home Office officials are in very close contact with their opposite numbers in the Office of Public Service in the Cabinet Office, who are developing the FOI proposals. Our aim must be to ensure that the two pieces of legislation mesh properly together, and achieve the Government's policy objectives as regards both data protection and FOI. As you will recognise, however, the provision that we make must be fully consistent with the obligations which are imposed upon us by the EC Data Protection Directive.

In drafting clause 59, we had close regard to the sorts of concern that you have raised in your letter. As you know, our original proposal was strongly criticised by the Data Protection Registrar. In an attempt to address her concerns while still respecting the requirement of article 28.7 of the Directive, we brought forward a revised version - the present clause 59 - by way of amendment in the House of Lords.

You suggest a number of ways in which the clause might be further amended. One of these would be to make the prohibition on disclosures dependent on harm being caused. This suggestion was debated in the House of Commons Standing Committee which considered the Bill. As George Howarth explained to the Committee, we do not believe that article 28.7 permits this approach. The Directive does not limit the prohibition on disclosures to confidential information which would cause harm if it were disclosed.

As you point out, clause 59 permits disclosures which are made for the purposes of and are necessary for the discharge of any functions under the Bill. You mention a number of circumstances in which the requirement for the disclosure to be "necessary" in relation to the function would mean that the disclosures could not be made. In particular, you suggest that the Commissioner's function under what is now clause 51(2) is too limited to permit the release of information whose disclosure is expressly prohibited by clause 59. I am not sure that the effect of the two provisions taken together is as restrictive as you would suggest. Clause 51(2) puts a duty on the Commissioner to arrange for the dissemination to the public of such information as she thinks expedient about the operation of the Bill, about good practice and about other matters within the scope of her functions under the Bill. This is a very broadly expressed - and - mandatory function, putting a substantial element of discretion in the hands of the Commissioner as to the dissemination of information. Clause 59 has, of course, to be seen in that context.

You mention the public interest defence in clause 59(2)(e), and suggest that this is unnecessarily strict. In particular, you are concerned that disclosures may only be made where they are necessary for reasons of substantial public interest. Again, our concern here is to ensure that any disclosures made in reliance on this provision do not infringe article 28.7 of the Directive. That is the reason why we have included "substantial". However, in the light of your comments this is certainly something which I am prepared to have another look at.

I am sorry that we are unable to go further to meet your concerns. I have explained the constraints which the Directive imposes upon us. We have already given long and careful thought to this provision, and have made changes to it in the light of concerns that were expressed at an earlier stage. Subject to looking

again at the substantial public interest test in clause 59(2)(e), I really think that we have now gone as far as we can to meet those concerns consistent with the Directive.

Nonetheless, in taking forward the work on the relationship between the Data Protection Bill and the proposals for FOI we shall continue to have regard to this matter. If in the course of that work we identify a way of going further to achieve the objective which you seek, we would be able to make any necessary adjustment in the FOI legislation.

I am copying this letter to the Chancellor of the Duchy of Lancaster.

Yours sincerely,

THE LORD WILLIAMS OF MOSTYN

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