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From: Richard Thomas**Sent:** 25 March 2008 21:23**To:** Lee Taylor**Cc:** David Smith; Jonathan Bamford; Phil Jones; Stephen McCartney; Mick Gorrill; Susan Fox; Robert Parker; Katie Johnson; 'ICO Press Office'; 'Patrick Robathan**Subject:** RE: Criminal Justice and Immigration Bill

I met Suma Chakrabarti and four other officials at MoJ this afternoon. Nicola Westmore represented the Information Rights Division.

Clause 76 (previously 129) will now be debated on the 3rd day of the Report stage – on 21 April. But – because of the intervening parliamentary recess - any amendments must be tabled by 3 April. The issue is becoming very political, though the “arithmetic” is very uncertain. The Liberals are “biding their time”, but likely to resist any attempt to remove the clause. Lord Kingsland, leading for the Conservatives, has said he would be unhappy at removal. But some media interests are now lobbying the Conservatives heavily in favour of removal. David Cameron and Lord Strathclyde are said to have some sympathy with removal, but have not yet decided. A worst-case scenario for us is a Conservative amendment, which is supported (or simply not opposed) by the government.

The officials' position is currently to favour retention, but with the new clause to widen the defence. There have been several meetings with media representatives – including Paul Dacre, Guy Black, Murdo McClellan and Rebekka Wade. The media side welcome the new clause as far as it goes, but are still holding out for removal. One of their fears – though remote - is that the penalty will be increased (clause 76), but the wider defence which gets taken later as a new clause will not succeed. They had countered this by arguing that the prison sentence should be dropped **and** the defence widened. I fell off my seat at this point and said my reaction to such an outcome would be “nuclear”.

I was asked how we would react to removal. I said it would be very noisy and very messy. We will publicly denounce any such attempt. If we lost, we would publish a third report to Parliament, documenting how this state of affairs had come about. Although we would certainly not get a sympathetic hearing across all the media, there are broadcast and other media which would report our position. It would also sit very uncomfortably with the imminent Gus O'Donnell report (probably 2 April).

I was asked if various media offers would be “acceptable” to ICO – amendment to Code, more training, guidance etc. My general answer was “too little, too late” and that I had no confidence that any improvements would stick for the long term. I was pressed on why unlimited fines were not sufficient and why we had not used the Crown Court more. I said that the deterrent had not worked so far and that our big case at Crown Court level had resulted in conditional discharges. Fines are an overhead. The prospect of prison – especially at magistrates level – concentrates minds. As we have seen.

The meeting concluded with discussion about any other compromises. I said we had given quite a lot with the wider defence and would be prepared to support it publicly. There was some discussion about the possibility of delayed commencement. I could not welcome that prospect, but might not denounce it if that was the price of keeping the clause. But we would keep up the pressure if commencement did not occur within (say) six months.

They promised to keep us informed.

After the meeting, I decided two immediate follow up steps as follows:

1. I have sent the attached letter to 10 selected politicians. This is basically a slightly amended version of the intro to the draft briefing. It is intended to serve as a warning shot across the bows of those who might be wavering and as an encouragement to potential supporters. I provided Suma's office with the text (but not the list) a couple hours before despatch. It has gone to Lords Kingsland, Strathclyde, Henley, Thomas, Holme and Soley, Baroness Miller, David Cameron, Nick Herbert and Nick Clegg.
2. I have discussed a media initiative with James Ford and we agreed that we will need to launch this next week – provisionally 2 April – unless we are confident that the clause will remain. Trimedia will prepare material for possible use on this basis. The strategy for the moment must be to steer away any

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support (government or opposition) for removal.

Richard

-----Original Message-----

From: Richard Thomas

Sent: 20 March 2008 10:39

To: Lee Taylor

Cc: David Smith; Jonathan Bamford; Phil Jones; Stephen McCartney; Mick Gorrill; Susan Fox; Robert Parker; Katie Johnson; 'ICO Press Office'; 'Patrick Robathan' [redacted]

Subject: RE: Criminal Justice and Immigration Bill

MOJ tell me that they now think the clause will not be debated until 3 April at the earliest, so there is no need for anything to go out today or at the start of next week.

The clause number has changed in the re-published Bill. I think it is now Clause 86, but please check.

Next up-date after my meeting on Tuesday afternoon.

Richard

-----Original Message-----

From: Jonathan Bamford

Sent: 20 March 2008 08:29

To: Lee Taylor; Richard Thomas

Cc: David Smith; Phil Jones; Stephen McCartney

Subject: RE: Criminal Justice and Immigration Bill

On the DPD contacts front, we do have contact with groups that include peers like EURIM. They are very quick at getting things out. We also have contact with peers like Earl of Errol that we have built though this. Merlin Errol is a cross bencher who we have briefed before on the issue of blagging etc and he is very alive to the issues here. I am sure Stephen will do his best.

Jonathan

-----Original Message-----

From: Lee Taylor

Sent: 19 March 2008 18:49

To: Richard Thomas

Cc: David Smith; Phil Jones; Jonathan Bamford; Stephen McCartney

Subject: RE: Criminal Justice and Immigration Bill

Hi

I will try and do it after my ISEB course tomorrow but apart from that the 26th March is the only day I am free to make any changes and send it out. If the clause is discussed on the 26th we would have to send hard copies by tomorrow which will not be possible without knowing what the Minister intends to do. I think email and political monitoring channels will be the only way to get the message out in time for the 26th.

Do DP development have any contacts or channels we could use at short notice if necessary?

Thanks

Lee

-----Original Message-----

From: Richard Thomas
Sent: 19 March 2008 10:52
To: Lee Taylor
Cc: David Smith; Mick Gorrill; Phil Jones; Susan Fox; Robert Parker; Katie Johnson; 'ICO Press Office'; 'Patrick Robathan' [redacted]
Subject: RE: Criminal Justice and Immigration Bill

Re-sent with correct month. Sorry.

Richard

-----Original Message-----

From: Richard Thomas
Sent: 19 March 2008 10:45
To: Lee Taylor
Cc: David Smith; Mick Gorrill; Phil Jones; Susan Fox; Robert Parker; Katie Johnson; ICO Press Office; 'Patrick Robathan' [redacted]
Subject: Criminal Justice and Immigration Bill

I attach a draft Briefing Paper for the House of Lords when clause 129 reaches Report stage. This is based on the draft prepared by Lee to which I have added a Summary drawn largely from my letters to Jack Straw and the PM.

The first day of Report stage is Wednesday 26 March, and the 2nd day will probably be the week after. We do not know when clause 129 will be reached – probably on the 2nd day, but we cannot yet be sure. Randalls are closely monitoring the situation, and MoJ have said they will keep us in the picture.

The other uncertainty is not yet knowing which way the government will jump. I hope they will decide to keep the clause, subject to amending the defence in ways we would find acceptable. But there is a lot of brinkmanship going on at the moment on all sides. I may get more intelligence when I visit MoJ on other matters later today. And I have been asked to meet Suma Chakrabarti and others on Tuesday afternoon (25 March) - the day before the 1st Report date. This is meant to be the “final decision” meeting, but it is quite possible that a decision will be made before I get there.

All this makes it hard for us to plan – substance, style and timing. We need to take a hard and more public line if withdrawal remains a real possibility. A softer line if government sticks to its guns. Ideally we wish to get our Briefing to relevant peers about 24 hours before the debate.

For now, could Lee (with any input from others) please tidy up the attached draft? It has been drafted so that, with fairly few changes, it could be “hardened” or “softened” without too much effort at the last moment. Can you please add an ICO logo on the front page and prepare the distribution list (hard copy and e-mail) and short covering letter.

Could Trimedia please prepare contingency media materials for use on 25/26 March or the week after for actual use if things are going badly?

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Richard Thomas
Information Commissioner

richard.thomas@ico.gsi.gov.uk



25 March 2008

Criminal Justice and Immigration Bill: Clause 76 – Illegal Trade in Personal Data

I am writing to you personally to ensure that you are aware how alarmed I am by the possibility that clause 76 (previously 129) may be withdrawn from the Criminal Justice and Immigration Bill at the Report stage in the House of Lords.

As Information Commissioner I attach great weight to this clause which, primarily as a deterrent, increases the penalties for the data protection offences of disclosing, obtaining or procuring personal information. To be illegal, the activity must be carried out knowingly or recklessly without the consent of the data controller and there are strong public interest and other defences. This has been a criminal offence for many years, but our 2006 report "**What Price Privacy?**" exposed a hidden and extensive trade in personal data which damages individuals, organisations and society. Personal data at risk includes financial, medical, police and government-held records.

The clause has strong and widespread support - notably from organisations holding large data collections. Following extensive MoJ consultation, it has made good progress through Parliament. Withdrawal from the Bill now would have very negative symbolic and substantive consequences. Public and political concerns about the security of personal data have never been higher. This is the first legislative opportunity after recent data losses to demonstrate the seriousness of safeguarding peoples' personal information. If these proposals to deter **deliberate** breaches are not enacted, it will difficult for measures aimed at preventing accidental data loss to be taken seriously.

I am aware that some media interests have been lobbying against the clause. I fully support genuine investigatory journalism, but the louder the protests against stronger penalties, the more it suggests a desire to continue with activity which has been illegal for many years. The press cannot be above the law. The law does not threaten legitimate and responsible journalism. It would be very difficult to justify the activities which our report uncovered in public interest terms and reliance on this defence was not even suggested in the media-related cases where convictions were secured. These involved wholesale obtaining of tittle-tattle by deception or payment. The existing penalties – including the possibility of unlimited fines - have not succeeded in deterring this illegal activity. And the major case brought in the Crown Court resulted in Conditional Discharges.

To allay media concerns, however, I am prepared to support amendment of the Bill to widen the public interest defence. I will also be publishing a Statement of Prosecution Policy which will very clearly recognise the importance of freedom of the press.

I am determined to stop this illegal and pernicious market. There will never be a better legislative opportunity to tackle this major problem. To remove Clause 76 from this Bill would send a loud signal that Parliament is not willing or able to make any serious attempt to tackle data security problems.

I propose to circulate more detailed Briefing as the Report stage approaches.

Richard Thomas
Information Commissioner