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A spectre is haunting Europe

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THE BATTLE AGAINST PRIVACY

By next Monday, organisations and individuals using computerised information about other people should have registered their databanks under the 1984 Data Protection Act. In September 1987, Britons will get a new right to inspect the contents of many files held about them. That right has taken 20 years to establish, in the face of the determined resistance of successive governments and their officials, report DUNCAN CAMPBELL and STEVE CONNOR

PRIVACY, in legislative terms, is a Home Office matter. With a few honourable exceptions, no one in the Home Office, be they civil servants or ministers — of either party — has ever given a damn about personal privacy.

The process of giving British citizens the right to privacy began by accident, as an attempt to head off an MP's private bill on the legal 'Right to Privacy'. It has only now been enshrined in law because British international trading interests in information technology might otherwise have been damaged.

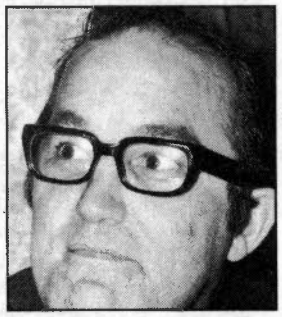
During the two decades of inaction, the Home Office first excluded *all government activities* from being considered as threats to privacy. Forced to broaden the issue, they ruled that Home Office interests, which in fact pose the major threat to privacy — police, immigration and national-security activities — should be wholly exempt from scrutiny. Finally driven to the point of near legislation, they nominated a Home Office official as a suitable protector of privacy against the abuse of personal information.

Dragged by Parliament and public opinion far enough to give the Data Protection Registrar some measure of independence,they robustly fought to ensure that the Registrar had few duties, no powers to speak of and a staff as small as conceivable. To acknowledge that a little useful protection for privacy may yet have come from this process is not to belittle the determined and forthright avoidance of the issue successively displayed by Home Secretaries James Callaghan, Reginald Maudling, Merlyn Rees, William Whitelaw and Leon Brittan.

In February 1967 Alex Lyon MP introduced a Right of Privacy Bill. It failed to get a second reading. But at the same time, the National Council for Civil Liberties (NCCL) launched a privacy campaign; and Justice, the British section of the International Commission of Jurists, started to draft potential legislation.

A more serious threat, from the government point of view, arose in January 1970 in the form of a Right to Privacy Bill introduced by Brian Walden MP. Walden's bill was adapted from the draft by Justice, who had just published a report on privacy and the law. The Walden bill recommended a general, enforceable right to privacy. It attracted widespread support.

Neither government nor Home Office cared in the slightest for this proposal; they reached quickly for one of the regular Whitehall standbys — a Royal Commission. Walden was cajoled into withdrawing his bill during its second reading, so that the Commission might deliberate. The Younger Commission on Privacy was appointed in May 1970, but central government activities were excluded from its terms of reference.



Alex Lyon: started the ball rolling in 1967, with a 'Right to Privacy' Bill. It didn't get a second reading

Younger reported in July 1972, recommending legislation on technical surveillance ('bugging') devices and the rapid creation of a 'standing commission' to keep under review the gathering and handling of personal information on computer.

The Home Office offered no action, but announced a new consultative exercise in order to 'take public reaction and the views of those interested in this matter into account before announcing our conclusions'. A White Paper would be proferred 'in due course'. A general election conveniently intervened before any further action was needed.

The incoming Labour administration in 1974 promised an early White Paper on the issue — no later than the summer. By January 1975, the White Paper remained unpublished. Home Office ministers had found 'a need to re-examine certain parts [of it]'. It was eventually published in December 1975, 18 months late.

A supplement listed central government computers then in use. That it ever emerged at all owed a great deal to Alex Lyon, then a newly appointed Home Office junior minister, who as a member of the Younger commission had signed a minority report recommending stronger protection for personal privacy.

The 1975 Home Office *Computers and Privacy* White Paper was drafted in less than the usually vague terms. It warned that:

> The time has come when those who use computers to handle personal information, however responsible they are, can no longer remain the sole judges of whether their own systems adequately safeguard privacy.

A Data Protection Committee was to be appointed forthwith, with the intention that it should lead directly to legislation for an independent Data Protection Authority. In February 1976, Sir Kenneth Younger was appointed to lead the new committee, but he died shortly afterwards.

His place was taken by the then director of Hatfield Polytechnic, Sir Norman Lindop. The Lindop committee started work in July 1976. Its report described how an independent, statutory Data Protection Authority should be set up; and recommended a range of codes of practice, legally enforceable, to govern the handling of personal data in different areas of concern.

BY 1979, over eight years had passed since the Walden bill, with legislative action successfully avoided. But Lindop offered the Home Office clear recommendations for early legislation, to which the government had earlier said it was committed. The Home Office, however, announced a new consultative exercise so that 'interested bodies' might offer their comments on the report. In effect, all the people whom Lindop had just consulted were to be consulted again.

In January 1979, Home Office junior minister Lord Boston stated that 13 government departments would soon be consulting over 200 such bodies, seeking their views. Home Secretary Merlyn Rees explained that this process might take some time as he did 'not think it appropriate to impose a rigid time limit upon consultation'.

In the event, the new consultations eventually took nearly two years to complete. The Home Office studied the responses; co-ordinated them; and considered their view. By

Brian Walden: tried again in 1970. The government headed him off with a Royal Commission instead

the time the responses had been fully examined, and a suitable view formed, another general election had conveniently intervened.

Kenneth Younger: chaired the Royal Commission on Privacy. But he died in 1975, before he was allowed to look at computers in detail, or government activities at all

The new government had no policy, a clean slate, and plenty of time to start re-thinking the issue from the beginning.

The new incumbents at the Home Office were, from the department point of view, commendably uninterested in information privacy. They wanted legislation on it like they wanted a hole in the head. But in 1980 the House of Commons Home Affairs Committee examined the history of privacy legislation.

The committee had a particularly arduous time trying to get intelligible information from Home Office witnesses. Home Office Deputy Secretary Ralph Shuffrey was repeatedly asked when legislation would come; repeatedly he answered that it was 'under consideration'. When it was pointed out that a special Council of Europe Convention on data protection would soon be in effect Shuffrey suggested that this provided good reason for further delay:

> It is not necessarily a good idea to have a policy cut and dried before the convention is ready for signature . . .

Despite British delaying tactics in Strasbourg (Mr Shuffrey called it '[action] to ensure that the draft Convention is phrased in the most sensible terms'), the Council of Europe's Committee of Ministers approved the Convention in October 1980. Styled the *Convention for the Protection of Individuals with regard to Automatic Processing of Data*, the new agreement was opened for signature at the start of 1981.

The Convention requires each signatory to have protection legislation, and not to transfer personal data to or from countries lacking such legislation. It prescribes a basic right to individual privacy, in terms broadly similar to the British Data Protection principles.

The Home Office was cornered. Consumer groups, civil rights bodies, medical and other professions, computer operators and users, trade unionists, the information technology industry and other government departments now shared an interest in early legislation.

The Home Office promised an early statement. None came until March 1981, when Home Secretary William Whitelaw conceded that legislation 'in principle' would have to come 'when an opportunity offers'. It would be the minimum necessary to comply with the Convention. But, first, there would be a White Paper, so that the government's views could be discussed and appropriate groups consulted yet again.

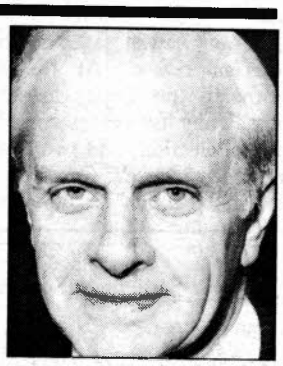
By the start of 1982, 12 years had passed since the Walden bill, 15 years since the issue had been first raised; the European Convention was a year old — and all government action had been successfully avoided. Labour MP Michael Meacher proposed a private member's Data Protection Bill. Like its predecessors, it did not reach a second reading. But an accident of fate now forced political commitment and a timescale for action onto a reluctant Home Office.

The *Sun* newspaper embarked on an exercise in breaching Meacher's personal privacy by hiring private detectives to see how much information they could gather on his personal life. Hedging their bets, they knew the exercise would either yield embarrassing data on his personal life (a good *Sun* story) — or illustrate how even innocuous information could be gathered to the detriment of the citizen (a good shock-horror story).

When the *Sun*'s probe into Meacher's personal life was raised in Parliament, the Prime Minister responded with unusual sympathy and characteristic impetuousness. 'I share your distaste,' Mrs Thatcher told the questioners, adding that legislation was 'urgent'. It was, she pronounced, the government's intention to legislate on data protection in the next session of Parliament. This was the first that stunned and dismayed Home Office officials had heard of it.

NOW THE PROMISED White Paper had actually to be written. It emerged hastily two months later. After years of effort, and a thousand pages of previous reports and White Papers, the Home Office proposals covered scarcely six pages.

The new law, the Home Office then said, would be the 'minimum additional burden



Sir Norman Lindop: chaired the Home Office's Data Protection Committee. Lindop found that central government was the major threat to privacy

that is consistent with proper protection'. Their proposal to put a Home Office official in charge of data protection had quickly been laughed out of court. There would be an independent Registrar.

But the Registry would be small: a staff of 20, and 'less once the Register is established'. Consequently, the Registrar's ability to police personal information privacy would be made impossible as he would 'not have the resources to supervise the operation of data systems in detail'. Manual files and records were to be excluded from the register. There would be no binding codes of practice.

The bill was published in December 1982. The purpose of the bill was to do the 'minimum necessary' to enable Britain to ratify the European data protection convention. Manual records were excluded, but computerised; records of almost every description had to be registered; failure to register was to be a criminal offence.

The Registrar was nevertheless given few formal powers and duties. The bill had failed to make the statute book when the 1983 general election was called.

A new bill, presented quickly by the returning government in June 1983, was described as 'simplified'. Computer information held solely for payroll and accounting purposes was excluded.

In a move to further weaken the bill — which the Home Office were pleased to describe as 'easing the Registrar's workload [and enabling] him to devote more of his resources to the general oversight of data protection' — the Registrar lost powers to enter premises to check on the conduct of databank operators. The new bill required the Registrar to apply to a circuit judge for this purpose.

The bill faced renewed, fierce and well-deserved criticism, particularly from such powerful professional lobbies such as the British Medical Association. The BMA described it as 'a load of holes joined together'. The major features criticised were the total exclusion of manual records, the vaguely drafted definitions and terms of reference, and the numerous and very widespread exemptions.

It was rather doubtful, according to both the National Council for Civil Liberties and Conservative Lawyers, that the bill even achieved its objective of enabling Britain to ratify the European Convention.

The weak position of the Registrar was attacked, and there was renewed pressure for an independent authority, as Lindop had recommended. But if there was one thing the Home Office would not do, it was to accept any part of any of Lindop's suggestions.

As Professor Fred Martin, one of the Lindop committee members, suggested, part of the reason for the eventual disregard of the committee's work was the Thatcher government's whimsical attitude to public-interest organisations:

> The incoming government was committed to the destruction of what it was pleased to call 'quangos'. How useful to manufacture a name like this, a slightly comic, slightly ominous name which enables you cheerfully to demolish some useless, some harmless, but some quite valuable and constructive bodies. How could they contemplate setting up a Data Protection Authority which could be immediately identified as another quango?

The Data Protection Act, Martin predicted accurately, would 'ensure that there is no embarrassment to government activities'. He added his own epitaph to the work of the Data Protection Committee:

> The fact that the report has been so effectively neutralised is a striking testimony not only to political indifference, but to the ease with which some powerful interests can take advantage of that indifference to ensure that their own domain remains inviolate.

The above is an edited extract from On the Record *by Duncan Campbell and Steve Connor, to be published by Michael Joseph on 19 May, £7.95 (paperback), £12.95 (hardback).*

Next week: who's got the data?