



The Royal Academy  
of Engineering

## Increasing penalties for deliberate and wilful misuse of personal data

Department of Constitutional Affairs

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The responses to the questions below are based on conclusions reached in The Royal Academy of Engineering's forthcoming report 'Dilemmas of Privacy and Surveillance: Challenges of Technological Change.' This report makes projections for the future course of technologies for collecting, storing and processing personal data and explores the social impacts of such technologies – including the impacts due to criminal abuse of such technologies.

### **Question 1**

**Do you agree that custodial penalties should be available to the court when sentencing those who wilfully abuse personal data (i.e. knowingly or recklessly obtain, disclose or seek to procure the disclosures of such data without the consent of the data controller)? Please give reasons for your answer.**

Yes, there is a serious need for stronger penalties for the wilful abuse of personal data. Theft and misuse of individuals' personal data is a serious crime with damaging consequences. Stolen data can be used to commit financial crimes which can cause distress and hardship to an individual, thus abuse of personal data should be viewed as being as serious as other types of fraud. Abuse of personal data can also cause great psychological distress to an individual when personal details are obtained by stalkers or by investigative journalists looking for information about peoples' personal lives. Penalties for abusing personal data should reflect the damage and distress that the crime causes.

There is also need for tougher penalties due to the increased need to deter this sort of crime. Developments such as the Government's ID cards scheme, and the general moves toward 'e-Government', will involve the collation of a wide range of detailed personal data about individuals. The existence of such a large amount of valuable data in a single database will be a honeypot to data thieves. Therefore, there must be more serious consequences for those who would be tempted to fraudulently access this data, in order to diminish its attractiveness.

There should also be appropriate sentences for those who negligently distribute personal data, for example, companies who are careless with customers' personal details, leaving them accessible to all staff or even to the public. These should not be custodial sentences, but should be sufficiently severe to prevent companies being reckless with sensitive personal information.

### **Question 2**

**Do you agree that custodial penalties will be an effective deterrent to those who seek to procure or wilfully abuse personal data? Please give reasons for your answer.**

The effect of custodial sentences is likely to convey the message that procuring personal data without consent is a serious crime, rather than simply unethical. This should be especially effective with regard to the demand for data by journalists, who were identified in the Information Commissioner's Office report 'What Price Privacy?' as playing a significant role in the market for personal data. Thus introducing custodial penalties, and thereby emphasising that procuring data is a criminal offence, should reduce the demand for personal data. Imprisonment of those who routinely obtain personal data for profit should seriously limit the supply, both by curtailing their activities and by deterring them from returning to data theft after conviction.

However, penalties for the misuse of data cannot be relied upon to prevent completely the theft of data (especially the kind of data that may be held in a National Identity Register). Therefore, there must be significant efforts to ensure that it is stored securely in systems that are capable of providing forensically sound evidence when necessary and that it is extremely difficult for criminals to access it by whatever means.

### **Question 3**

**Do you agree that the custodial penalties are of the right length?**

The view of The Royal Academy of Engineering is that the custodial penalties are of the right length, but as this is outside the expertise of the Academy, it can offer no evidence-based support for this view.

### **Question 4**

**Do you agree that a guideline issued by the Sentencing Guidelines Council is necessary for this offence in England and Wales?**

The view of The Royal Academy of Engineering is that a guideline is necessary, but as this is again outside the expertise of the Academy, it can offer no evidence-based support for this view.

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