

Government's 'Big Brother' Database. Do we need it? The 'Single Resident Record' Proposal

What intrigues me about this whole plan is how little, in fact, I have to do with the Government. I submit a paper tax return, pay my rates by cheque and renew my car tax at the post office. That's the extent of my involvement with the bureaucracy.

On your seats you will find a report ¹ by Human Rights specialist Allan Norman which I commissioned as my submission to the consultation. I will explain the background to this and the concerns that led to me commissioning legal opinion on the Government's Single Resident Record proposal.

This is a very small Island and the '*everybody knows everybody*' culture extends through Government. Even if strict privacy rules for a database are constructed information visible on a screen in an open plan office may cease to be private very quickly. It's unavoidable.

The effect of personal information needlessly leaking into the public domain can be devastating and I have known local families to up sticks and leave because some family secret, or allegation, was revealed. Typically, the parents can't face a life where their children are bullied because of leaked personal information and the inevitable gossip and speculation that ensues.

The blithe notion that people, particularly young people, care less for their privacy in the social media age is also false. The Appleby Hack obviously makes this point. Nobody is going to tell Facebook if, for example, they have an STD but as that type of information is encoded digitally by Government it is lying in wait for the hacker.

I experienced a couple of interesting events arising from the misuse and corruption of my own personal data.

Back in 2000 I was working as an airline pilot at Heathrow. One of the company perks was being able to buy cheap tickets from the airline for family and friends on the strict undertaking that I was responsible for their behaviour.

It was, therefore, traumatic and career threatening to have a unfounded allegation made against me by my employer that I had arranged for a ticket for a passenger who had caused a violent incident on board an aircraft and had to be dragged off by the police.

This was nothing to do with me but the data, or more precisely the digits, showed that I had purchased the ticket using my company staff number. Whether the data was corrupt, stolen or abused I never found out but it was the devil of a job to get it cleaned from my employment record. Thankfully, I did so, and am shortly collecting my pension but the misuse, or misinterpretation, of my background personal data, that I was completely unaware of, could have ruined my career and financial prospects.

Another event was when, having recently moved to the Isle of Man, I opened an account

¹ Paper on a Single Resident Record for the Isle of Man, Allan Norman, September 2017
http://www.positiveactiongroup.org/index.php?option=com_attachments&task=download&id=210

with a high street bank. I became concerned about the information that bank held on me and I submitted a data protection subject access request and found that, instead of the £1 I had expected, my account showed a healthy balance of over £400,000. The bank, it transpired, had opened my account using a dead man's account number - and then forwarded me his records. Whilst this was slightly amusing, the digits could have easily attracted the false interest of HMRC. The result of this was that I completely lost trust in a bank which I had been with for thirty years.

Of course, you can change banks and employers but not so easily can you change your government and the difference is that private organisations cannot demand personal data – you can always switch companies – but Government is different; it can create laws to demand your personal information.

The point is that there is no possibility that personal data held by organisations, or Government, can be guaranteed to tell the truth about any one of us. As our lives become defined by digits it is always possible that the data conceals a lie, and that the Government will act on a false view of us, which we may have to deal with in many unexpected and uncomfortable ways. We can't be expected to continually keep checking up on the accuracy of our data - there's too much background information for this to happen.

The UK Supreme Court well understands these points.

In the case ² of an adult who was refused a job because of an entry made on his records when he was eleven that he had committed a minor crime committed they commented on the: *“growing concern in recent times about surveillance and the collection and use of personal data by the state”* and, in a 'Winslow Boy' type judgement the Court came down on the side of the young man. In essence, the use of personal data retained by the state was an interference under Article 8 of the Human Rights Act.

That's a clear case of the British Common law catching up with the states data gathering powers and acting to curtail it.

There is a furious row ³ in Scotland just now about data gathering and information sharing. FOI requests have revealed that Police Scotland are running a Vulnerable Persons Database. If the Police think your 'well-being' is at risk then your details are added to the database so you can be monitored. There are, so far, 800,000 people on this database out

² R (on the application of T and another)(Respondents) v Secretary of State for the Home Department and another (Appellants), 18 June 2014

https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0048_Judgment.pdf

³ Personal details of 815,000 'vulnerable' Scots held on secret police databases, Sunday Express, 29 October 2017

<http://www.express.co.uk/news/uk/872465/Scots-details-held-on-police-database-vulnerable-people>

THE personal details of more than 815,000 Scots are being held on a secretive police database of “vulnerable people”, almost double the number previously reported.

. . . Many people do not know they have been recorded on the register, including those who do not consider themselves to be vulnerable or potentially at risk, and third parties who may simply be related to a victim of crime.

. . . One family of five, who did not wish to be identified, only discovered they had all been added after making a Subject Access Request to their local council and Police Scotland after one of their children was assaulted at school in November 2015.

The mother said: “After a long battle to get this information, I was horrified to find out our whole family were listed on VPD and that it had been shared with several partner agencies, and used by the Named Person to instruct a social work

of a population of 5.2 million – 15 % of the population. None of these have been asked if they want this attention from the Police and none were informed. In setting up this database they ignored a recent Supreme Court judgement that said the stockpiling of such data was illegal. They have, in another context, ⁴ actually now admitted sharing data illegally.

I have heard the argument that if very large fines, or lengthy custodial sentences, were mandated for data breaches, then the privacy and security of our data could be assured. I would suggest that hell will freeze over before Tynwald passes a law that would see civil servants and policemen going to jail for this.

The issues are, to a lesser degree, understood by Parliament. New Labour's National Identity Card Register, which would have tracked all adults, was repealed by David Cameron.⁵ To this day, there are no plans to resurrect a similar scheme.

The problem is the piecemeal expansion of the use of our personal data by the civil service. England has a National Pupil database ⁶ which started out as an anonymous statistical tool on school performance. It now holds over 20 million highly detailed records on named children who are not informed how their personal data may be used, for what purposes, and by whom. And, yes, they sell the data to commercial entities.

⁴ **'Scots police broke law sharing info under Named Person'** Christian Institute, 26 Oct 2017

<http://www.christian.org.uk/news/scots-police-broke-law-sharing-info-named-person/>

At a Holyrood evidence session, Detective Chief Inspector Norman Conway told MSPs the police felt "on good grounds" to share private data at the low threshold of 'wellbeing', specified in the named person plans.

He pointed to ICO guidance, issued in 2013, which states that the Data Protection Act "should not be viewed as a barrier to sharing personal data" where there are wellbeing concerns.

However, Conway added that the police has "tightened up" its information-sharing procedures following a UK Supreme Court ruling on the named person legislation.

⁵ **ID cards scheme to be scrapped within 100 days**, Guardian, 27 May 2010

<https://www.theguardian.com/politics/2010/may/27/theresa-may-scrapping-id-cards>

The £4.5bn national identity card scheme is to be scrapped within 100 days, the home secretary, [Theresa May](#), announced today.

. . . The publication of the identity documents bill today marks the end of an eight-year Whitehall struggle over compulsory identity cards since they were first floated by the then-home secretary [David Blunkett](#) in the aftermath of 9/11.

. . . May said: "This bill is the first step of many that this government is taking to reduce the control of the state over decent, law-abiding people and hand power back to them.

"With swift parliamentary approval, we aim to consign identity cards and the intrusive ID card scheme to history within 100 days."

The deputy prime minister, Nick Clegg, said: "The wasteful, bureaucratic and intrusive ID card system represents everything that has been wrong with government in recent years."

⁶ **'Defenddigitalme' - campaign to ask the Department for Education to change policy and practice on the personal data of 20 million children in the National Pupil Database**

<http://defenddigitalme.com/>

I could find only three registers similar to that proposed in the Isle of Man and just one under consideration. Two are run by Camden and Brent councils. Other Councils do NOT appear have any interest in these registers.

The purpose of the Camden and Brent Council registers is, overtly, to monitor people and join up data. However, FOI's ⁷ I sent to these Councils showed that their actual working practices are opaque. It is simply not possible to see the full extent of the data usage. I have made a complaint to the ICO about this and the response is a long time coming.

In 2012 Jersey passed a law creating a simple 'Name & Address Register' ⁸ similar to that proposed here. In that law just five words 'The Minister may by Order modify' meant that there was no limit placed on the amount of information they could collect in the future. Three years later another law was attached giving the Health Minister access to medical records ⁹ - all without public debate. I fully expect our Government to propose a Single Resident Record that they can amend.

Government databases engage the law - not just Data Protection law - but the Human Rights Act and case law. The use of personal data by Government creates benefits and threats. The Government, obviously, promotes the perceived benefits, but is always silent on the threats which the public have to deal with. Governments which may seem benign at the present time may not always be so. Can we trust politicians not to sneak in something intrusive and unpleasant in the future? I'm not so sure.

For this reason my submission to the recent consultation included a paper by lawyer and Human Rights commentator Allan Norman. My brief to him was to address:

"what would need to happen for the Single Resident Record to be Article 8 compliant [taking] in recent case law and European Court of Justice judgements as well as the General Data Protection Directive."

Some key points emerge:

If the IOM Government were to fully comply with the spirit of all the applicable law they would not be able to do much more with our data than at present. How we ensure that they do this, should they go ahead with the register, is highly problematic.

⁷ https://www.whatdotheyknow.com/request/single_view_of_the_citizen_syste_5#incoming-993513

<https://www.whatdotheyknow.com/request/404299/response/980344/attach/html/2/Response%20all%20information%20to%20be%20supplied.pdf.html>

https://www.whatdotheyknow.com/request/single_view_of_the_citizen_syste_4#incoming-983113

⁸ **Register of Names and Addresses (Jersey) Law 2012**
<https://www.jerseylaw.je/laws/revised/Pages/15.660.aspx>

(8) The Minister may by Order modify the requirements of this Article in respect of any individual or description of individual as may be prescribed.

⁹ **Register of Names and Addresses (Access for Medical Purposes) (Jersey) Regulations 2015**
<https://www.jerseylaw.je/laws/revised/Pages/15.660.05.aspx>

'The Minister for Health and Social Services may use any registrable fact for medical purposes.'

Creating the law for the Single Resident Record is only the start of the legal arguments. In no way will it conclude them.

Allan Norman comments further that

' . . . how difficult it can be to know or foresee what the long term consequences of an unwise decision that is recorded might be. In particular, where someone suffers adverse consequences many years later in respect of something they did as a child'

and

' . . . the need to foresee and address the possibility that information held and passed on by the State is used to the detriment of the individual by somebody else in this instance, higher education institutions and employers. So do people understand that any consent they might give to being on a Single Resident Record might lead down the line to information being shared and used to their detriment by someone other than the Government to which that consent was given?'

On Data security he points out that you cannot legally prevent hackers and that a Crown Dependency database would be a high value hack requiring our civil service to be one jump ahead of all hackers for all time.

My position in this debate is that it is for the public to adjudicate on which data Government collects and what they use it for. We need to decide whether it is 'necessary and proportionate under the Human Rights Act for them to have this.

We have to ask whether the benefits of a Single Resident Record would actually accrue to individual people or whether, in fact, the Government would take most of the benefit. Consider, for example, the well known case of the woman in the Isle of White who was in dispute with her council housing department. She became suspicious of how much they appeared to know about her and submitted a Data Protection Subject Access request. She found out that they had accessed her medical records and were aware of a her problem with depression. That kind of enquiry is simply malevolent and who is to say that can really be prevented in the future.

Is it really 'necessary' to have this database to improve public service?

Would it be 'proportionate' as required by the Human Rights Act?

I propose an alternative for the improvement of public services - formal, statutory, inspections of all public services. It's not 'necessary' for Government to learn more about us - but it is necessary for us to learn more about them.

Please, do read Allan Norman's paper.

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