Dear Norman

Thank you for your letter of 25 March regarding the powers that the Information Commissioner has to compel individuals to interview.

We are committed to ensuring that the Information Commissioner’s Office (ICO) is a world class regulator and has the resources and enforcement tools she needs to safeguard the rights of individuals in relation to their data. During the passage of the Data Protection Bill, we worked closely with the Commissioner to modernise and increase her powers so that she is able to investigate the most complex data breaches.

Some of the new provisions, which now form part of the Data Protection Act 2018, include powers for the Commissioner to issue an “information notice” on any person connected with an investigation. This requires them to provide the Commissioner with specified information within a certain time period. Previously, an information notice could only be served on a data controller or processor, rather than, for example, a specific employee or former employee. Under the Act, the Commissioner can specify the form in which the information must be provided, so that it is most helpful to the investigation and can seek a court order if the person refuses to comply with the information notice.

Recent high profile cases have demonstrated how important it is that the Commissioner is able to act swiftly to investigate alleged data breaches. This is why we upgraded the Commissioner’s powers to impose ‘urgent’ information and enforcement notices, accelerating the period within which a person must provide information about the alleged breach or take action to address a risky processing activity. She can also carry out ‘no notice’ inspections without a warrant by imposing an urgent assessment notice in certain circumstances.

There will be occasions when the ICO needs to enter and search premises, after obtaining a warrant, to investigate a criminal offence or to carry out an assessment of an organisation’s processing activities. Under these powers, the Commissioner can require any person on the premises to provide information to help determine whether the controller or processor has breached data protection rules. We strengthened these powers in the Act to allow the Commissioner to seek a warrant from a High Court judge.
Under the previous rules a warrant could only be sought from a circuit judge or district judge, which could cause delays. We made further changes to the Commissioner’s powers under a warrant by ensuring that she can obtain information which might be accessible from computers in the premises, but is actually held elsewhere, for example in the cloud.

Lastly, we introduced a new criminal offence to deal with people who frustrate an information or assessment notice by deliberately destroying or concealing evidence which has been identified as being relevant to an investigation. The offence is punishable by an unlimited fine when tried on indictment and is a recordable crime.

We are confident that the Act provides a robust framework that protects the information rights of individuals and gives the Commissioner the powers she needs to deal with increasingly-complex data breaches. However, as with all legislation, we will keep this law under review and will continue to work closely with the ICO to make sure the Commissioner’s investigations are effective.

Thank you again for your interest and I look forward to continuing to work with you.

Yours ever

Best wishes

MARGOT JAMES MP
Minister for Digital and the Creative Industries