

Storing Critical Data
Legal Issues
London Metropolitan Network



17 July 2007
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Relationship with your users (1)

- Current trends
 - Paperless offices
 - Massive email traffic
 - Technological advances
 - Increasing legal regulation eg Companies Act 1985, Companies (Audit, Investigations and Community Enterprise) Act 2004, Finance Act 1998, VAT Act 1994 – regulate retention of certain corporate information, including electronic records
 - Compensation culture/personal privacy = need for quick access to authentic records

Relationship with your users (2)

- Users
 - Staff members
 - Academics
 - Students
 - Third parties sharing their data with you

Relationship with your users (3)

- User content
 - Academic work
 - Commercial information / day to day management information
 - Personal data governed by the Data Protection Act 1998
 - Other confidential information
 - Copyright works, trade secrets, patents, other Intellectual Property
 - Correspondence and email traffic

Relationship with your users (4)

- Contractual responsibilities
 - Student contracts
 - Terms of employment
 - Academic tenure/IP rights

Relationship with your users (5)

- Warranties / representations / undertakings as to data security
 - Can you honour these?
 - Who bears liability?
 - What do you tell users about data storage?
 - Who controls what is or is not backed-up?
- Avoid/ take care – undertakings and representations – avoid contractual claims for breach, loss of data, lack of secure storage

Relationship with your users (6)

- Data Protection Act 1998
 - Living individuals identifiable from data – system users and third parties
 - Information which is “biographical in a significant sense” or “affects privacy”
 - Fair processing and 8 Data Protection Principles
 - Institution = “data controller”

Relationship with your users (7)

- Principle 1 – “fair and lawful processing”
 - Advise “data subjects” how and by whom data is processed – including data storage
 - Ensure data protection notification is up to date
- Principle 5 – “not kept for longer than necessary”
 - Does all back-up data require permanent preservation?

Relationship with your users (8)

- Principle 7 – “appropriate technical and organisational measures ... against unauthorised or unlawful processing ... and accidental loss or destruction or damage to personal data”
 - External data storage provider – “data processor”
 - Written contract – data processor acts under instructions from data controller plus appropriate data security

Relationships with External Storage Provider (1)

- Contractual terms to include:
 - Ownership of data – it is yours, it remains your property
 - What will be done by whom?
 - Who will have access of why?
 - Responsibility for compliance with relevant law:
 - Data Protection Act
 - Regulation of Investigatory Powers Act

Relationships with External Storage Providers (2)

- Intellectual Property Law
 - Personal and business confidentiality
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- No third party sharing
 - All contracted staff – proper training and procedures
 - Overall security standards

Relationships with External Storage Providers (3)

- Freedom of Information Act 2000
 - HE/FE Institutions – subject to FOI Act as “public authorities”
 - Public access rights to “information held” by public authorities
 - Information discloseable subject to various exemptions, including:
 - Confidential information
 - Trade secrets
 - Legal professional privilege
 - Personal data

Relationships with External Storage Provider (4)

- Information is also “held” by a public authority if it is held “by another person on behalf of the authority” – ie external storage provider
- Contract to include suitable terms: eg assistance in respect of answering a request for information under the Act

Litigation and Disputes

- Effective storage of critical data means:
 - Quick access to authenticated documents/data
 - Compliance with Court rules on disclosure of relevant documents including electronic documents
 - Preserve documents when litigation is likely
- PR / legal concerns – the next Enron?
- Balance between sensible document retention and protecting legal rights

Future Trends and More Information (1)

- Overall storage capabilities – will technology keep up with demand?
- Data Retention Directive
 - February 2006 Directive – implementation by September 2007/March 2009
 - Not yet implemented in UK
 - Applies to public telephone and internet communication service providers

Future Trends and Other Information (2)

- Obligatory data retention: traffic and location data
- National security v personal privacy and commercial debate – *Google* – investigation of archiving by EU Article 29 working party
- Private sector next?
- British Standards Institute:
 - Not legally binding but useful guidance
 - www.bsi-global.com

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