

## European Working Party issues Opinion on “personal data”

On 20 June 2007, the Article 29 Data Protection Working Party adopted “Opinion 4/2007 on the Concept of Personal Data” (01348/07/EN-WP136). The Article 29 Data Protection Working Party, (or the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data, to give it its full name) was established by Directive 95/46/EC of the European Parliament and the Council of Ministers of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

One of the Working Party’s key remits is to contribute to a uniform application of the provisions of the Directive throughout EU Member States. The Data Protection Act 1998 (“1998 Act”) derives from the UK’s commitment to enshrine the provisions of the Directive in UK domestic law.

There are a number of practitioners and academics who consider that the decision in *Durant v Financial Services Authority* 2003 EWCA Civ 1746 resulted in such a narrow construction of ‘personal data’ that the UK’s compliance with the provisions of the Directive is in doubt. The objective of the Working Party’s latest Opinion was to determine a common understanding of the concept of personal data and establish a uniform way in which data protection legislation should be applied in EU Members States.

The Opinion states that “the Working Party is aware of the need to conduct a deep analysis of the concept of personal data. Information about the current practice in EU Member States suggests that there is some uncertainty and some diversity in practice among Member States as to important aspects of this concept which may affect the proper functioning of the existing data protection framework in different contexts”.

Following the publication of the Opinion, the UK Information Commissioner published new data protection technical guidance, entitled “Determining What is Personal Data”, on 29 August 2007. The guidance draws on the Working Party’s Opinion and applies the concepts discussed in the Opinion, in a UK context. The UK Information Commissioner has stressed that, although his guidance is structured differently, he is satisfied that it is consistent with the approach taken by the Working Party.

The House of Lords is due to consider what is meant by ‘personal data’ for the first time later this year, when it hears the appeal by the Common Services Agency against a decision by the Court of Session, which upheld the Scottish Information Commissioner’s decision against the Common Services Agency. It remains to be seen whether the Working Party’s latest Opinion, and the UK Information Commissioner’s new guidance, will have a bearing on the outcome of this case.

### Weblinks:

- [Article 29 Data Protection Working Party adopted Opinion 4/2007 on the Concept of Personal Data](#)
- [Durant v Financial Services Authority \[2003\] EWCA Civ 1746](#)
- [Data Protection Act 1998](#)
- [Directive 95/46/EC of European Parliament and Council of Ministers, 24 October 1995](#)