

There relating to  
individuals, including  
the obtaining,  
holding,

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There are different uses of the word privacy, however the legal meaning varies slightly to the everyday meaning. Within international documents and laws there has been many definitions proposed however there is no universal definition of privacy. Ameneh Malmir and Mohammad Malmir gave a range of definitions within their journal 'Government's civil liability towards individuals' privacy in cyberspace'<sup>1</sup>. " Privacy is marking the boundary line which allows the society to enter the private affairs of a person. Privacy is the realm of private life which a typical person does not allow himself to violate in any condition by understanding society needs. Individuals' tendency to their own dignity is the most important objective of privacy...Collecting sensitive information without the permission or knowledge of the person can be considered as a potential weapon in the hands of those in power...Therefore, this value is not less than other fundamental values, as in the era of information culture, some privacy is required for security and prosperity of human beings.

" Currently, every member state of the EU follows the current 1995 Data Protection Directive which regulated the processing of personal data within the European Union. However, every state has their own laws, we operate under the Data Protection Act<sup>2</sup>. In the preamble, it was said to be " An Act to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

" The GDPR (General Data Protection Regulation) will come into force on 25th May 2018 and will supersede the Data Protection Directive. This will

change the way that customers information can be handled, this will replace the Data Protection Directive which as above stated our current legislation operates under. The EU's GDPR website<sup>3</sup> states; " The EU General Data Protection Regulation...replaces the Data Protection Directive 95/46/EC and was designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens data privacy" The underpinning regulation and directive have been published in the EU official Journal<sup>4</sup> which states when it will come into force with a two-year preparation period for anyone covered by the regulation.

The new UK data protection legislation<sup>5</sup> was published on 14th September 2017, which revealed that it implemented most of the GDPR, and some exemptions<sup>6</sup>, including added protection for journalists, scientific and historical researcher and anti-doping agencies. Because we are implementing our own laws Brexit isn't an issue here because the Data Protection Bill largely includes the provisions of the GDPR. Therefore, there will only be minor changes to our laws and we are not relying on the EU for our privacy laws. However, there have been a few cases where the UK has allowed data protection laws to be breached and when they have reached the EU courts they have been stopped and the UK has been told to change this. In the EU, there are two legal systems, the European Court of Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (CFREU), when we leave the EU we will only be leaving the latter. The European Court of Human Rights is the first legal system within the EU, this is an international court which deals with cases of states alleged violations of our rights which are

defined in the European Convention on Human Rights. The ECHR dealt with the appeals of Mr S and Mr Marper<sup>7</sup> who had both been accused of committing crimes which subsequently they were prosecuted for however, their finger print and DNA samples were kept on record.

They appealed multiple times within the UK and were rejected so they eventually appealed to the ECHR on the basis that under Articles 8 and 14 the authorities had continued to keep their data on record unnecessarily. The court found that there had been a breach of Article 8 - the right to respect for privacy and family life, this wouldn't have been established without the ECHR. The Charter of Fundamental Rights is a text on basic but necessary human rights of every citizen in the EU.

The charter is in place to clarify rights into a single document which can change and adapt as society does. Court of Justice in the European Union dealt with two cases at the same time being, the cases of Tele<sup>29</sup> and Watson<sup>10</sup>. Both cases concerned the ability of member states to make electronic communications service providers to retain traffic and location data, this was in issue in relation to the CFREU. This happened under the ePrivacy Directive exemption<sup>11</sup> which allows member states to restrict rights on the confidentiality of communications. In the judgment, the Court of Justice in the European Union (CJEU) said which parts of national legislation would be deemed as unlawful under EU law of the Charter of Fundamental Rights.

The main issues were in regard to, the use of traffic and location data, the purpose of retaining data, how the data can be accessed, data subjects being informed quickly, and containing the data within the EU. Clearly in both these cases member states have violated EU laws and when we leave the EU we won't be protected by EU courts in cases like these. As we are only leaving the CFREU this would be the only one effected but this is clearly a big issue which may lead to the public's privacy being invaded. In addition to the new GDPR, there are new ePrivacy rules coming into force because without these the GDPR would be incomplete. Because of the changing society it is necessary to have protection of the right to private life as promised in Article 712 of the Charter of Fundamental Rights and this relies on having online protection as well. Currently, our protection comes from the ePrivacy Directive 2002/13 which was revised in 2009/14, this was referred to by many as the cookie law, because this is where the pop up consent cookies came from. Increasing government surveillance would be good in the sense that it would allow us to have a fuller picture of what is happening within the country and anything which may affect us. For example, in the case of R (Catt) v ACPO & Metropolitan Police<sup>15</sup>, Mr Catt appealed after a judgment that his records could be kept under 'review' by the police even though he has no criminal convictions and has never been violent personally at anti-arms trade rallies.

It is argued that deleting this evidence would leave the police with a lack of awareness, Lady Hale<sup>16</sup> commented that; "It is well known that, for a variety of reasons, complaints of domestic violence are often not followed through to

prosecution and conviction. But it is vital for the police, when responding to any new complaint, to know whether there have been similar complaints in the past." As this appeal was subsequently rejected this leaves the government in a good position because it supports the idea of increased surveillance, however as new laws are being developed for the UK's exit of the EU it is likely that this would still be deemed unlawful and this would have to be established through case law. A newspaper article in the Guardian<sup>17</sup> explained the case of 2016 European court of justice (ECJ) ruling in a case brought by Labour's deputy leader, Tom Watson, initially with David Davis, now the Brexit secretary. In the article<sup>18</sup>, it quotes Watson's argument that; "The current legislation fails to protect people's fundamental rights or respect the rule of law". This is again a clear breach of Article 8<sup>19</sup> as treating every member of the public like a suspect and gathering information on them is not a respect for privacy and family life. However, not having this information creates a lack of awareness for both our government and the police which could in turn lead to crime which could have been prevented if we'd have had the knowledge.

Therefore, this creates the difficult line between keeping people safe by having information on people and infringing on people's basic rights to privacy. From this information, it is clear that we heavily rely on the EU for all of our privacy laws however, it is too early to say that we are too dependent on the EU because it may be the case that we continue to have legal protection but this will depend on the outcome of negotiations. 1

Ameneh Malmir and Mohammad Malmir, 'Government's civil liability towards

individuals' privacy in cyberspace', (2015) International Journal of Law & Management <https://login-westlaw-co-uk>.

<https://login-westlaw-co-uk/maf/wluk/app/document?&srguid=i0ad69f8e000001606f0d0ebcc8dba8c9&docguid=I3969BFC03D5E11E5A757FDD8BCA9A1B5&hitguid=I3969BFC03D5E11E5A757FDD8BCA9A1B5&rank=5&spos=5&epos=5&td=3889&crumb-action=append&context=25&resolvein=true> Accessed 19th December 2017 2 Data Protection Act 1998 c.

293 'GDPRPortal: Site Overview', (EUGDPR. org) < <https://www.eugdpr.org/eugdpr.org.html> > Accessed 20th December 2017 4 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April (2016) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679&qid=1513877377270> Accessed 21st December 2017 5 Data Protection Bill (HL Bill 66) 6 Data Protection Bill (HL Bill 66) Part 1, Chapter 14 7 8 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 8 9 10 11 Privacy and Electronics Communications Data 2002 OJ 2 201/37, Art 10 12 The Charter of Fundamental Rights 2000/C 364/01 Art 7 13 Directive on Privacy and Electronic Communications 2002/58/EC 14 Directive on Privacy and Electronic Communications 2009/136/EC 2015 UKSC 9 16 2015 UKSC 9, Para 54 17 Alan Travis, 'UK police to lose phone and web data search authorisation powers' The Guardian (30th November 2017) 18 Ibis. 19 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 8

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