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Chapter IV

The Impact of the UK Human Rights Act 1998 on Privacy Protection in the Workplace

Bernd Carsten Stahl, De Montfort University, UK

Abstract

Privacy is one of the central issues in the information society. New technologies pose new threats to privacy but they may also facilitate new ways of protecting it. Due to the generally accepted importance of privacy, many countries now have explicit legislation to support privacy protection. At the same time there are philosophical debates about privacy, its definitions, meanings, and limitations. In this chapter I present the current state of legal protection of privacy in the United Kingdom. In doing so, I will argue that there are different philosophical concepts of privacy that underpin different pieces of legislation. I will explore what this may mean for the justification of privacy protection and speculate where the future development may be heading.

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Introduction

Privacy is generally accepted as one of the main issues of computer and information ethics. New technologies raise a number of issues for privacy protection. Governments in many countries have recognised that this is a problem that their citizens are sensitive towards. Thus, there are laws and regulations that attempt to address the issue of privacy. Behind those laws, however, there are philosophical concepts of privacy that are not always easy to identify but that are important to recognise if one wants to understand how and why privacy is legally protected. This chapter will concentrate on the case of the UK and analyse the UK legislature's view of privacy. The main emphasis is on the question of employee privacy and how it is affected by different pieces of legislation.

The chapter will focus on the question whether the introduction of the European Convention on Human Rights (ECHR), which includes a right to privacy, heretofore unknown to English law, adds anything to employee privacy as delimited by the Data Protection Act 1998 (DPA) and the Regulation of Investigatory Powers Act 2000 (RIPA). There has been some speculation that says that privacy protection of employees was well established before the European Convention on Human Rights became British law through the Human Rights Act 1998 (HRA). The chapter will argue that such a view would be false because the HRA influences employer-employee relationship in a number of ways. The Article 8 provision of personal privacy is an important aspect of this. One could approach this question superficially by exploring how the HRA in general and Article 8 in particular have changed the nature of privacy protection in work relationships. However, this chapter will use a different strategy. It will concentrate on the very notion of privacy and explore the question whether there are different concepts of privacy underlying the Human Rights Act 1998 on the one hand and the Data Protection Act 1998 (DPA) or the Regulations of Investigatory Powers Act 2000 (RIPA) on the other hand.

In order to develop this argument, the chapter will begin with a brief review of the literature on privacy. It will then discuss the DPA and RIPA and how privacy is perceived and protected by both. In a subsequent step the chapter will discuss the nature of the impact of the ECHR on employment relationships and particularly on privacy considerations within those. The chapter will conclude by outlining the different implications of the respective notions of privacy and discussing possible reasons for the development of different concepts of privacy.

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