



Privacy and cloud computing

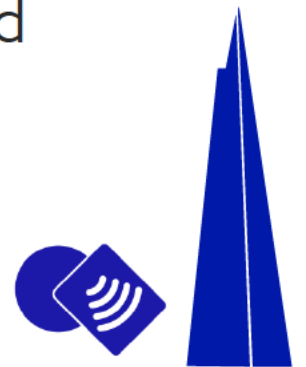
James Alexander
Head of Privacy and Data Protection



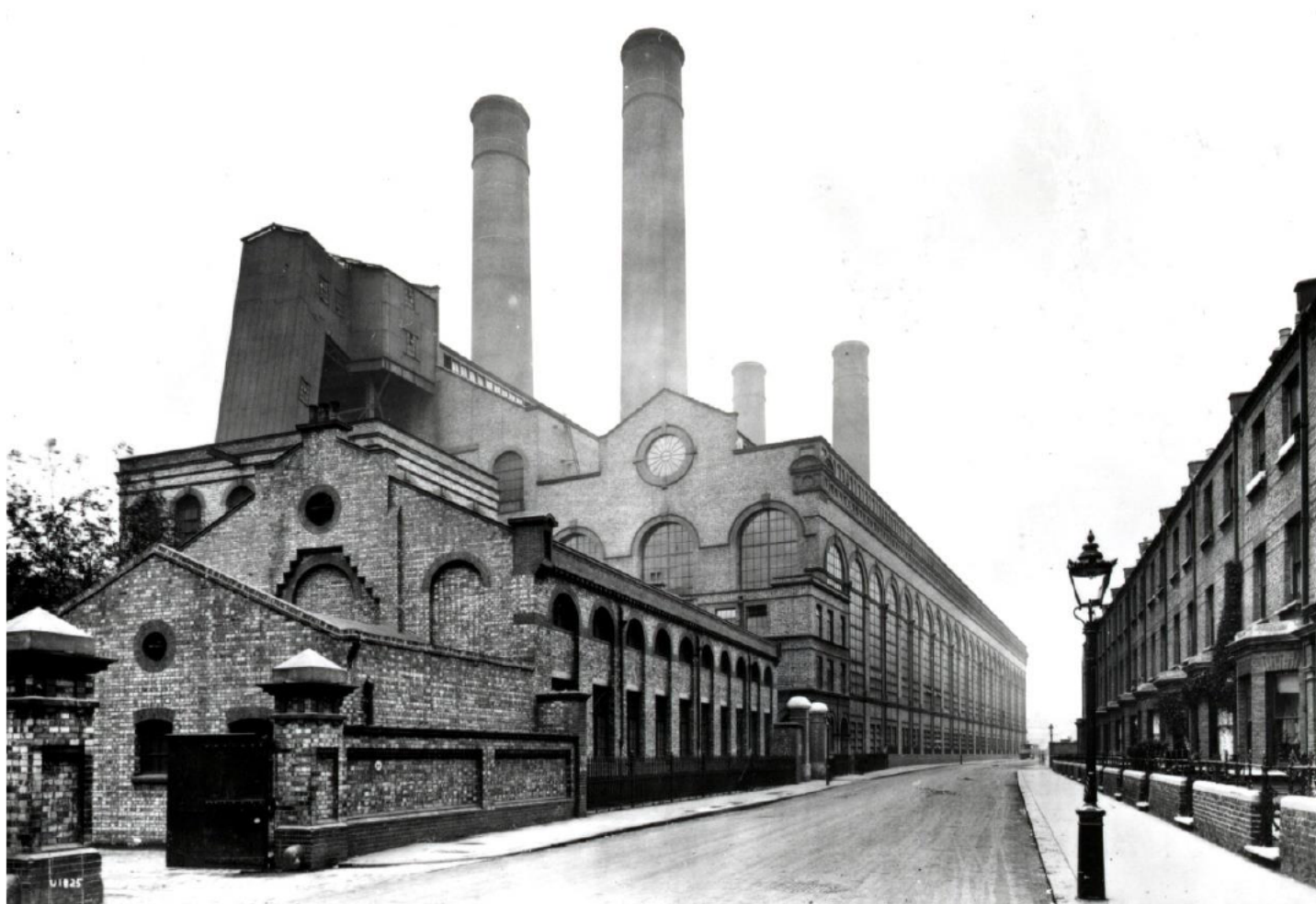
EVERY JOURNEY MATTERS

Privacy and cloud computing at TfL

- No prohibition on the processing of personal data in a cloud environment
- We recognise that cloud has many advantages – not just commercial (eg timely security patching)
- Privacy and DP Factsheet – Cloud computing
- Effective due diligence is essential (eg at ITT stage) and compliance must be reviewed periodically
- Robust privacy and data protection terms and conditions are also essential
- Mandatory Privacy Impact Assessments



A shift towards computing as a utility





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PRIVACY AND CLOUD COMPUTING

INFORMATION AND RECORDS MANAGEMENT

STAKEHOLDER FORUM

3 MARCH 2017

, Herbert Smith Freehills

James Alexander, Head of Privacy and Data Protection, Transport for London



PRIVACY AND CLOUD COMPUTING PRE-GDPR

- Key considerations for customers
 - Security of data
 - Location of data at rest
 - Access to data during and at end of service term
- Legal issues under Data Protection Directive / Data Protection Act 1998
 - Direct statutory obligations for controllers, but not for processors
 - Processors generally only subject to obligations the controller imposes on them by contract
 - ‘Traditional’ cloud service arrangements often did not address in detail areas of risk such as supply chain, data subjects’ rights, data security breaches

GDPR – WHAT'S CHANGING?

- General Data Protection Regulation

- Direct statutory obligations for processors for the first time
- Prescriptive list of requirements that must be included in data processing contracts

- Theory versus reality

- Simple case of updating contractual templates to incorporate these requirements?
- How will service providers approach key areas such as:
 - liability caps? (% of annual contract revenue v % of customer's global annual turnover)
 - restrictions on their ability to appoint sub-processors?
 - agreeing to audits by their customers?
- No clear market practice yet
- Data protection contracting set to become significantly more complicated under GDPR

NOTIFICATION REQUIREMENTS

Current Law

- No **requirement** under the Data Protection Act 1998 to notify regulator or data subjects

GDPR

- Controller must notify **without undue delay** if there is likely to be a high risk to the rights and freedoms of individuals
- Must describe the nature of the breach, the DPO's contact details, the likely consequences of the breach and the mitigating measures taken/to be taken by the controller
- Exceptions: data would be unintelligible; reduction of risk through subsequent measures; disproportionate effort (n.b. adverts)

SANCTIONS

Current Law

- Enforcement notice issued for breach of any of the data protection principles. Failure to comply with an enforcement notice is a criminal offence
- Monetary penalties of up to **£500,000** may be issued by the regulator

GDPR

- Fines of up to **EUR 10 million or 2% of global annual turnover** for breach of certain controller/processor obligations (including breach notification, and privacy by design)
- Fines of up to **EUR 20 million or 4% of global annual turnover** for breach of certain obligations, such as the basic data protection principles (including data security)

ABOUT OUR DATA PROTECTION PRACTICE

Legal issues permeate all aspects of cyber security. How you prepare for cyber security incidents, and the decisions you make, can greatly affect the legal and regulatory liability that can arise when an incident does occur. Involving lawyers at the outset and during incident response can help ensure that your cyber security strategy and response will withstand scrutiny from courts, regulators and other affected parties.

Our global cyber security team has an unrivalled breadth and depth of expertise and includes specialists from our data privacy, financial services regulatory, corporate crime & investigations and employment teams, amongst others. As a global full service firm, we are able to advise on cyber security issues wherever they may arise, and simultaneously across multiple jurisdictions where an incident requires it.

We work across the full cyber security life cycle, helping to design and embed cyber security policies and procedures and ensure that they are compliant. Our work includes before-the-event cyber risk management and advisory, incident response, as well as transactional and project work.

GLOBAL REACH

26 offices (including associated offices) across Asia-Pacific, EMEA and North America.

DEPTH OF TALENT

3,000 Over 3,000 lawyers, including 482 partners

CLIENT SERVICE

1ST for "Assurance" and "Reliability", NISUS survey of leading law firms

EXPERIENCE

We acted for a **global resources company** in relation to incident response following the inadvertent disclosure of the entirety of its global HR database to an unrelated third party by one of its cloud service providers. The incident affected employees in multiple jurisdictions across Australasia, Europe and the Americas.

We are advising a **global investment bank** in relation to a cyber security attack which saw \$40 million taken from a number of accounts, including reporting to and subsequent liaison with the relevant regulators, and on litigation by the account holders seeking to recover their losses from the bank.

We are appointed as the **sole APAC and EMEA cyber security counsel** to a global financial services company to assist in managing cyber security risks and incidents across 26 countries.

"PARTICULARLY PRONOUNCED EXPERTISE IN RELATION TO CYBER SECURITY ISSUES"
CHAMBERS 2017

"VERY GOOD AT ADVISING ON THE CUTTING-EDGE DEVELOPMENTS IN THIS AREA"
CHAMBERS 2017

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"EXPERIENCED IN HANDLING BOTH LITIGATION AND NON-CONTENTIOUS INFORMATION MATTERS, WITH PARTICULAR CAPABILITY IN RELATION TO CYBER SECURITY"
CHAMBERS 2016

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