

Decision Notice



Decision 057/2011 Mr Mark Irvine and South Lanarkshire Council

Job Evaluation Scheme

Reference No: 201002079

Decision Date: 17 March 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Irvine asked South Lanarkshire Council (the Council) for information about the job evaluation scheme adopted by the Council.

The Council provided some information, but initially refused to comply with part of Mr Irvine's request on the grounds that it would incur costs in excess of the sum of £600 prescribed for the purposes of section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council also advised that certain information was not held, and withheld certain information under section 38(1)(b) of FOISA, on the grounds that disclosure would breach the first data protection principle. After review, the Council withdrew its reliance on section 12(1) of FOISA, but substituted a refusal in terms of section 17 of FOISA (Notice that information is not held) in relation to that part of the request. The Council also withdrew its reliance on section 38(1)(b) of FOISA in relation to information covered by another part of the request, and again substituted a refusal in terms of section 17. The Council confirmed the other parts of its response without alteration. Mr Irvine remained dissatisfied and applied to the Scottish Information Commissioner for a decision.

The Commissioner found that the Council had generally complied with Part 1 of FOISA in dealing with Mr Irvine's request, but had failed to provide Mr Irvine with reasonable advice and assistance as required by section 15(1) of FOISA. The Commissioner did not require the Council to take any further action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held) and 38(1)(b), (2)(a)(i) and (b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data"); Schedule 1 (The data protection principles, Part I: The principles) (the first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.



Background

1. On 10 September 2009, Mr Irvine requested the following information from the Council:
 - a) What were the Council's reasons for not adopting the nationally recommended COSLA (Gauge) Job Evaluation Scheme (JES)
 - b) What was the Council's share of the £250,000 costs of producing the nationally recommended COSLA JES?
 - c) Who were the creators or authors of the Council's 555 JES?
 - d) What payment did the creators/authors of the Council's 555 JES receive for their time and expertise?
 - e) What credentials did the creators/authors possess for developing the Council's 555 JES?
2. The Council initially took the view that Mr Irvine's request was vexatious in terms of section 14(1) of FOISA, but this was not upheld by the Commissioner (*Decision Notice 108/2010 Mr Mark Irvine and South Lanarkshire Council*¹). On 3 August 2010, therefore, the Council responded to Mr Irvine's request.
3. The Council's response to each part of the request is summarised as follows:
 - a) compliance with the request would incur costs in excess of the £600 limit imposed by the Fees Regulations²;
 - b) information not held by the Council;
 - c) information withheld under section 38(1)(b) of FOISA;
 - d) the Council advised that it did not make any additional payments to the creators/authors of the 555 JES; the creation of 555 JES formed part of their normal workload and salary;
 - e) information withheld under section 38(1)(b) of FOISA.
4. On 16 August 2010, Mr Irvine wrote to the Council to request a review of its response, giving reasons for his dissatisfaction with each part of the Council's response, with the exception of part d).

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201000367.asp>

² The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004



5. On 20 September 2010, the Council provided its response to Mr Irvine's request for review. In relation to part a) of the request, the Council advised that it had identified an alternative way of retrieving any information covered by the request, which did not incur excessive costs. However, after carrying out a search of its records, the Council had not found any information which would answer Mr Irvine's specific request, and it therefore gave notice in terms of section 17(1) of FOISA that it did not hold the information requested. In relation to parts b) and c) of the request, the Council confirmed its previous decision, providing additional reasoning. In relation to part e) of the request, the Council withdrew its reliance on section 38(1)(b) of FOISA and gave notice that the information was not held.
6. Mr Irvine remained dissatisfied with the Council's response, and applied for a decision from the Commissioner on 29 October 2010. He provided reasons for his dissatisfaction, which are considered later in this decision.
7. The application was validated by establishing that Mr Irvine had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request.

Investigation

8. On 5 November 2010, the Council was notified in writing that an application had been received from Mr Irvine and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
9. On 22 November 2010, the Council was asked to provide any comments it wished to make on Mr Irvine's application (as required by section 49(3)(a) of FOISA). In particular, the Council was also asked to provide further details of the searches it had carried out in responding to Mr Irvine's request, including the record sets searched and the search methods employed. The Council was asked for more information relating to the authors/creators of 555 JES.
10. The Council replied on 22 December 2010, providing comments and information as requested. An additional question about the Council's electronic records was raised on 23 December 2010 and answered later the same day.
11. Further enquiries were made during the investigation, including in the course of a visit to the Council on 3 February 2011 and in a follow-up email sent the next day. All relevant submissions received from the Council and Mr Irvine will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the information withheld and the submissions which have been presented to him, and is satisfied that no matter of relevance has been overlooked.

Parts a) and b) of the request – information not held

13. In part a) of his request, Mr Irvine asked for information about the Council's reasons for not adopting the nationally recommended COSLA (Gauge) Job Evaluation Scheme (JES). After review, the Council advised that it had carried out a search of its records to locate information that would explain or identify its reasons for adopting its own JES rather than the COSLA national scheme. The search included all Committee minutes for 1996 to 2003 (when the Single Status Scheme was formally adopted) and the Corporate Management Team records for the period 1999 to 2003. The Council concluded "there is no information contained within these records that would answer your specific request".
14. Mr Irvine was not satisfied with the Council's response in relation to this part of his request, which seemed to him to indicate that the Council had no collective memory or proper records of strategic decisions taken less than 10 years ago. He believed that the Council was being obstructive and unhelpful in its response.
15. The Council was asked to provide more details of the search carried out in relation to part a) of the request. The Council confirmed that the search carried out did not cover all Committee minutes, as originally stated, but was restricted to records of those Committees likely to hold the requested information; specifically, the Policy and Resources Committee, the Personnel Services Committee and the Corporate Resources Committee. Personnel Services had also searched their files on Single Status. The Council confirmed that the available electronic records (which did not cover all of the relevant minutes) had been searched using such terms as "job evaluation scheme", "matrix" and "555".
16. The Council provided the Commissioner with copies of the minutes and reports it had identified through its search. The Commissioner asked the Council to supply some additional documents to which reference was made in the minutes and reports provided. The Council provided most of the documents requested, but advised that the Corporate Management Team (CMT) meeting report of 7 October 1999 could not be supplied; the records did not go back so far. Following a meeting with officers of the Council on 3 February 2011, the Council was asked to check that no earlier reports or minutes from the CMT were held in any part of the Council. After another search by Administration Services and Personnel Services, one additional report was provided (26 October 1995), along with two additional sets of minutes (27 January and 10 February 2000); however, these did not contain any information relevant to Mr Irvine's request.



17. Some of the minutes and reports retrieved by the Council and supplied to the Commissioner record steps taken in relation to the adoption and implementation of 555 JES throughout the Council. As the Council stated, they do not provide specific reasons why the Council did not adopt the nationally recommended COSLA JES. However, in documenting the development and introduction of 555 JES, the information in these minutes and reports provides a context within which the development and adoption of 555 JES can be better understood, and which may help to explain why there is no record of any decision not to adopt the COSLA JES.
18. Section 15(1) of FOISA requires a Scottish public authority to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information to it. In this case, the Commissioner believes it would have been reasonable for the Council to advise Mr Irvine that, although the specific information he had requested was not held (i.e. the reasons for not adopting the COSLA JES), the minutes and reports identified in its searches might go some way towards explaining why the Council was content to adopt the 555 JES. In failing to advise Mr Irvine of the existence of such information, the Commissioner considers that the Council failed to comply with section 15(1) of FOISA.
19. The Commissioner notes that Mr Irvine has now made a separate request for the information contained in these reports and minutes, and in these circumstances, does not require the Council to take any further action on the failure identified in the preceding paragraph.
20. In part b) of his request, Mr Irvine asked for information about the Council's share of the costs of developing the COSLA JES. The Council advised that this information was not held, a conclusion based on the failure of its Personnel Services to locate any relevant information in a search of "all relevant paper and computer files and minutes of the Council's committees". It confirmed this during the course of further enquiries, explaining that it held no records of any such transaction. It advised that, during a recent Employment Tribunal hearing, the former Director of Personnel Services had been asked about, but had no recollection of, such payments.
21. The Commissioner is satisfied that no information relating to such payments appears in the minutes and reports identified by the Council in relation to part a) of Mr Irvine's request. The Commissioner accepts that the Council is familiar with the information it holds in relation to the implementation of the Single Status Agreement and related matters, through its ongoing involvement in Employment Tribunal hearings.
22. On the basis of the searches carried out by the Council and information obtained through additional enquiries to the Council, therefore, the Commissioner accepts that the Council does not (and did not at the time it received Mr Irvine's request) hold any recorded information covered by part a) or part b) of Mr Irvine's request.

Parts c) and e) – information withheld under section 38(1)(b) of FOISA or not held

23. In part c) of his request, Mr Irvine asked who were the creators or authors of the Council's 555 JES. The Council withheld this information under section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or 2(b).



24. In part e) of his request, Mr Irvine asked what credentials the creators/authors possessed for developing the Council's 555 JES. The Council advised that this information was not held.
25. The Commissioner will first consider what information the Council held about the creators/authors of the Council's 555 JES, as any such information is likely to be personal data. The Council has advised that the only information it held at the time it received Mr Irvine's request was the name and former job title of the individual believed to have been responsible for developing the Council's 555 JES.
26. Mr Irvine asked about the "credentials" of the creators/authors. In his request for review, in relation to parts c) and e) of his request, Mr Irvine explained that he was seeking information about the professional role of senior council officials who had carried out an important specialist task, and the credentials or qualifications they possessed which would allow them to advise the Council on matters of strategic importance. As noted above, the Council advised Mr Irvine that it did not hold such information.
27. In its submission to the Commissioner, the Council advised that it had interpreted this part of the request as including both employment history and formal qualifications, but had searched primarily for information about formal qualifications. It confirmed that the individual in question was no longer employed by the Council, and that their personnel record had been routinely destroyed several years ago.
28. During the investigation, the Council was asked to consider whether it held any information which might be covered if a broad interpretation of the word "credentials" was used; for instance, information about previous work experience which would have made the individual particularly suited to undertake the development of 555 JES.
29. The Council confirmed that the only information it held (at the time of Mr Irvine's request and request for review) was the name and job title of the individual concerned. In this decision, the Commissioner cannot consider any information which the Council may have obtained since that time. On the basis of the submissions he has received and the enquiries he has made, the Commissioner accepts that the information held by the Council was limited to the name and job title of the individual concerned (which falls within the scope of part c) of the request), and that the Council did not hold any recorded information which would show the credentials of the author of the 555 JES at the time it received Mr Irvine's request.
30. The only information which therefore falls to be considered in relation to the exemption in section 38(1)(b) of FOISA is the name and job title of the individual concerned. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and if its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles laid down in Schedule 1 to the DPA. The Council has argued that disclosure of the information requested by Mr Irvine would breach the first data protection principle.
31. The exemption in section 38(1)(b) is an absolute exemption, so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.



Is the information personal data?

32. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
33. The Commissioner is satisfied that the withheld information relates to a living individual who can be identified from that information, and that it is therefore personal data as defined in section 1(1) of the DPA.

Would disclosure breach the first data protection principle?

34. The Council has argued that the release of the information would breach the first data protection principle, which requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that the withheld information does not fall into any of the relevant categories. It is therefore not necessary to consider the conditions in Schedule 3 in this case.
35. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
36. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.

Can any of the conditions in Schedule 2 to the DPA be met?

37. When considering the conditions in Schedule 2, the Commissioner notes Lord Hope's comment in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47³ that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights and freedoms or legitimate interests of the data subject.

³ <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>



38. The Commissioner considers that condition 6 of Schedule 2 of the DPA (which is, in any event, the only condition referred to by the Council in its submissions) would appear to be the only condition which might permit disclosure of the personal data requested by Mr Irvine. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
39. There are a number of different tests which must therefore be satisfied before condition 6 can be met. These are:
- Does Mr Irvine have a legitimate interest in obtaining the personal data?
 - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject?
 - Even if the processing is necessary for Mr Irvine's legitimate purposes, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject (i.e. the member of staff to whom the data relate)? There is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. Accordingly, the legitimate interests of Mr Irvine must outweigh the rights and freedoms or legitimate interests of the data subject before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Council was correct to refuse to disclose the personal data to Mr Irvine.

Does Mr Irvine have a legitimate interest?

40. There is no definition within the DPA of what constitutes a “legitimate interest”, but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. In his published guidance on section 38 of FOISA⁴, the Commissioner states:

In some cases, the legitimate interest might be personal to the applicant – e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as scrutiny of the actions of public bodies or public safety.

41. As noted previously, in his request for review Mr Irvine explained that he was seeking to find out who carried out an important specialist task, and what credentials or qualifications they possessed which would allow them to advise the Council on matters of strategic importance.

⁴ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=133>



42. The Council argued that the exemption in section 38(1)(b) stated that the “processing” in question was the disclosure of information “to the public”, not to the applicant. The Council took the view that the applicant’s interests must be aligned with those of the public. In effect, therefore, the identity of the applicant should not be taken into account when applying the exemption; instead, the issue would be the legitimate interests of the public, i.e. a public interest.
43. The Council went on to consider whether it could identify any public interest in the disclosure of the personal data in question, but concluded that there was no public interest that would be served by disclosure of the information and, consequently, no legitimate public interest in its disclosure.
44. The Commissioner acknowledges that whoever created the 555 JES, once the scheme was adopted by the Council any complaints or concerns about the scheme became the responsibility of the Council, not the author of the scheme. However, he takes the view that Mr Irvine has demonstrated a legitimate interest in information which would permit further scrutiny of the Council’s decision to delegate the task of creating the 555 JES to one particular official, and which might show why this individual was an appropriate choice for the task. The Commissioner accepts that Mr Irvine has demonstrated a legitimate interest in information which would add to public understanding of the origins of the 555 JES, which has had an impact on the working lives of many of the Council’s employees.

Is disclosure of the information necessary for Mr Irvine’s legitimate interests?

45. The Commissioner then considered whether disclosure of the personal data was necessary to meet Mr Irvine’s legitimate interests, or whether those aims could be achieved by means which interfere less with the privacy of the data subject.
46. The Council has argued that if there are any questions relating to the 555 JES, they relate to the scheme itself and not its author. The Council has questioned whether, even if there was a public interest (i.e. a legitimate interest) in disclosure, that disclosure would be necessary for the purposes of that legitimate interest, given that there is an appropriate forum to deal with such issues, i.e. through the Employment Tribunals. In support of its position, it referred to the decision of the Information Tribunal in the case of *Mrs S M Butters and the Information Commissioner (EA/2008/0088)*: as in *Decision 056/2011 Mr Mark Irvine and South Lanarkshire Council*, the Commissioner accepts the principles underlying that decision but would emphasise that he must consider their application in the context of the specific information he is required to consider in this case.



47. The Commissioner accepts in this case that it would be necessary to disclose the individual's job title in order to help satisfy Mr Irvine's legitimate interests, as this is the only information available which relates in any way to the credentials of the author of the 555 JES or which is otherwise capable of meeting the legitimate interest he has identified above. Based on his interviews with Council staff, he does not understand that there can be any guarantee that this information will be revealed during the current Employment Tribunal hearings on equal pay matters involving the Council. In the circumstances, he can identify no viable means of achieving Mr Irvine's legitimate aims which would interfere less with the privacy of the data subject.
48. The Commissioner will go on to consider the final test required in order to meet condition 6 of Schedule 2 of the DPA; that is, whether disclosure would cause unwarranted prejudice to the rights and freedoms of the data subject. As disclosure of the job title is likely to lead to the discovery of the individual's name, he must consider this test in relation to both parts of the withheld personal data.

Would disclosure cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject?

49. The Council argued that the author of the 555 JES would have had no expectation that their identity would be disclosed, at the time the work was undertaken (noting that this had taken place a number of years ago and prior to the passing of FOISA). The individual concerned was not a senior Council official (i.e. at the level of Executive Director, the level at which the Commissioner had required disclosure in *Decision 218/2010 Mr Michael Traill and South Lanarkshire Council*⁵) and this made it less likely that disclosure of the personal data would be fair: while the public interest in accountability for decisions taken on behalf of the Council might make it fair to release the personal data of employees below that level, because the individual concerned would have a reasonable expectation of disclosure, it was difficult to find such an expectation in this case given the time which had elapsed since the work had been done.
50. The Commissioner accepts that, in all the circumstances of this case, the data subject would have had no reasonable expectation, at the time this work was undertaken, that their role in creating the 555 JES would become public knowledge. This is clearly relevant in considering the data subject's legitimate interests, if not necessarily conclusive. In this connection, the Commissioner notes that the identity of the author is not mentioned in any of the minutes or reports which the Council has provided during the course of this investigation.
51. The Council considered the disclosure of information identifying the individual as the creator/author of 555 JES to be more intrusive on the privacy of the individual concerned than simply identifying the post they held.

⁵ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201001057.asp>



52. The Commissioner has considered the likely impact that disclosure of the name and job title of the individual concerned would have on their rights and freedoms. The Commissioner believes it is likely that disclosure of this information would lead to attention becoming focused on the data subject, in relation to the ongoing complaints and grievances arising from the implementation of the 555 JES within the Council. On balance, and given that responsibility for the 555 JES lies with the Council rather than the author of the scheme, the Commissioner finds that disclosure of the name and job title of the author would cause unwarranted prejudice to the rights and freedoms of this individual.
53. This being so, the Commissioner has concluded that condition 6 of Schedule 2 of the DPA cannot be met in this case. For the same reasons, he finds that disclosure would not be fair or, in the absence of a condition permitting disclosure, lawful. He therefore concludes that disclosure of the personal data in question would contravene the first data protection principle, and consequently that the information was correctly withheld under section 38(1)(b) of FOISA.

DECISION

The Commissioner finds that South Lanarkshire Council (the Council) generally complied with Part 1 of FOISA in responding to Mr Irvine's request, in advising him that certain information was not held and in withholding certain personal data under section 38(1)(b) of FOISA.

However, the Commissioner also finds that the Council failed to provide reasonable advice and assistance to Mr Irvine in dealing with his information request, and therefore failed to comply with Part 1, and in particular section 15(1), of FOISA.

The Commissioner does not require the Council to take any further action in relation to the failure identified above in response to Mr Irvine's application.

Decision 057/2011
Mr Mark Irvine
and South Lanarkshire Council



Appeal

Should either Mr Irvine or South Lanarkshire Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
17 March 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
- ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- ...
- (e) in subsection (1) of section 38 –
- ...
- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

38 Personal information

- (1) Information is exempt information if it constitutes-

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

- (2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles; or



...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

- (5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...



Data Protection Act 1998

1 Basic interpretative provisions

In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 – The data protection principles

Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...