

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 20 April 2009

**Public Authority:** Metropolitan Police Service  
**Address:** Public Access Office  
20th Floor Empress State Building  
Lillie Road  
London  
SW6 1TR

### Summary

---

The complainant asked the public authority for information about various aspects of an internal investigation into a particular officer's conduct that he believed had taken place. The public authority informed the complainant that it was not obliged to comply with section 1(1)(a) in relation to this information by virtue of the exclusion from that duty found in section 40(5)(b)(i) of the Act. The Commissioner is satisfied that the public authority applied section 40(5)(b)(i) properly and dismisses the complaint. However, the Commissioner has found a procedural breach of section 10(1) as the public authority did not issue its refusal notice within twenty working days and a breach of section 17(1)(b) because the public authority failed to cite fully the exemption that it relied upon within the statutory timescales, but requires no steps to be taken.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. On 9 April 2007 the complainant requested the following information in accordance with section 1(1) of the Act:

*'A schedule of all resources and costs associated with an internal investigation, specifically that of:*

**[Officer redacted by the Commissioner]**

Currently of:  
**[Address redacted by the Commissioner]**

*I ask to be provided details of:*

1. *The date the enquiry commenced and the date the enquiry concluded.*
2. *The number of police officers associated and their role from those obtaining statements to the senior officers hearing the matter at a tribunal.*
3. *The number of support officers associated with the investigation.*
4. *The hours associated with the enquiry.*
5. *A breakdown of the hours i.e. those associated with statement recording, travelling, recording phone calls , surveillance, general enquiries etc.*
6. *A breakdown of the hourly rates i.e. those at standard rate and the overtime recorded.*
7. *The actual cost of the enquiry, the monetary figure.*
8. *A breakdown of the costs i.e. those associated with statement recording, travelling, recording phone calls, surveillance, general enquiries etc. To include the total amount paid at normal rate and the total paid as overtime.*
9. *The sum paid to the DCI during this period of suspension, the monetary figure.'*

3. On 18 May 2007 the public authority responded to the request for information. It informed the complainant that it was excluded from the duty to confirm or deny by virtue of section 40(5). It informed the complainant that the Act's purpose was to place the information in the public domain. It said that to confirm or deny whether that information exists would reveal information about that individual, breaching their right to privacy under the Data Protection Act 1998 (DPA). It said that it was obliged by the Freedom of Information Act to observe that right to privacy in all instances. Finally, it indicated that this response is in line with normal practice in commenting on requests for personal information and should not be taken as conclusive evidence that any information exists or not.
4. On 18 July 2007 the complainant asked the public authority to conduct an internal review. He informed the public authority that he had spoken to the officer to whom the request related about this request.
5. On 24 July 2007 the public authority responded to the request for an internal review. It informed him that it was upholding its position and informed him that the duty in section 1(1)(a) of the Act does not apply, by virtue of the following

exclusions: section 40 (personal information), section 30 (investigations) and Section 31 (law enforcement). It stated that this should not be taken as conclusive evidence that the information requested exists or not.

## The Investigation

---

### Scope of the case

6. Dissatisfied with the public authority's final response on 24 July 2007, the complainant wrote to the Commissioner on 30 July 2007 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That he already had some information about the situation.
  - The officer in question is a Detective Chief Inspector and has considerable experience.
  - His role has resulted in him receiving considerable public exposure. The complainant specified three roles that the officer had and also detailed media coverage about operations that he was responsible for.
  - That he does not believe the release of the information would have any effect on the health and safety of the data subject.
  - That he also disputes the public authority's application of section 31 in this case.
7. The Commissioner is only investigating the public authority's handling of the request for information made to it on 9 April 2007. He is not making any comment on the public authority's handling of any other request by the complainant in this notice.
8. The complainant has also made a number of other requests that were about his personal data. The Commissioner has made an assessment under section 42 of the DPA of the public authority's compliance with that Act. This has been dealt with separately and does not form part of this Decision Notice. (An assessment under section 42 of the DPA is a separate legal process from the consideration under section 50 of the Freedom of Information Act.) The complainant has also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
9. The complainant has made this request in the belief that the named officer was the subject of an internal investigation that led to a disciplinary hearing. For clarity the Commissioner will refer to internal investigation and/or disciplinary hearing throughout this Decision Notice. This does not mean that the named officer was necessarily the subject of either an internal investigation or a disciplinary hearing.

## Chronology

10. On 7 November 2008 the Commissioner wrote to the complainant and informed him that he would focus on just the handling of the request dated 9 April 2007. He also informed the complainant that he would look at the applicability of section 40(5) first. He informed the complainant that he would write to the public authority to establish its arguments, and invited the complainant to make further arguments if he chose to.
11. On 12 November 2008 the Commissioner wrote a detailed set of questions to the public authority about section 40(5)(b)(i) (the exclusion from the duty to confirm or deny). He also asked for the public authority's specific arguments.
12. On 8 December 2008 the public authority informed the Commissioner that it would not be able to provide a response to his questions before the Commissioner's deadline. The Commissioner agreed to extend his deadline by one week.
13. Also on 8 December 2008 another person from the public authority called the Commissioner regarding its submissions in the Data Protection Act case.
14. On 18 December 2008 the public authority provided a letter to the Commissioner with detailed arguments about its position in relation to the Freedom of Information complaint.
15. Between the 8 and 12 January 2009 the Commissioner exchanged a number of emails with the complainant and also discussed the scope of the case on the telephone.

## Findings of fact

16. The Police Reform Act 2002 and the Police (Complaint and Misconduct) Regulations 2004 contain provisions for some parties to access disciplinary information.
17. The relevant disciplinary process for the rank of the Detective Chief Inspector at the date of the request was dictated by the *'Home Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures'* and the *'MPS Misconduct Investigation Guide 2007.'* The Commissioner has examined the process in order to understand what the expectations of the officer would be in the circumstances, whether or not recorded information is held.
18. The Commissioner has also considered the internal processes that the public authority has for disclosing information of this type. The detail of these processes can be found in the *'MPS Media Relations Standard Operating Procedures'* and the *'DPS [Directorate of Professional Standards] Media and Communications Strategy Including DPA [Directorate of Public Affairs] Guidelines'*.

## Analysis

---

### Procedural Breaches

#### Section 10(1)

19. The time for complying with section 1(1) is contained within section 10(1) and states:

*“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”*

20. The Commissioner notes that the request was made on 9 April 2007 but the public authority did not issue its refusal notice until 18 May 2007. This was 29 days working days from the date of the request and in excess of the twenty working days allowed. This was therefore a breach of section 10(1) of the Act.

#### Section 17(1)(b)

21. Section 17(1) provides that -

*“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.”*

22. The public authority failed to cite the exemption that it chose to rely on fully within the statutory timescale. It should have stated that it was excluded from the duty imposed on it by the provisions of section (1)(1)(a) by virtue of the provision of section 40(5)(b)(i). In failing to cite the exemption fully that it was relying upon (i.e by specifying the relevant sub paragraph) it has also breached section 17(1)(b) of the Act.

23. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

## Exemption

### *Section 40(5)(b)(i) (exclusion from the duty to confirm or deny)*

24. The information was requested by the complainant in the belief (and it is irrelevant whether this was right or wrong) that the officer in question had been the subject of an internal investigation and/or a disciplinary hearing. In confirming whether or not information is held in relation to this request the public authority would have been exposing to the public whether or not the officer in question was subject to an internal investigation and/or a disciplinary hearing. The public authority has informed the Commissioner that this is the reason that it chose to rely on section 40(5) in this case. Its position therefore is that it is excluded by virtue of the provisions of section 40(5)(b)(i) from the duty imposed on it by the provisions of section 1(1)(a).
25. Section 40(5)(b)(i) provides that a public authority is not required to confirm or deny whether it holds information if the confirmation or denial itself would reveal third party personal information and contravene a data protection principle.
26. From the outset, it is important to point out that the Act except in very few scenarios (none of which are applicable in this case) is applicant blind. In other words, a disclosure made under the Act is in effect to the world at large, as every other applicant would be entitled to that information upon request.
27. Generally, the provisions of subsections 1 to 4 of section 40 exempt 'personal data' from disclosure under the Act. In relation to a request which constitutes the personal data of individual(s) other than the applicant(s), section 40(5)(b)(i) further excludes a public authority from complying with the duty to confirm or deny holding the information imposed by section 1(1)(a) if complying with that duty would contravene any of the data protection principles, or section 10 of the DPA, or would do so if the exemptions in section 33A(1) of that Act were disregarded.
28. Therefore, in order for section 40(5)(b)(i) to be correctly applied the public authority must establish the following two elements:
  - (1) that confirming whether or not information is held by the public authority would reveal the personal data of a data subject as defined by section 1(1) of the DPA;
  - (2) that to confirm whether or not information is held would contravene one of the data protection principles.

### *Would confirming or denying whether information is held reveal personal data of the data subject?*

29. The Commissioner has considered whether to confirm or deny whether the subject officer was the subject of an internal investigation and/or a disciplinary hearing would be the named officer's personal data.

30. Personal data is defined by section 1(1) of the DPA. This states that –

*“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”.*

31. The public authority informed the Commissioner that through confirming or denying that the information requested was held it would reveal to the public whether the named officer was or was not the subject of an internal investigation and/or a disciplinary hearing. This would be the personal information of the officer involved. The Commissioner agrees with the public authority that whether someone was subject to an internal investigation and/or a disciplinary hearing would fall under the definition of personal data in the DPA.

32. The Commissioner also recognises that it may be possible that the information would be sensitive personal data of the named officer as defined by section 2(g) and (h) of the DPA:

*‘In this Act “sensitive personal data” means personal data consisting of information as to—*

*....*

*(g) the commission or alleged commission by him of any offence, or*

*(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.’*

*Would confirming or denying whether information is held contravene any of the data protection principles?*

33. The Commissioner must then go on to look at whether confirming or denying whether information was held would contravene any of the data protection principles of the Act. The Commissioner notes in considering whether the exclusion applies, he must consider what information is in the public domain as opposed to what information the particular applicant may be aware of. The Commissioner has checked what is available in the public domain and as of the date of this notice there is no information that confirms or denies whether the named officer was subject to an internal investigation and/or a disciplinary hearing. The public authority has also informed the Commissioner that it does not believe that any information is in the public domain.

34. In this case the public authority has furnished the Commissioner with detailed arguments about the first data protection principle. The Commissioner agrees with the public authority that the relevant principle in this case is the first data protection principle: the requirement that processing should be fair and lawful.
35. The first data protection principle has two components, which both need to be satisfied for the principle not to be contravened. These are outlined below:
  - the personal data should be processed fairly and lawfully; and
  - personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

There is also a further condition to be satisfied for the processing of sensitive personal data. This is that one of the conditions in Schedule 3 of the DPA (as amended by The Data Protection [Processing of Sensitive Personal Data] Order 2000) is also satisfied.

36. The public authority argued that confirming or denying of whether a particular officer was subject to an internal investigation and/or a disciplinary hearing would be unfair and would not satisfy the first component. It informed the Commissioner that this was its general policy and it would never routinely confirm or deny whether an individual was subject to an internal investigation and/or a disciplinary hearing as to do so would be contrary to their expectations that such information would remain private.
37. The Commissioner is inclined to agree that in this case to reveal whether or not a specific officer was subject to an internal investigation and/or a disciplinary hearing would be unfair. He considers that there is a general and reasonable expectation that internal investigations and disciplinary hearings will remain private between employer and employee. In addition he notes that the officer in question is below the most senior ranks and after thoroughly examining the policies and procedures (which are outlined in the finding of fact section of this notice) he is satisfied that these are consistent with an expectation of privacy. The view that there is a reasonable expectation of privacy for internal investigations and disciplinary hearings has been supported by the Information Tribunal in the case of *Waugh v ICO and Doncaster College* [EA/2008/0038].
38. He also notes that potentially singling out the officer in question would intensify the unfairness. The Commissioner is aware that each calendar year there are around 1265 conduct matters looked at by the public authority. A minority of these enter the public domain on an 'if asked' basis. This is after the press department has indicated to the officer concerned that this would happen and where what is disclosed is limited to information that will inform the public without radically affecting the officer's privacy.
39. When considering the reasonable expectations of the officer in this case the Commissioner has also taken into account the Police Reform Act 2002 and the Police (Complaint and Misconduct) Regulations 2004.



40. Section 11(7) of the Regulations states:

*'As soon as practicable after any misconduct hearing or other action that is taken in respect of the matters dealt with in any report submitted under paragraph 22 of Schedule 3 of the 2002 Act, the Independent Police Complaints Commission or, as the case may be, an appropriate authority shall notify any complainant and interest person of the outcome of that hearing or action, including the fact and outcome of any appeal against the findings of or sanctions imposed by such a hearing.'*

41. In view of the above, some may argue that police officers should, irrespective of their seniority, reasonably expect that information about disciplinary hearings will be made available to others. However, any disclosure under the above Regulations is likely to be to parties who are already aware that disciplinary action is being considered. The Commissioner does not consider that the possibility of disclosures to certain limited parties in that context means that officers should reasonably expect that the public at large will be informed about whether or not they have been the subject of any action.
42. The Commissioner has considered the fact that the officer is performing a public role and does hold a relatively senior role where they have considerable responsibility. However, on the facts of the case he does not consider that this would make confirming or denying the existence of information fair.
43. The Commissioner has considered the officer in question's rights under Article 8 of the Human Rights Act and, following contact with the officer, has concluded that releasing the information would affect their privacy rights and would be likely to cause damage and distress. This is highly persuasive and supports the position that release of this information would be unfair.
44. The Commissioner has also asked the Independent Police Complaints Commission (IPCC) about its general policies of disclosure in relation to findings in investigations and disciplinary hearings given that it is the other body that is often engaged in managing such investigations. It informed the Commissioner that in practice its policy is to name officers in reports that are published (this includes disclosing them to interested parties) unless there is a reason under section 20 of the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004 why they should not be named. The Commissioner is satisfied that this policy would ensure that the correct parties are aware of this information and that any potential harm is considered rigorously at this point. The Commissioner considers that the expectations of the data subject would be that this sort of information would only be released through the correct process and, he therefore takes the view that to release it outside of this process would be unfair.
45. While the Commissioner accepts that there may be a legitimate interest in the public knowing about investigation into the conduct of police officers, he considers that the Police Reform Act provisions satisfy this interest and that disclosure under the Act is not appropriate in this case.

46. The Commissioner has also considered conversely whether to confirm that a particular officer was **not** the subject of an internal investigation or disciplinary hearing would also be unfair. In this case the Commissioner believes that the approach needs to be uniform. Any other approach would indirectly expose those that had been subject to an internal investigation and/ or a disciplinary hearing. The Commissioner therefore considers that to confirm that there was not an internal investigation or a disciplinary hearing would be unfair too.
47. As the Commissioner has concluded that confirming or denying the existence of the information would breach the first data protection principle because it would be unfair, he has not deemed it necessary to consider the lawfulness of disclosure of the data, or whether disclosure would meet any of the conditions in Schedule 2 of the DPA. It is also not necessary to consider whether complying with section 1(1)(a) would meet any of the conditions in Schedule 3 of the DPA, when it comes to revealing potentially sensitive personal information.
48. Because the Commissioner has upheld the section 40(5) exclusion to the duty to confirm or deny in this case, he has not gone on to consider sections 30 and 31 in this case.

## The Decision

---

49. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - the public authority correctly relied upon section 40(5)(b)(i) to refuse to confirm or deny whether it held the requested information.
50. However, the Commissioner has also found that the public authority did not meet the requirements of section 17(1)(b) in failing to fully cite section 40(5)(b)(i), which it was relying on or section 10(1) in issuing its refusal notice within twenty working days. However, he requires no remedial steps to be taken in this case.

## Steps Required

---

51. The Commissioner requires no steps to be taken.

## Right of Appeal

---

52. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 20<sup>th</sup> April 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **Section 1 - General right of access to information held by public authorities**

Section 1 provides that:

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

...

#### **Section 10 - Time for compliance with request**

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

...

#### **Section 17 - Refusal of request**

Section 17 provides that:

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

- (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

## **Section 40 – Personal information**

Section 40 provides that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) 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 [1998 c. 29.] Data Protection Act 1998, 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

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

## Data Protection Act 1998

### Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “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;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
  - (a) organisation, adaptation or alteration of the information or data,
  - (b) retrieval, consultation or use of the information or data,

- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
  - (d) alignment, combination, blocking, erasure or destruction of the information or data;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
  - (b) that it should form part of a relevant filing system,
- it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.
- (4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

## **Section 2 - Sensitive personal data**

In this Act “sensitive personal data” means personal data consisting of information as to—

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the [1992 c. 52.] Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or



(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.